

ed during the course of the discussion. One is the constitutional and legal aspect. I think the House has extensively discussed this and the Law Minister has answered every point. On the question whether the Presidential Order was constitutional and valid I can only quote from what the Law Minister has said. That I do not want to do and take the time of the House. This question was discussed earlier and also at the time of placing the Order on the Table.

The other point raised was about the political question of the constitution and fall of the Ministry, the House is aware of the circumstances in which the Ministry was formed and also the circumstances in which it fell. I would not like to go into this matter.

Some specific points were raised by Shri Viswanathan. It would not be correct to say that Pondicherry has been neglected. There has been definite progress. As can be seen from the budget estimates for the last six years. In 1969-70 the budget estimates were of the order of Rs. 863 lakhs. By 1973-74 it went up to Rs. 1,501.44 lakhs. As far as the Plan is concerned, Rs. 400 lakhs have been provided for 1974-75 for the State Plan schemes, which is a high target, as far as Pondicherry is concerned. The Planning Commission has approved an outlay of Rs. 5.25 crores, comprising Rs. 4 crores as Central assistance and Rs. 1.25 crores as State resources. The Plan Outlay is: Agriculture—Rs. 131 lakhs; Irrigation and Power—Rs. 37.73 lakhs; Industry and mining—Rs. 29.17 lakhs; transport and Communications—Rs. 34.98 lakhs; Social Services—Rs. 191.47 lakhs. As regards Education, out of the Budget estimate of Rs. 15,014.44 crores, Education gets an outlay of Rs. 262.78 lakhs.

It is also known that the percentage of literacy in the Union Territory of Pondicherry is 46 per cent as against the national average of 29.34 per cent.

He referred to a Central University to be set up in Pondicherry. There is a proposal to set up a Central University during the Fifth Plan. Necessary land will be made available by the State Government and proposal has also been initiated for making education free up to the degree level.

A proposal to set up a thermal plant has been accepted in principle by the Planning Commission.

About housing to which a reference was made, it is given in the Explanatory Memorandum that there is an increase in the Budget estimates for housing. This is intended to cover land acquisition and allied schemes, including free distribution of house sites to landless workers under the Minimum Needs Programme.

With these words, I commend the Budget proposals for the acceptance of the House.

MR. CHAIRMAN: The question is:

"That the respective sums not exceeding the amounts on Revenue Account and Capital Account shown in the third column of the Order Paper, be granted to the President, on account out of the Consolidated Fund of the Union territory of Pondicherry to defray the charges which will come in course of payment during the financial year commencing from 1st April, 1974, in respect of the heads of demands entered in the second column thereof—

Demands Nos. 1 to 32 and 34."

The motion was adopted.

14.18 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

PONDICHERRY APPROPRIATION
(VOTE ON ACCOUNT) BILL, 1974

THE MINISTER OF STATE IN THE
MINISTRY OF FINANCE (SHRI K. R.
GANESH): I beg to move for leave

[Shri K. R. Ganesh]

to introduce a Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the Union territory of Pondicherry for the services of a part of the financial year 1974-75.

SHRI SEZHIYAN (Kumbakonam):
Sir, I rise to oppose the introduction of the Pondicherry Appropriation (Vote on Account) Bill, 1974.

I am fully aware that under Sections 29 and 31 of the Union Territories Act, it has been clearly stated:

"As soon may be, after the grants have been made by the House, there shall be introduced a Bill to provide for the Appropriation out of the Consolidated Fund ..."

This is on par with article 114 of the Constitution. Now, the demands have been granted and there shall be an Appropriation Bill introduced. But I am opposing that one. The simple reason is that the present Appropriation Bill, in the form in which it is being sought to be introduced, is not the usual form of Appropriation Bill; it tries to introduce other factors which are extraneous. It will go against the grain of Parliamentary democracy itself if we allow this Bill, in its present form, to be introduced and passed. It will be a day when Parliamentary democracy will have been thrown out of this House, it will be given a go-by, if we allow the Appropriation Bill, in its present form, to be taken up for consideration and approval of the House.

On the 11th the Speaker was kind enough to refer to a note put forth by me for consideration of the meeting called for by the Speaker with the leaders of the Opposition. He has stated:

"In the original of the note which Shri Sezhiyan gave me he stated that in the Appropriation Bill,

which is brought before this House, or in the statement this Order by the President must be mentioned and there must be another clause, rectifying the mistake, by giving it retrospective effect from the date it became effective, so that doubts could be removed."

I concede, I gave a note wherein I suggested that amounts already withdrawn under the Presidential Order out of the Consolidated Fund of the Union Territory of Pondicherry should be regularised. I gave a model Appropriation Bill wherein under Clause 3 I gave the form by which all the withdrawals till the date of commencement of the Act could be regularised. I do not deny that the whole basis on which my suggestion was prepared rested on the opening sentence of the note itself where I have said:

"Regarding the question of authorisation of withdrawal of sums of money from the Consolidated Fund of the Union Territory of Pondicherry, it is obvious from the objections raised in this House and the ruling given by the Speaker that withdrawals from the Consolidated Fund could and should be sanctioned only by the Legislature and in the present case by the Parliament which has assumed the power of the Assembly of Pondicherry."

My suggestion rested on the sole ground that it is the Legislature that has got the power and that his power can never be arrogated by the executive. That was the basis of my suggestion. Now they have not accepted that in so many words. They may be implementing what I have said, but they have not accepted what I have said regarding the validity of the Order. Even on 3rd when the Speaker queried me as to what was the way out of this, I made it very clear that, first of all, they should accept that Parliament and Parliament alone has got the power to sanc-

tion withdrawal of funds; the President, by an executive fiat, could not do it; if they accepted that and apologised to the House, the House would be ready to give the sanction retrospectively; unless the supremacy of the Parliament in financial matters was recognised, there was no meeting-ground. On that basis I gave the note, but they are using the form without accepting the basis on which I raised this. On 11th, Mr. H. R. Gokhale has gone on record to say—he has reiterated the stand taken earlier; that is what he said—that the order was passed fully legally in accordance with the provisions of the Union Territories Act, which we have been contesting. Again he has gone on record to say:

"I want to reiterate that the Government's position is that the order is legal and Government will establish it before the court when the time comes."

I have given him a golden opportunity by filing a writ petition in the Madras High Court. If he still feels, if the Government still holds the opinion, that the Presidential Order is fully valid and legal, I would request him to utilise this opportunity—and not to take refuge under anything else—to argue out the case. Let us, once and for all, have it decided in a legal way. The case has been posted for the 22nd. I hope the hon Minister will instruct the counsel, whichever eminent lawyer may be appearing on behalf of Government, to see that the case is heard and a decision comes out. Matters of fact are not involved there. Only points of law are to be discussed. Let them raise the question and fully argue it out. If he is quite confident that the President has got the powers to issue the Presidential order in question, if he feels that the Presidential Order issued on 29th March is valid and is legal, let him argue. I have given him a golden opportunity to establish the case. He brags words in the House can give it the legality. As cor-

rectly stated "by the Speaker, he cannot give a ruling on the legality or the constitutionality and that we have to go to the court. Now it is in the court, it is very much in the court and I ask the Government to come forward and prove the legality of the Presidential order. The case should be argued out and the Government should not take recourse to this method of avoidance.

