

जाज फरनेन्डीज : उपाध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है। इस याचिका पर भाषा को लेकर मेरा व्यवस्था का प्रश्न है।

MR. DEPUTY-SPEAKER : You are presenting your petition. At the same time, how can you raise a point of order? It is not possible. I can hold it over till tomorrow, if you like. But I will not permit a point of order. This is my final decision. I will not permit you. If you want to present it today, do it now. Tomorrow we will consider the point of order.

श्री जाज फरनेन्डीज : भाषा को लेकर मेरा व्यवस्था का प्रश्न है।

MR. DEPUTY-SPEAKER : You may raise it on some other occasion; not now. Does he want to present his petition now?

श्री जाज फरनेन्डीज : याचिका तो मैं पेश करना चाहता हूँ।

MR. DEPUTY-SPEAKER : Let him write to me. I will consider it. Now let him present his petition.

श्री जाज फरनेन्डीज : लेकिन कल मुझे कैसे बतलाया कि आज मैं उसे उठा सकता हूँ? आज मुझे पेटिशन की भाषा के सम्बन्ध में व्यवस्था सम्बन्धी प्रश्न को उठाने नहीं दे रहे हैं तो ऐसा करके उपाध्यक्ष महोदय आप संविधान के नियमों को तोड़ रहे हैं...

MR. DEPUTY-SPEAKER : Is he presenting his petition or not?

श्री जाज फरनेन्डीज : मैं पेश कर रहा हूँ। लेकिन मुझे व्यवस्था का सवाल न उठाने देकर आप संविधान के नियमों को तोड़ रहे हैं।

MR. DEPUTY-SPEAKER : I will not listen to any point of order. Let him present it.

श्री जाज फरनेन्डीज : मैं श्री बालकृष्ण रामचन्द्र डंडावाटे तथा अन्य लोगों की ओर से एसेशियल सर्विसेज मेंटेनेन्स बिल, 68' के सम्बन्ध में एक याचिका प्रस्तुत करता हूँ।

12.52 hrs.

STATUTORY RESOLUTION RE.
ESSENTIAL SERVICES ORDINANCE—Contd.

MR. DEPUTY-SPEAKER : Yesterday, after about three hours of debate on the point of order raised by Shri S. M. Banerjee, I had reserved my ruling.

SHRI S. M. BANERJEE (Kanpur) : I submitted further materials.

MR. DEPUTY SPEAKER : I have considered all materials, including those sent by him.

When Shri S. S. Kothari moved following Resolution, a point of order was raised by Shri S. M. Banerjee that it could not be discussed as the Ordinance was pending adjudication before many courts of law :

"This House disapproves of the Essential Services Maintenance Ordinance, 1968 (Ordinance No. 9 of 1968) promulgated by the President on the 13th September, 1968."

I allowed a full discussion on the point of order in which several hon. Members from both sides, including the Law Minister, took part. I am obliged to the hon. Members for their contribution to the discussion. The arguments of hon. Members who raised and supported the point of order was that the Ordinance had been challenged in a court of law, and it would not be appropriate to discuss the same matter on the proposed resolution at this stage. In support of their argument they stated that the Speaker had previously ruled in

connection with a motion of Shri Madhu Limaye that it could not be discussed as the subject matter of that motion was pending in a court of law. The hon. Members who opposed the point of order contended that the present resolution was distinguishable from the previous motion in as much as the present resolution related to legislation and the rule of *sub-judice* did not apply to legislation.

I have given careful consideration to the whole matter and the arguments that were advanced for and against the point of order. I have also looked into the precedents and the other references on the subject.

Under the Constitution, Parliament is supreme and sovereign in the exercise of its legislative powers and cannot be paralysed by reason only of the fact that a writ petition against the constitutionality of the existing legislation is pending in a court of law. The Constitution has given power to Parliament to disapprove of an Ordinance and in exercising its constitutional power, Parliament does not in any way interfere with or prejudice the jurisdiction of the courts in declaring an Ordinance void or unconstitutional for infringement of Fundamental Rights of citizens or any other constitutional provisions. There is therefore, no conflict between the powers and functions of Parliament under article 123 and powers of the courts under articles 32 and 226 of the Constitution.

According to the precedents in this House, the Speaker has held that discussion on a Bill the subject matter of which is *sub-judice* by virtue of an appeal pending in the Supreme Court is in order provided Members refrained from referring to the facts of the particular case in appeal, as thereby the debate in the House could not prejudice the hearing of the appeal by the Supreme Court (Lok Sabha Debate dated 26-9-1955). The Speaker has also held that a Bill seeking to replace an Ordinance can be discussed

in the House notwithstanding the fact that the Ordinance had been challenged in a Court of Law and the Court had issued a rule nisi to the Government (Lok Sabha Debate dated 22-11-1965).