One thing that baffles me is that Shri Gokhale said the other day that he was quite clear about the validity of the order. Only two positions can exist. Either the Presidential Order is valid in which case no regularisation and no validation is called for as he contemplates to do in the Appropriation Bill. Otherwise, if they take the position that it is invalid, then they can put the deeming clause. But they want to have it both ways. They are in two minds. They want to confuse us, in fact they are confused. They want to cloud the entire issue. You take a categorical stand.

If they feel that the Presidential Order is valid, then clause (3) of the Appropriation Bill is superfluous and redundant and is not called for at all. In no Appropriation Bill such a clause you will find. What do they say in clause (3) which is the crux and which is the burden of the entire Bill? They have put clause (3) which says:

"For the removal of doubts, it is hereby provided that notwithstanding anything in the Government of Union Territories Act, 1963, any sums withdrawn from the Consolidated Fund of the Union Territory of Pondicherry on or after the 1st day of April, 1974 and before the commencement of this Act in pursuance of the Order of the President, dated the 29th March, 1974... shall be deemed to have been authorised to be withdrawn under this Act as if this Act had come into force on the 1st day of April, 1974."

MR. DEPUTY SPEAKER: You are going into the provisions of the Bill. I am not preventing you. Should it not better come at the stage of consideration? Now we are at the stage whether the Bill should be introduced or not. All these may come later.

SHRI SEZHIYAN: I do not want to take the time of the House but that is the thing which makes the character of the Appropriation Bill completely changed from the usual form, this deeming clause they have tried to introduce. This is not new. It is quite a common practice that whenever a provision or an Act of Government is found to be invalid or struck down by the court, a new legislation is always brought by way of an amendment giving retrospective effect or providing for a deeming clause to make the correction. This is always done to correct an error, to regularise an irregularity and to validate an invalid order. The deeming clause by itself means that an irregularity has occurred or an invalid act has been perpetrated. Either the courts have struck it down or you are afraid that the court may strike it down, you come with a deeming provision. In this case, it is quite clear that the introduction of the deeming provision necessarily implies an irregularity notwithstanding the words that are used.

'For the removal of doubts....' This is a very peculiar one. Nowhere in the statute book and in drafting a legislation do they use this form—'For the removal of doubts....' The first question I want to raise is: whose doubts you want to remove?

SHRI SOMNATH CHATTERJEE (Burdwan): It is yours.

SHRI SEZHIYAN: Sir, we are very clear that it is invalid. If they are very clear, then where is the question of removal of doubts? What are the doubts? Nowhere has these been mentioned. If you say there

are doubts the proper procedure in drafting the Bill is to give explanatory note. Whenever there is a doubt, it needs clarification, not a phraseology like this, saying, 'for removal of doubts'. We will become a laughing stock if such a Bill goes into our statute-book saying, 'for the removal of doubts.' One more peculiar and funniest part is this. You can give retrospective validity to a thing, to regularise a mistake committed. But, for doubts entertained, can you give retrospective effect? Can you remove retrospectively a doubt? Has this been done in any piece of legislation? Deeming provision is not a new one. I will take one example. In Article 31A, a deeming provision was put. The provision was put by the Constitution (First Amendment) Bill of 1951 saying: 'After Article 31 of the Constitution, the following Article shall be inserted and shall be deemed always to have been inserted, namely...'. So this is what has been done there, namely, to give validity for those land legislations which were in danger of being struck down by the courts. So they made this thing very clear there.

In Shankari Prasad case the Supreme Court put it very clear as:

"At this stage the Union Government, with a view to put an end to all this litigation and to remedy what they considered to be certain defects, brought to light in the working of the Constitution, brought forward a Bill to amend the Constitution."

If you concede there are certain defects, I will allow the deeming provision but you cannot have it both ways. In the statement of objects of the Constitution Amendment Bill, they made this thing absolutely clear. The Zamindari Abolition measure was the farthest place of social welfare legislation and this was attacked by the opponents' effectually with reference to Articles 14, 19, 21, etc.

The Bill said: 'Subsequent judicial decisions, interpreting Articles 14, 19 and 31 have raised serious difficulties in the way of Union and States putting through other and equally important social welfare legislation on the desired lines' etc. If you are clear that the Presidential order has created difficulties in a legal way, say so; not the kind of difficulties which you expressed the other day, saying, Budget papers were received at 12—30, I did not have any time to come before the House to get that sanctioned etc. and arrogating to come before the House to get that at 12—30, I did not have any time to yourself the power of Parliament. Therefore, they should make this thing quite clear. First let us accept the position that the Presidential Order is invalid. Then on that basis we can proceed. So, this clause has to be recast and it cannot be as it is here. That is why I have given an amendment. My submission is that it should be in the proper form. In the present form, it should not be accepted by the House.

Whenever we go in for retrospective legislation, whenever a deeming provision is put, care should be taken not to take away any existing rights. Craies says on Statute Law: 'Perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right.' So, in this case, the existing right is the right of Parliament. They are going to impair the existing right, namely, Parliament's right, to grant or withhold the funds. What will happen if you allow the present thing to go? As I mentioned already, nothing prevents the wooden bureaucracy to make this as a precedent to put the Assemblies of State into dissolution.

The Constitution does not say that you should call both Houses of Parliament or the Legislature, in the month of February and March. And so, everything should be done in March. They can hold the meeting of

both the Houses in January. Only six months' time is required. By the time, they will say that these are the difficulties experienced. The Houses have not been in session and therefore, the Governor's or President's order is issued. The issue of such an order is going to be the beginning of the end of Parliamentary democracy if we are going to allow this. What is the supremacy of power of Parliament? May's Parliamentary Practice has made clear the principal power of the Government:

"The most important power vested in any branch of the Legislature is the right of imposing taxes upon the people and of voting money for the exigencies of the public service. The exercise of this right by the Commons is practically a law for the annual meeting of Parliament for redress of grievances; and it may also be said to give to the Commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power; but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure is one of absolute supremacy."

This is an absolute supremacy, the chief authority, on which the Parliament's structure is raised which is sought to be sabotaged by the powers that be. I am very sorry to say—I do not know—where is it going to lead. With a protest, I say, that we shall have nothing else left in Parliament. This morning when we asked for time, the Minister for Parliamentary Affairs said: 'Why more time? There is nothing there.' I agree with him, that after this measure, there is nothing left in the Parliament. You can make good speeches here. Democracy is driven out; nothing is left there in this process. I am worried about Gokhal, and the Ministry have become tools of the bureaucracy. They want to destroy and destroy the Parliamentary power in this country. Sir for

[Shri Sezhayan]

centuries, the Parliamentary democracy has been fought in the battle fields in England and in the battle fields in England and in the battle five years, we have been building the nascent democracy in this country. In this silver jubilee year, twentyfifth year, let not the Parliament sit mute and silent to see the death warrant being signed. In this House, I hope, you will not be a party; and, we refuse to be a party. I would appeal to the Congress Members also not to take it as a party issue. Today we may be here and you may there. But, this is going to be a growing institution; for centuries to come, you have to lay down a precedent. Do not allow the parliamentary rights to be trampled like this—it is not our right alone and it is your right also and it is the right of the House. The rights of the House are supreme. Please, therefore, safeguard the supremacy and the power of this Parliament.

With these words, I oppose totally tooth and nail the present draconian and the authorative Bill—an insidious Bill—that has been put before this House.

SHRI SHYAMNANDAN MISHRA (Bogusarai): Sir, I oppose this Bill at the introduction stage for very substantial reasons. To my mind, it would be an invalid law if it were passed by Parliament. This is not an Appropriation Bill; this is clearly a Misappropriation Bill! Eightyfive per cent of the amount for which authorisation is sought is either already being spent or much of it has already been spent. That is the position.

Earlier, the President, by his Order, had sanctioned an expenditure of the order of more than five crores of rupees. The present Appropriation Bill seeks authorisation for Rs. 6 crores and odd. So, my submission is that eightyfive per cent of this amount had already been sanctioned by the executive order and

thus, it is not an Appropriation Bill, but it is indeed a Misappropriation Bill or at best it is an amalgum of both with 95 per cent of misappropriation and 10 per cent of appropriation. That creates a difficulty for us and that would make the Bill completely invalid.

By definition a Bill of Appropriation seeks authorisation for prospective expenditure. Have you ever thought of a Bill of Appropriation which seeks authorisation for past expenditure? By definition it is wrong and nowhere—I would challenge the Hon'ble Law Minister—you will find a single instance where there is retrospective legislation sought of the expenditure already incurred by the executive. This is against the very concept of the Appropriation Bill as we are accustomed to.

It is also my respectful submission that it is beyond the legislative competence of Parliament to pass such a Bill because it is violative of the Constitution. Article 266 of the Constitution says in clause 3:

"No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

My contention is that here the 'State' includes the Union territory. And that is so, because the general clause Act 1897 Section 3 (58) says that State is to be deemed to include the union territories. If that is so then Article 266 applies to this illegal expenditure that has been incurred and, therefore, my submission is it is violative of the Constitution. If the Hon'ble Law Minister is able to convince us that Article 266 does not apply to the Union territories then also I would say that it is violative of the basic Act although I do stand firmly on the ground that it does apply to the Union territories. But if it is not found to be so, ultimately, then I

would submit that it is violative of the Union territories Act itself.

The question that I want to pose is whether any law can go against the general law which overrides all other laws and which provides the framework within which all other laws have to be conceived and framed. The general law for the governance of the union territories is the Union Territories Act and that provides the basis on which any law of appropriation or for that matter any law could be conceived. If that law, Union Territories Act, provides that a certain procedure has to be followed in financial matters then it is clear that it has not been followed in this case. So, the expenditure that is sought to be legalised is an illegal expenditure and that cannot be legalised in this manner because the Appropriation Act is not meant for legalising any act in this respect. It cannot be cured through a clause in the Appropriation Act.

Now, how is the illegality of the present position to be cured? That is the basic question. Whether the illegality could be cured by insertion of a clause in the Appropriation Act? To that my answer is it could not be, because the Appropriation Act has to be conceived within the framework of the Union Territories Act which provides the basic framework for the formulation of any measure. It cannot override the basic Act which relates to the governance of the State. So, this is again violative of the Union Territories Act, and, therefore, it is invalid.

According to the decisions of the Supreme Court, it is also clear that a retrospective law cannot be made if it is in contravention of the provisions of the Constitution. The Supreme Court has already laid down in so many cases that it cannot be in violation of the provisions of the Constitution. A retrospective law can be made in other cases, but not in violation of the provisions of the

Constitution, and the relevant provision of the Constitution is article 266.

The question now is in what way this can be cured. The hon. Law Minister does not seem to have applied his mind to this matter. The illegality, in my opinion, could be cured only by a constitutional amendment, if article 266 governs the Union territories also; if it does not, it could be cured by an amendment of the Union Territories Act. If the Union Territories Act remains as it is, then it cannot be cured by a clause in the Appropriation Bill; it can be cured only by amendment of the Union Territories Act. And if both apply, then amendments have to be brought forward to the relevant article of the Constitution and also to the relevant Sections of the Union Territories Act. Both these things have not been done with regard to the expenditure that has already been incurred or is being incurred according to the Presidential order. The Presidential Order has absolutely no status in this particular matter. It is completely meaningless. It cannot be done by an order of the President. It could well have been done by an ordinance; although that is a separate matter into which I would not like to enter at this stage. It could have been done by an ordinance which has got the force of a legislation; but it could not have been done by an order of the President. And it really beats me how this Bill mentions that the Presidential order was made in accordance with section 51 of the Union Territories Act which only says that incidental and consequential provisions could be made by the President or consequential or incidental action could be taken by the President. But could it be pleaded by any stretch of imagination that it is an incidental or consequential action that the President has had to take in the given circumstances? So, it is also completely baffling how it has been claimed that the Presidential Order was made in accordance with

[Shri Shyamnandan Mishra]

section 51 of the Union Territories Act. Therefore, I would say that it would be a completely invalid measure, and this measure cannot be considered by this House since it is against the Constitution and against the Union Territories Act which this House has passed. As I submitted earlier, it is beyond the legislative competence of this House, and therefore I would request you to kindly ask the Government to take back this measure which as I have tried to submit is completely invalid.

SRI SOMNATH CHATTERJEE: This Bill has been brought to legalise the illegalities that have been perpetrated by an arrogant executive supported by a pliant bureaucracy with the intention of scuttling parliamentary democracy in this country.

MR. DEPUTY-SPEAKER: It may be the other way round.

SRI SOMNATH CHATTERJEE: Yes.

So far as parliamentary democracy is concerned, it is admitted that in financial and money matters, the control of the Lok Sabha on Central revenues is supreme and that of the State Legislature is supreme on the revenues of the concerned State. Now, the Legislative Assembly of Pondicherry has been dissolved. Under the Presidential Order, power has been conferred on this Parliament to exercise the functions of the Legislative Assembly of the Union Territory. Under the Government of the Union Territories Act 1963, the provisions of which hold the field today, in the present case Parliament shall be treated as the legislature of the Union Territory of Pondicherry. What is provided under sec. 29 of that Act? It provides:

"As soon as may be after the grants under sec. 28 have been made

by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Union Territory of all monies required to meet the grants so made by the Assembly and the expenditure charged on the Consolidated Fund...."

Now, therefore, under the scheme of this Act, the Government of the Union Territories Act of 1963, which follows almost verbatim the provisions of the Constitution of India in this regard, an appropriation Bill under sec. 29 can only be for the appropriation of the grants already granted. This is very significant. After the grants have been made by the Assembly to give effect or to provide for the appropriation of those grants and for payment out of the Consolidated Fund, an appropriation Bill shall be introduced.

Earlier today, this House had made grants so far as Pondicherry is concerned. Therefore, an appropriation Bill cannot go beyond the scope or ambit of sec. 29 which is only for the purpose of appropriation of the grants.

Now, if you look at any of the Appropriation Acts we have passed, what does it say? I have got the Appropriation Act of 1973 passed by this House so far as the Union expenses and budget estimates are concerned. You will see there are only three sections. Section 1 says this is the Appropriation Act. Section 2 is almost on similar lines to cl. 2 of the present Bill. Section 3 corresponds to cl. 4 of the present Bill. That is the scheme of the Constitution. That is the scheme of the Government of the Union Territories Act. Only for the limited purpose of providing appropriation of the grants already made by the Assembly or Parliament, you can bring an appropriation Bill.