The above rulings and the precedents are clear that this House is not prevented from discussing legislation the subject matter of which is the same as in the Ordinance which it seeks to replace and which may be pending before a Court of Law.

Now the question arises whether the resolution which has been moved under Article 123 of the Constitution disapproving the Ordinance can be discussed when the Ordinance has been challenged in a Court of Law.

It is clear from the rulings that the rule of *sub-judice* does not apply to legislation and the resolution under the Constitution to disapprove the Ordinance is in the nature of a legislation because all it seeks to do is to disapprove the Ordinance *i. e.* to appeal the legislation which is in force. It is well known that the Ordinance has the same force as a law of Parliament. A law of Parliament can be repealed by a repealing Bill, and the rule of *sub-judice* will not apply to such Bill. The Constitution, however, provides that an Ordinance can be repealed after the Houses have passed a Resolution disapproving the Ordinance. Therefore, the constitutional resolution disapproving the Ordinance is nothing else but a repealing measure. I, therefore, hold that the rule of *sub-judice* does not apply and the resolution can be discussed in the House.

We shall now proceed with the Resolution. Shri S. S. Kothari.

श्री आर्च फरने-डीज (बम्बई दलित) : मैं जरा एक खुलासा चाहता हूँ। कल के आर्डर पेपर में यह लिखा था कि बोच मे वी टेकन टुगेदर। माइटम नम्बर 7 और 8, मे वी डिस्कस टुगेदर। ऐसा लिखा हुआ है। मैं यह जानना चाहता हूँ कि पहले जो

[श्री जार्ज फरनेन्डीज]

हम लोगों ने प्रस्ताव पेश किया था उस पर बहस होगी और उसके पास या न पास करने के बाद इस विधेयक को पेश करेंगे या वह प्रस्ताव और विधेयक दोनों पेश हो जायेंगे और दोनों पर बहस चलेगी !

MR. DEPUTY-SPEAKER : We have previously done like this. To save the time of the House, we have discussed the Resolution and the Bill together,

SHRI S. M. BANERJEE : Has he moved the Bill ?

MR. DEPUTY-SPEAKER : He will move it after he makes the speech.

SHRI S. M. BANERJEE : When he moves it, I have a point of order on the Bill also.

श्री जार्ज फरनेन्डीज : अगर वह अपने उस विधेयक को पेश करना चाहेंगे तब हमारी व्यवस्था रहेगी ।

श्री रवि राय (पुरी) : बिल तो स्वतंत्र है और बिल के ऊपर व्यवस्था का प्रश्न उठाया जा सकता है ।

MR. DEPUTY-SPEAKER : The point of order raised yesterday covered both. It covers both. (*Interruptions*)

SHRI S. M. BANERJEE : We raised the points of order only on the Ordinance, that is, the Resolution.

MR. DEPUTY-SPEAKER : Please read the ruling carefully. I will give you a copy.

SHRI SAMAR GUHA (Contai) : On a point of order, Sir. (*Interruptions*)

MR. DEPUTY-SPEAKER : There cannot be a point of order on the ruling. (*Interruptions*) That is a hypothetical question. That motion is not before the House. So far as this ruling is concerned, it is on whether this House is competent to discuss the Ordinance or legislation

replacing the Ordinance. On that, I have given the ruling.

SHRI UMANATH (Pudukkottai) : On a point of order, Sir... (*Interruptions*)

13 hrs.

SHRI SAMAR GUHA : On a point of order.

MR. DEPUTY-SPEAKER : I am calling Mr. Kothari.

SHRI SAMAR GUHA : On a point of order.

SHRI UMANATH : On a point of order.

MR. DEPUTY-SPEAKER : Let the motion come up. If you have any other point, then we shall consider.....

SHRI SAMAR GUHA : Whether that motion can come or not, that is the point.

SHRI UMANATH : You said that the ruling that you have given covers both the Resolution as well as the legislation. Yesterday, repeatedly, you in your wisdom told the members on this side as well as on that side that the discussion and point of order was limited only to Resolution. That is why many of us did not talk about its applicability to the legislation, because that would come later. Having said that--and that is on record--, having restricted us to the point of Resolution, now for you to come and say that your ruling applies to the legislation as well is not in order. I will tell you why. Even if you feel that this particular thing will apply to the legislation as well, it is for us to raise this question, the point of order, again when the legislation comes up and then for you to consider our view points on that aspect and then give your ruling. Without allowing us to give our viewpoints, how can you... (*Interruptions*)

MR. DEPUTY-SPEAKER : That, we shall consider later. Now the other motion is before the House. Why should we anticipate ? Let it come before the House.

SHRI UMANATH : You should not anticipate.