Now, what is sought to be done here? Apart from providing what the Constitution of the Government of

the Union Territories Act requires, this Government has introduced a clause in this Bill which has nothing to do with appropriation of grants already made. This is seeking to obtain the sanction of this Parliament with the help of their brute majority for an illegality which has been committed in sanctioning payments under the Presidential Order which does not stand the scrutiny of the constitutional provisions. Therefore, in the garb of an Appropriation Act, they are seeking to legalise an illegal order which is not only showing contempt of the House but of a legally and constitutionally competent court, namely the High Court of Madras, before whom, on the invitation of the Law Minister, the matter has been brought. The Law Minister himself offered 'I shall satisfy a court of law; I have no doubt about the legality of the Presidential Order of the 28th or 29th March'. Therefore, instead of waiting for the decision of the Court, this Bill has been brought. As the matter is *sub-judice* before the Madras High Court, why has this Government not the decency to go before the court and await its decision. They can bring it before the Supreme Court if the decision goes against them. But why not await the decision of a legally constituted judicial forum in this country before you seek to introduce an Appropriation Bill which has never happened in the past in legislative history? This is obtaining an *ex-post-facto* sanction for an illegality committed. How can there be a deeming provision of appropriation which will follow only the grants made by the Assembly or Parliament? It can only follow; it can never precede it. Here, expenses have been incurred. There is no question of sanctioning a grant which has to be utilised in the future. Therefore, the object of the insertion of clause 3 is not showing respect to Parliament or merely removing a doubt in the minds of the Opposition. Knowing that they cannot get a favourable decision from the courts of law, they are seeking

to go before the court and say, "We have already got it sanctioned so that the court's view does not matter; we have not legislative sanction behind it." This is nothing but a fraud on the Constitution; this is a fraud on the entire constitutional machinery and procedure; This is a fraud on the Government of the Union Territories Act. It is going back upon the attitude taken by the Government that they will face a judicial forum to get its validity tested.

I submit first that this goes beyond the provisions of section 29 of the Government of the Union Territories Act which does not postulate or authorise insertion of a provision which has nothing to do with the appropriation of a grant made by the Assembly or Parliament here. That they are seeking to do is to treat it as mentioned under the Presidential order, as expenses covered by the Appropriation Bill. We would like to know whether the amount that has been mentioned by the Presidential Order has been included in the schedule to this Appropriation Bill. When these expenses which have been made mentioned in the presidential order have been already incurred, there is no question of sanctioning the subsequent expenses of the amounts mentioned in the schedule. Therefore, in the garb of obtaining an order for appropriation in future of amounts mentioned in the schedule, they are trying to have an *ex post-facto* sanction for expenses already made. That is not the object of an Appropriation Bill. This Parliament cannot be treated in this cavalier fashion. If they want to say, "We do not care for Parliament and we shall go by the fiat of the President's order, legal or illegal, and we shall not wait for the decision of the courts to have its validity tested," let them say so openly. What is the object in inserting in the Appropriation Bill a provision of this nature which goes against the very concept of an Appropriation Act?

[Shri Somnath Chatterjee]

I Would request the hon. Minister to place before the House any other Appropriation Bill in the past where such draconian provisions have been made which cut at the very root of Parliamentary democracy.

SHRI SHYAMNANDAN MISHRA.
Not a single instance.

SHRI SOMNATH CHATTERJEE:
Let them produce one instance—we shall stand corrected—where such *ex post-facto* sanction of a legislature has ever been obtained in the grab of an Appropriation Bill.

Therefore, this Appropriation Bill goes beyond the provisions of section 29 which still holds good today even after the dissolution of the Legislative Assembly, because we are only discharging the function of the Legislative Assembly as laid down in section 29. Therefore, it goes beyond the provisions and the object and the ambit of section 29. So, this will not be a valid piece of legislation which is sought to be introduced and which Parliament is to discuss.

15 hours

The second aspect is also a very important one. If you have got a copy of this Act which is called the Government of the Union Territories Act you will find that section 27 of the Act requires that "the Administrator of each territory shall in respect of every financial year cause to be laid before the Legislative Assembly of the Union territory, a statement of the estimated receipts and expenditure of the Union territory for that year, in this part referred to as the annual financial statement." Therefore, section 27 of the Act requires and contemplates an annual financial statement for the whole year. We have been supplied an annual financial statement of the Union Territory of Pondicherry for the whole year 1974-75. It is not for part of a year. If the annual estimate is presented to Lok Sabha section 28 has to

be followed, namely so much of the estimates as relate to expenditure charged upon the Consolidated Fund shall not be submitted to the vote of the Legislative Assembly as we all know that there are certain expenses charged on the Consolidated Fund which is not the subject-matter of voting. Certainly members can comment on that. But so far as other estimates are concerned they are the subject matter of vote. Kindly see 29. 28 contemplates the House making a grant. Earlier today we have followed the procedure of section 28 regarding the annual financial statement for the entire year. Section 29 says that for that year for those grants already made for the whole year we have to have an appropriation Bill. It cannot be for a part of the year if section 29 is followed. Section 27 has been applied here in the sense we have only an annual financial statement for the entire year. Look at the present Bill, and the preamble. It is to provide for the withdrawal of certain sums from out of the consolidated fund of the Union Territory of Pondicherry for the services of a part of the financial year, 1974-75. Section 28 does not contemplate part of the year, nor does section 27 nor 29.

The hon. Minister will refer to section 31. The scheme there is entirely different from the other sections. It says: notwithstanding anything contained in the foregoing provisions the legislative assembly of the Union Territory shall have power to make any grant in advance in respect of the estimated expenditure for a part of the financial year pending the completion of the procedure prescribed in 28, for the voting of grants and passing of the law in accordance with the provisions of section 29 in relation to expenditure, etc. Therefore, it says that if the Government is unable to prepare an annual financial statement for the whole of the year the Government can prepare an estimate in advance and shall have power to make any grant in advance in respect of the estimated

expenditure for a part of the financial year. In the grants that we have granted today earlier, are there any indications anywhere that for a part of the financial year it has to be sanctioned in advance. That is not so; the annual financial statement has been submitted. Kindly look at the grants. Is it anywhere indicated that it is for the annual financial statement has been submitted. Kindly look at the grants. Is it anywhere indicated that a part of the year?

Now if section 31 is taken recourse to, there is to be a grant in advance in respect of the estimated expenditure for a part of the financial year pending compliance with provisions of sections 27, 28 and 29. In a vote on account under section 31 no annual financial statement is necessary. It is not contemplated. That has not been done here. The Vote on Account is never preceded by an Annual Financial Statement for the whole year. Now, Sir, kindly look at the list of Demands for Grants. Where do they provide that it is for part of the year for two months or three months? Nowhere. It is indicated. We do not find, in the Annual Financial Statement, any provision that this will be for part of the year.

Now, Sir what is sought to be done after complying with the provisions of Section 27, 28 and 29 is that an appropriation Bill is being brought forward for a part of the year as if it was a Vote on Account. Sir, the Vote on Account is a special procedure which has been laid down in the Constitution as well as in Section 31 of the Union Territories Act. We are concerned with Section 31 of the Union Territories Act. It is a particular procedure which has been laid down to enable the executive to come before the legislature with certain proposals or grants in advance in respect of the estimated expenditure for a part of the financial year. A Vote on Account can never

replace and it can never be a substitute for the Annual Financial Statement, followed by Grants on the basis of that followed again in its turn by an Appropriation Bill on the basis of the Grants made. That is the usual procedure. But, the Vote on Account does not follow that procedure. The Vote on Account is made before the estimates are made, before the complete estimates are made, for the purpose of carrying on the day to day activities of the Government even for a limited period before the Budget is passed. Then, you come before the Legislature and get its sanction for a limited period. Now Sir, what is sought to be done in this Appropriation Bill is wholly against the scheme of the statute. In the garb of a Vote on Account, they have not followed the procedure, but, they have followed the other procedure under Sections 27, 28 etc.

I would now come to the Statement of Objects and Reasons, Sir an Appropriation Bill, as you know, has a very very limited object. The only object is legislative sanction to the disbursements to be made in accordance with the Grants. Nothing else. It does not limit, a ceiling as to the total expenses otherwise to be made. It only sets a limit, a ceiling as to the total expenses that have to be incurred out of the Consolidated Fund of India either for moneys charged on the Fund or on Revenue Account or Capital Account for which legislative sanction is necessary. Prior to that, Grants are considered by the House Grants are made by the House as was done earlier so far as Pondicherry Grants are concerned. In the garb of an Appropriation Bill, they present an Annual Financial Statement for the entire year. In the garb of an Appropriation Bill, they limit the object of it and the scope of it. The Statement of Objects and Reasons says:

"This Bill is introduced in pursuance of Section 29(1) of the Government of Union Territories Act.

[Shri Somnath Chatterjee]

1968 read with section 31 thereof and the Order of the President issued on the 28th March 1974 under section 51 of that Act to provide for the appropriation out of the Consolidated Fund of the Union Territory of Pondicherry of the moneys required to meet the expenditure of Pondicherry of the moneys required to meet the expenditure charged on the Consolidated Fund and the grants made in advance by the Lok Sabha in respect of the estimated expenditure of the Government of Pondicherry for a part of the financial year 1974-75."

Where do you get that except in this Bill? Grants which have been made earlier are not a part of the financial year 1974-75. They are for the whole of the financial year 1974-75.

Then, it says:

"Specific provision has also been made in the Bill in respect of the expenditure incurred from the 1st April, 1974 up to the date of enactment of the Bill."

So, my submission is this is wholly against the law, wholly against the Constitution and the scheme of this Act.

There is one more provision which I want to deal with. This is sub-section (3) of Section 31. They have referred to Section 29(1) read with Section 31. After Mr. Chavan presented the Budget for the whole of the year 1974-75 and when Grants have been made by the House in respect of the whole year, can the Government on the basis of that bring forward a Vote on Account? That cannot be done.

Section 31(3) says:

"The provisions of sections 28 and 29 shall have effect in relation to the making of any grant under sub-section (1) or to any law to be made under that sub-section as they have effect in relation to the making of

any grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of monies out of the Consolidated Fund of the Union Territory to meet such expenditure."

In my submission what it means is that there are certain inherent limitations in the matter of discussing the items of expenditure in the annual financial statement. For instance, we cannot vote on the amounts of expenditure which are charged on the Consolidated Fund. Similarly in the case of vote on account, we cannot vote on amounts which are charged on the Consolidated Fund, but we can discuss and vote on the other expenses. Section 29 says that the Appropriation Bill should be modelled on the basis of the grants made. Similarly a vote on account Bill should be modelled on the estimates to be made for a part of the financial year. Therefore, to that extent the provisions of sections 28 and 29 should be followed in respect of Vote on account. My submission is, nothing has been done in this regard. What has been done here is completely unconstitutional. In their anxiety to legalise the butchery of the Constitution they have given a go-by to the constitutional provision and the position of this House, in order to legalise an illegal order passed by the President of India under the advice of the Law Ministry.

Why was this *modus operandi* adopted? As I said earlier, they themselves had voted down the particular estimates in the Pondicherry Assembly. If they were to bring it here and have it sanctioned, they have to vote in favour of those estimates. Naturally they did not want to be placed in such a situation. So, this subterfuge was adopted by utilising the name of the President. In the garb of exercising his incidental and consequential powers they brought this Presidential Order, having probably spent the

entire Rs. 5 crores they wanted to bring this vote on account Bill, after presenting a financial statement for the whole year. This is not permitted. This would have been outside the competence of the Pondicherry Assembly and we are exercising no higher powers than the powers of the Pondicherry Assembly. So, this Bill which is against the Constitution should not be allowed to be introduced. I oppose its introduction.

SHRI G. VISWANATHAN (Wandiwash): I oppose the introduction of this Bill under Rules of Procedure which says:

"In order that a motion may be admissible, it shall satisfy the following conditions namely:

(viii) it shall not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India."

The Presidential Order on Pondicherry dated 28th March 1974 has been challenged before the Madras High Court..

MR. DEPUTY-SPEAKER: That is not discussed. What is being discussed is the Appropriation Bill.

SHRI G. VISWANATHAN: That order is referred to in this Bill. It tries to validate the particular order. As I said, the order has been challenged and the Madras High Court has admitted the petition of Shri Era Sezhiyan and Shri Sivaprakasam. The High Court has issued a rule nisi returnable on 22nd of this month. I think it is proper that it should be kept pending till the High Court gives its verdict on the subject.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I suppose this is the only occasion when I have to reply to the constitutional and legal points raised at the introduction stage.

MR. DEPUTY-SPEAKER: It was also pointed out that it was outside the legislative competence of this House.

SHRI H. R. GOKHALE: Legislative competence is the main point that I have to deal with.

First of all, the general impression that the present Bill provides for validating what has been done under the Presidential Order is not correct. It does refer to the Presidential Order, but not for the purposes of validating it. The impression that it has been regarded or treated as an invalid order and therefore, the Bill is brought in for validation is not correct, in my submission. What has been stated is that the Bill is not in the usual form in which the Appropriation Bill is or ought to be. It is quite true that it is not in the usual form, because the situation with which we are dealing is also not usual. It is true that clauses similar to clauses 3 and 4 might not be found in other Appropriation Bills. But that as nothing to do with the legislative competence of Parliament to pass this Bill.

The main question is whether Parliament has the legislative competence to pass this Bill or not. Reference has been made to article 266 also in connection with the power to legislate in respect of Union Territories. My submission is that article 266 is not relevant for the purpose of this legislation, which is in respect of a Union Territory. There is a separate chapter dealing with law relating to the Union Territory, which also contains article 239A. Article 266 first of all refers to the Consolidated Fund of India whereas we are now concerned with the Consolidated Fund of the Union Territory, which is specifically referred to in section 47 of the Union Territories Act. Therefore, article 266 in terms does not apply to expenditure of money from the Consolidated Fund of the Union Territory. It deals only with the expenditure from the Consolidated Fund of India.

SHRI SHYAMNANDAN MISHRA: Here the contention is "State" includes a Union Territory under the General Clauses Act. You have to explain that point.

SHRI H. R. GOKHALE: Here we are not referring to a "State". A reference was made to the General Clauses Act. If we look at article 1 we will see that when we refer to a State, we always mean a State which is referred to in the Schedule and it does not include a Union Territory. My submission before you is that there are specific provisions for legislation in respect of Union Territories. Even assuming that there is another provision dealing with the Consolidated Fund of India, that will have to be read subject to the special provisions which deal with the Union Territory that is, article 239A, which enables Parliament to legislate in respect of Union Territories. That expressly provides that even if such a legislation has the effect of amending any provision of the Constitution, it will not be regarded as an amendment of the Constitution for the purpose of article 368, the sole purpose of this provision being that they contemplated even at that time, they envisaged that when you legislate for the Union Territories under the Act, you might find certain provisions which are not wholly in harmony with the other provisions of the Constitution, which in fact might even be repugnant to the other provisions of the Constitution. Therefore the special power to legislate in respect of Union Territories was given by article 239A, in a separate chapter of the Constitution, and there is an explicit provision that such law, even though it might appear to be an amendment of the Constitution, will not be regarded as amendment of the Constitution.

Therefore my submission is assuming for the sake of argument, although not admitting it, if any provision of the Constitution has been violated, it would have no effect whatever, because this will not be regarded as an amendment of the Constitution so long as, and only so long as, the legislation is within the legislative competence of Parliament under the special provision in respect of the Union Territories, which are contained in the Constitution itself.

Now, I agree, when it was said in the course of the debate that to the extent to which in the existing Union Territories Act there are certain provisions which require a certain procedure to be followed, if that procedure is not followed then you are doing something which is repugnant to the Union Territories Act. The question is this. The Parliament has passed the Union Territories Act. It is quite true that if the new Bill had not said, "Notwithstanding anything contained in the Union Territories Act.", the provisions of the new Bill would have been quite repugnant to the Union Territories Act. It was possible to amend that Act also. You could also pass a legislation within the powers of the Parliament so as to make laws in consistent with the Union Territories Act. Here, a special situation has happened in this case. Therefore, in clause 3 there is an express provision "Notwithstanding anything contained in the Union Territories Act". This, obviously has a reference to Sections 27, 28, 29 and 31 of the Union Territories Act. It was realised that if this express provision "Notwithstanding anything contained in the Union Territories Act" had not been there it would have been rightly and legitimately pointed out that you are doing something although there is something else in the Union Territories Act. The Parliament has powers to say, "We have passed another law." Here, we pass a law "Notwithstanding anything contained in the Union Territories Act". This is the law which we propose and which we pass to meet a special situation.

Reference was made to three Sections, 27, 28 and 29 of the Union Territories Act. I think it was agreed that even in respect of the normal procedure for financial matters, under the Constitution, you are required to place the estimates of the expenditure for the whole year first for the whole Budget first, which ask for Demands for Grants and then, to meet a limited contingency where you have to begin spending before all the Demands for Grants are approved and a

proper Appropriation Bill is passed you enable the Parliament to pass a Vote on Account Appropriation Bill.

The same situation obtains in respect of the Union territories. My colleague, Shri K. R. Ganesh, tells me and I have also understood it that way that the statement of expenditure which was put before the House earlier and the Demands for Grants which were discussed earlier were in respect of the whole year, not in respect of a part of the year. It is only after doing this that we use the special provision of Section 31 in the case of Union territories and ask for a Vote on Account Appropriation for a limited duration because passing of the entire Budget and all the Demands for Grants take considerable time and a proper Appropriation Bill has to be brought in course of time later on.

Coming to Section 31 provision, "Notwithstanding anything in the foregoing provisions"—this is important—what is provided for in Section 31 is this. For example if the provision "Notwithstanding anything in foregoing provisions" had not been there, then a Vote on Account could not have been taken under Section 31 because it would have been legitimately asked. "Have you followed Section 27? Have you followed Section 28? Have you followed Section 29? If not, how can you go to Section 31?" Therefore, Section 31 in terms begins with the words "Notwithstanding anything in the foregoing provisions". That means even if foregoing provisions have not been complied with Section 31 will be operative to the limited extent to which it is intended to be operative for the purpose of Vote on Account Appropriation Bill.

It says that the Legislative Assemblies of the Union territories shall have the power to make grants in advance for this purpose. You have not passed the whole Budget because an Appropriation Bill has not been passed. You are asking in advance to incur expen-

diture in respect of estimated expenditure for a part of the financial year pending the completion of the procedure prescribed under Section 28. The Section 28 procedure has to be pending. That is why a statement has been placed before the House. That is why the Demands for Grants have been passed. Pending that procedure where you accept the expenditure for the whole financial year, the power is given under Section 31 to pass a Vote on Account Appropriation Bill.

I respectfully submit that so far as that is concerned, the procedure envisaged is not materially different from the procedure which is followed in respect of financial matters for the regular Budget of the Government of India when it comes before the House every year.

First of all, let me go to the argument, 'for removal of doubts'. It was asked, 'whose doubts?' I have said earlier in my interventions that I have no doubt that the Presidential Order is valid; I repeat that even today. As against what I have said, that this Presidential Order is valid, equally emphatically it has been said by some others in this House that it is not a valid order. Now there are two views in this matter and, therefore, possibly there is a doubt. We have conceded that there is a doubt. When responsible Members of Parliament have very emphatically stated that they do not accept the position of the Government which the Government reiterates, a doubt has been cast; rightly or wrongly a doubt has been cast, and it is not unknown in legislative history that we pass legislations for removal of doubts. Any number of instances...

MR. DEPUTY-SPEAKER Is it their doubt that you want to remove by this Bill?

SHRI H. R. GOKHALE: It is a doubt which has arisen because of this controversy. In any case, in financial

[Shri H. R. Gokhale]

inatters even. if it is their doubt that is removed, what is wrong? Even if we respond to the Opposition doubt and try to remove it, what is wrong in it?

MR. DEPUTY-SPEAKER: I wish there is more of such generous give-and-take between the Opposition and the Government; whenever there is a doubt, you remove it.

SHRI H. R. GOKHALE: I have already stated that there is a deeming provision in respect of expenditure which has already been incurred and there is a provision for expenditure to be incurred in the rest of the period to which the Bill pertains. I submit that, on the validity of the Presidential Order, I have spoken in the House twice and today also; I would not say much about it because there is a case pending. It is not as if we want to run away from the case; we will face it when it comes. Meanwhile, I would like to point out that the President himself in his Order has said that it is subject to approval by Parliament. On the one hand it is asked: why was it not brought before Parliament. Now when it is brought before the House, it is said: why is it brought before Parliament....

SHRI SHYAMNANDAN MISHRA: It is an illegal order.

SHRI H. R. GOKHALE: Neither you nor we are the final judges to decide whether it is legal or illegal. I treat your opinion with respect, and that is all I can say for the time being. But I cannot accept it. That is a matter which has to be decided by the appropriate authority, and it will be decided by the appropriate authority. Mr. Sezhiyan has said that he has given me an opportunity. I welcome that opportunity, and when the time comes, we will face it in the court. But that has nothing to do with the legislative competence of Parliament to bring this Bill and I

submit that, so far as introduction of this Bill is concerned, there is no Constitutional validity on which the introduction of this Bill can be objected.

MR. DEPUTY-SPEAKER: I am not going to give my decision. The House will decide....

AN HON. MEMBER: Have you not got a doubt?

MR. DEPUTY-SPEAKER: I would request the members and the Ministers to hear me. I am here to guide and regulate the proceedings of this House....

SHRI DINEN BHATTACHARYYA (Serampore): And advise the Ministers.

MR. DEPUTY-SPEAKER: This is the difficulty with this gentleman. I request you to restrain him for a few minutes and you will find that he is, perhaps, the happiest man.

I am here to guide and regulate the proceedings of this House. This House is the highest authority in the country, and I have always been saying this that it is this House that ensures that this country remains together and united, and we have to conduct ourselves with the greatest amount of circumspection, with the greatest amount of responsibility. Of course, we also have the supreme power to regularise, to regulate, to do anything. We have that power: it is your power; it is my power; it is his power; it is every member's power.

SHRI SEZHIYAN: The power has been arrogated.

MR. DEPUTY-SPEAKER: Now, it is not for the Chair to decide whether this Bill is within the legislative competence of the House or not. It is for the House to decide ultimately. Yet, the issues are to be framed and understood and whatever we do, we do after a full understanding of the issues involved.

I have been following the subject also very closely as a student of current affairs in the country and as a Presiding Officer of this House. Therefore, a number of questions also have come to me. All those questions will be directed both to the Minister, to the Government and also to the Opposition leaders who will have to sort them out.

In the first place, I must say that it is not correct that the Government wants to by-pass the Parliament. I think I would take the Minister at his word when he said the other day that they themselves have volunteered that everything is subject to a decision of this House. That is proper respect shown to this House. I think we should be satisfied there.

I have been looking at Section 51 of the Union Territories Act under which the President had declared Presidential rule there. I think under Section 51 it is not necessary—I may be wrong and you can enlighten me there—for the President even to say that the powers of the Legislative Assembly of Pondicherry will be exercised by the Parliament. It is not necessary. It is not at par, as the Minister said, with Article 356 where it is laid down that whenever the President takes over the administration of a State, then the powers of the Legislative Assembly must be exercised by the Parliament. It is not provided there. But, despite that, the President in his order, had said that reference to certain sections relating to Pondicherry Assembly would be reference to the Parliament. So, he has come himself to do that. Therefore, there is no question of any disrespect.

But a doubt arises in my mind in this. The first day when the Minister spoke in defence of the Presidential order—we are not discussing the Presidential order now because that is *sub judice* and we cannot go into that—but since a reference has been made in this House, we only make a

reference to that limited extent. He said in his speech, and I have read the speech very carefully, the main plea he made at that time was the question of constraint of time. He had received certain information and papers from Pondicherry only in the forenoon of the 29th and this was raised also. At that time I was in the Chair, and despite the fact that it was not on the agenda, when the matter was brought to my attention that certain legal and constitutional complications would arise, I went out of my way and allowed Mr. Sezhiyan and others to raise this question. I had also said at that time and I requested the Minister of Parliamentary Affairs—I used an expression about him which I still hold to be correct, that we have a live-wire Parliamentary Affairs Minister, and he liked it very much. I am not giving out any secret. We are all friends. But he said, 'Yes, the live-wire is there but there is no current. The current does not pass. What can I do do? Then I said, 'In that case, we must drag Mr. K. C. Pant into the matter because it is his responsibility....

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): What I said then was that the wire was there but that the current to be carried was very weak.

MR. DEPUTY-SPEAKER: Anyway the current is there.

SHRI SOMNATH CHATTERJEE: It was very much under-charged.

MR. DEPUTY-SPEAKER: My intention in allowing Mr. Sezhiyan was this. It was to make the Government wise about it. If they have anything on that day or even the next day, they could have come up. That was my intention. Before everything had happened, some remedial measure, some preventive measure, could have been taken.

[Mr. Deputy-Speaker]

The Minister made a plea that we could not have the time to go into this and he also said, because we could not accept all the figures and estimates prepared by the Pondicherry Administration, we have to look into them, we have to find out and then make up our mind with what we shall come before this House, etc., which appears quite legitimate and convincing superficially. But, my attention was drawn to Section 23 of the Union Territories Act. In effect this says that any legislative proposal which would require appropriation of money out of the Consolidated Fund of the Union Territory of Pondicherry and all that sort of thing, cannot even be brought before a Union Territory Assembly, without the prior vetting and approval of the Administrator. It is not as if it is a State where the Government comes forward on its own and I think it is to everybody's knowledge that the Administrator in this case is just an agent of the Home Ministry. And, therefore, to plead that the Government of India is not in the know of the estimates of receipts and expenditure and of the Appropriation Bill, which was okayed by the Administrator on behalf of the President,—I think that is the Constitutional position—creates doubts in my mind, and therefore, I would like the Home Minister to clarify that point.

Another point that arose in my mind was this. Since you have respected the Parliament so much, you could have gone out,—you need not have come here at all—but you have come here all the same. When you could come out with a Presidential Order on the same evening, why could not the same thing be done before the House on the 29th itself? We could have sat a little late, or even if he had said that we should have a special session on Saturday for this, we could have done that. It could have been done and all this could have been avoided. Here we have a very anomalous, a very unusual situ-

ation. Everybody is agreed, even the Minister has said so many times, that this is an unusual situation. And I am happy, in a way, this has come up, because this question of Pondicherry has revealed some of the lacunae, some of the weakness of our Constitution.

Repeatedly the Minister has taken recourse to Article 239A of the Constitution by which he said, anything provided in the Union Territories Act, even if it has the effect of amending the Constitution, would not be called into question, it will have its effect. It is not an Amendment under the meaning of Article 368, that is to say, the Union Territories Act can amend any provision of the Constitution relating to the administration of the Union Territory, if it is so provided in the Union Territories Act itself. That is the main crux, the main brunt, of his argument. Mr. Mishra has referred—what appears to me to be a very valid thing—to Article 266, by which no fund could be appropriated; and also he referred to a definition under the General Clauses Act of 1897 by which he said that the Union Territory is also a State. Here we have an anomalous situation.

Under the Constitution Union Territory is not included and listed as a State.

SHRI SHYAMNANDAN MISHRA.
In the First Schedule it is there.

MR. DEPUTY-SPEAKER: We are talking of the present Constitution.

SHRI SHYAMNANDAN MISHRA:
Union Territories are included.

MR. DEPUTY-SPEAKER: Not for the purpose of Art. 3 of the Constitution.

Under this, it is interpreted that a Union Territory is also a State.

Here we have an anomalous situation. A Union Territory works under the Home Ministry at present.

SHRI SHYAMNANDAN MISHRA: As the hon. Law Minister said, under Sec. 266, between the Union Territories, there is no conflict.

MR. DEPUTY-SPEAKER: I am clarifying the issue. And then we shall take a decision. Here we have an anomalous situation where certain provisions of the Constitution are nullified by other provisions of the Constitution. The Minister says that these are provisions good for Parliament, good for the State but not good enough for the Union Territory because the Union Territory Act has nullified these provisions. That is why, on the first day, when the Minister spoke, you, Mr. Mishra, raised a very legitimate doubt. It looks as if the Union Territory is working—functioning—in a world of its own and is outside the scope of the Constitution. But, that seems to be so. And, here is a very anomalous situation—an anomaly of the Constitution—and yet it is there. To my knowledge, the Union Territory works under the Home Ministry. I do not mean any disrespect for, very often, we hear this kind of thing. In my part of the country, there are union territories and, in the world of a 'Union Territory', everything is decided at the level of the Under Secretary or Deputy Secretary, under the Home Ministry. It does not go up to the Minister or even a Deputy Ministers. I do not know whether it is correct or not but this is what people say. The Home Ministry cannot get a single plea without the grant of this House but a Department under the Deputy Secretary can get any amount of money. He does not have to go to anybody. It is a very funny and a very anomalous situation. We have to think about it; we have to do something about this.

PROF. MADHU DANDAVATE
(Rajapur): The country is exposed in the working of the Constitution.

MR. DEPUTY-SPEAKER: That is what I say. It is nobody else's fault; it is our fault that these things have come up. Now there are a number of questions that arise. The Minister can help us. I do not know whether it is correct or not. As Mr. Mishra said, the Supreme Court has ruled that no law can be made to validate certain actions that were done with retrospective effect. That was the point you made, I think.

SHRI SHYAMNANDAN MISHRA: That was so far as the provisions of the Constitution are concerned.

MR. DEPUTY-SPEAKER: I think that question should be answered. Then, Shri Somnath Chatterjee made this point that to-day we have passed certain grants. And it is only in pursuance of the acceptance of those grants that we shall now consider the Appropriation Bill. Whether those grants which we have passed today also include the expenditure which we have incurred from the 1st of April is, I think, a very valid question. If the Grants we have passed today, a little while ago, do not cover the expenditure from the 1st of April till today, till the Commencement of the Act, then, I think, this has got to be explained. After the Rajya Sabha meets and the President gives his assent to the Appropriation Bill which we have passed today in respect of grants, will that apply also to the expenditure that we have incurred from the 1st of April to the time when this Bill becomes an Act.

I think that this also needs to be looked into carefully. Shri Viswanathan made a point. This does not arise because we are not discussing the Presidential Order. We are discussing about this Appropriation Bill. (Interruptions).

Well that he can explain. I am not convinced about that part of your argument, Mr. Chatterjee.

SRI SOMNATH CHATTERJEE: They have followed Section 27 by submitting an annual financial account under Section 27 and after that they have got grants made under Section 28. So, they can go only to Section 29.

MR. DEPUTY-SPEAKER: Well, you may take note of that. Mr. Viswanathan has said that the High Court of Madras has already issued a rule nisi. In that case does that mean that the expenditure already incurred is under the Presidential Order and not the Bill? I think that position has also to be clarified...

SRI H. R. GOKHALE: Sir, I want to make only two points. With reference to the first point that was raised by Mr. Mishra that in view of the Supreme Court judgement you cannot retrospectively validate what is un-constitutional, the point is if anything is unconstitutional, by ordinary legislation you cannot make it constitutional. If what is done is not un-constitutional that argument of the Supreme Court does not apply. The point is, if there is any unconstitutionality, through the ordinary law which is not amendment of the Constitution, you cannot validate what is unconstitutional. That is quite true.

SRI SHYMANANDAN MISHRA: My point is, Article 266 applies and State includes union territory. You have pointed out that Art. 239 overrides. Here there is no conflict between 239 and 266. The Union Territories Act which has been passed by Parliament does not conflict with Article 266 of the Constitution. So, both of them are in harmony. Therefore, it cannot be said that it replaces the other.

SRI H. R. GOKHALE: It is one thing to say there is no conflict between 266 and the Union Territories Act and another thing to say that 266 applies.

SRI SHYMANANDAN MISHRA: Only to the extent it is repugnant.

SRI H. R. GOKHALE: To the extent to which the Union Territories Act make provision there is no conflict, but the main point is that we are governed by the Union Territories Act and not Article 266.

SRI SHYMANANDAN MISHRA: Do you rule out that the States does not include Union Territory? Please, make a clear statement in this regard.

SRI H. R. GOKHALE: It does not, I have already said that. The one question which was asked by you and about which I have gathered information from my colleague just now is that the grants on account passed today are inclusive of the expenditure incurred on and after 1st April 1974.

SRI SEZHIYAN: We wanted some clarifications from the Home Minister. Before we receive them, how can we proceed further?

MR. DEPUTY-SPEAKER: I can clarify the issues. I cannot do anything further.

SRI SOMNATH CHATTERJEE: I believe your doubts are now more now, with the Law Minister's explanations, it is clear that this is wholly illegal.

PROF. MADHU DANDAVATE: You have summed up the entire wisdom of the Opposition. But he has not replied to it.

MR. DEPUTY-SPEAKER: I am only clarifying the issues. I belong to no party; I belong to the whole House.

SRI SHYMANANDAN MISHRA: You have put it very objectively.

SRI SEZHIYAN: We refuse to be a party to this.

SHRI G. VISWANATHAN: We want your ruling on this. You yourself had framed the issues. We want your ruling on those issues.

SHRI SEZHIYAN: We wanted some clarifications from the Home Ministry. But the Home Minister has not cared to attend the House. The Union territory of Pondicherry is under President's rule and it is under the charge of the Home Minister. But the Home Minister does not care to attend the House. There is no other representative of the Home Ministry here. There are three or four Ministers in the Home Ministry but none of them is here. What has happened to all of them?

SHRI SHYMANANDAN MISHRA: We cannot be a party to an executive outrage. This is nothing less than an executive outrage.

SHRI SEZHIYAN: The clarifications that we had asked for should come from the Home Minister. But there is no spokesman of the Home Ministry here. There is a Cabinet Minister and there are Ministers of State and Deputy Ministers, but none of them is here. An inquiry has come from the Chair, but nobody has come forward to give the clarifications. It is utter contempt of the House

SHRI JAGANNATHRAO JOSHI (Shajapur): Where is the Home Minister?

MR DEPUTY-SPEAKER: It is not necessary for him to be present here, there are other Ministers who are present here. I can only put the question now. There is nothing more than I can do . . .

SHRI SEZHIYAN: We refuse to be a party to a legislation which undermines the supremacy of Parliament. Therefore, we would like to walk out.

SHRI SHYAMNANDAN MISHRA: If we supported this, we would be condemned by posterity on the ground that we had become a party to such nefarious acts of the executive. Therefore, we also wish to walk out.

SHRI M. KALYANASUNDARAM (Tiruchirapalli): So far as my party is concerned, we are walking out as a mark of protest against the irresponsible manner in which the ruling party behaved in Pondicherry by topping the Government.

SHRI SOMNATH CHATTERJEE: The Constitution is being violated. How shabbily the House has been treated;

PROF. MADHU DANDAVATE: We also walk out in protest against this attitude of the ruling party which is not only a ruling party but which is a misruling party.

SHRI S. M. BANERJEE (Kanpur): Kindly tell the Home Minister that we are also going home.

MR DEPUTY-SPEAKER: All right, let him go home. Home is a sweet place

Shri Sezhiyan, Shri Shyamnandan Mishra, Shri M. Kalyanasundaram, Shri Somnath Chatterjee, Pro. Madhu Dandavate and some other Members then left the House.

MR DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the Union territory of Pondicherry for the services of a part of the financial year 1974-75."

The motion was adopted.