MR. DEPUTY-SPEAKER : The other motion has yet to come before the House. Your right to raise a point of order is not taken away.

Now, the House stands adjourned to meet again at 2.00 P. M.

13.03 hrs.

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

— — —

The Lok Sabha reassembled after lunch at three minutes past Fourteen of the Clock

[SHRI R. D. BHANDARE in the Chair]

STATUTORY RESOLUTION RE.
ESSENTIAL SERVICES
ORDINANCE—Contd.

SHRI SAMAR GUHA : Sir, I have a point of order. (*Interruption*)

MR. CHAIRMAN : Shri Kothari to resume his speech. Let the hon. Member please resume his speech. Otherwise I will declare that he is not prepared to speak. There cannot be any point of order on the Ruling at all. The Resolution is before the House.

SHRI SAMAR GUHA : Not on the ruling, Sir...

MR. CHAIRMAN : On what subject do you want to raise the point of order ?

SHRI SAMAR GUHA : On the procedure of the House...

MR. CHAIRMAN : The Resolution is before the House. Have you any point of order on the Resolution itself ? Please resume your seat. If you have a point of order on the Resolution then you may say.

SHRI SAMAR GUHA : On the Resolution. My point of order is this. When

the Deputy Speaker asked Mr. Kothari to move the Resolution he simultaneously announced that after the Resolution is moved the Bill will be moved.

MR. CHAIRMAN : There is no point of order. The hon. Member is in the midst of his speech on the resolution. So, let the hon. Member resume his seat.

SHRI S. M. BANERJEE : I am raising a point of order on the resolution. I have nothing to say against the ruling which has been given by the Deputy Speaker.

MR. CHAIRMAN : He cannot say anything against it.

SHRI S. M. BANERJEE : Please do not interrupt me like this because I get derailed. In his ruling, the Deputy Speaker...

MR. CHAIRMAN : Again he is dealing with the ruling. Let him leave that aside. If he has any point of order on the resolution he can raise it.

SHRI S. M. BANERJEE : I am leaving the ruling aside. I would invite your kind attention to rule 188. It reads thus :

"No motion which seeks to raise discussion on a matter pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions...shall ordinarily be permitted to be moved..."

MR. CHAIRMAN : The hon. Member may sit down. There is no point of order. That has been determined already.

SHRI S. M. BANERJEE : I would draw your attention to one particular aspect. Kindly hear me. It is a very important point. Regarding the High Courts, I am not touching them after the ruling from the Chair. The Deputy Speaker has said that even if the matter is before a High Court, it could be discussed in this House.

The rule further says :

".....or any commission....."

MR. CHAIRMAN : Why does he want to travel to the other subjects ? Let him confine himself to the resolution. He can state his point of order on the resolution. He can state his point of order on the resolution briefly.

SHRI S. M. BANERJEE : Kindly hear me. I have seen you raising points of order, and you have taken at least two or three minutes to formulate it; you have not been able to do it more quickly. So, kindly give me one minute at least. The word "commission" does not necessarily mean a commission appointed under the Commissions of Inquiry Act. Now, there are two commissions in the country...

MR. CHAIRMAN : Commission is not a subject before the House.

SHRI S. M. BANERJEE : That is true. But there are two commissions in the country. One is the Commission on Labour and the other is the Administrative Reforms Commission. After the strike when the ordinance was passed and people were being arrested and so on, this particular aspect of the problem whether Central Government employees should have any right to strike or not has been referred to the Administrative Reforms Commission.....

MR. CHAIRMAN : We are not discussing now whether the employees should have the right to strike.....

SHRI S. M. BANERJEE : Kindly hear me.....

MR. CHAIRMAN : Let the hon. Member kindly listen to me. I shall allow him to raise a point of order dealing with the resolution. Whether the employees should be allowed to strike or not is not a matter before the House.

SHRI S. M. BANERJEE : You have not heard me correctly. I say that this resolution cannot be discussed even after the ruling from the Chair.

There are two commissions in the country, one headed by Shri Hanumanthaiya, an hon. Member of this House and

an ex-Chief Minister of Mysore; and another commission is presided over by a former Chief Justice of the Supreme Court, Shri Gajendragadkar, namely the commission on Labour.

MR. CHAIRMAN : Everybody is aware of these two commissions. Why does he want to deal with that whole thing now ?

SHRI S. M. BANERJEE : I do not want to educate you, Sir, but I want to educate others.

MR. CHAIRMAN : The others are also quite aware.

SHRI S. M. BANERJEE : You may be an encyclopaedia but others are not. So, I am trying to educate them. There are two commissions, one is the National Commission on Labour and the other is the Administrative Reforms Commission...

SHRI SHEO NARAIN (Basti) : Let him go to some university to educate others.

SHRI S. M. BANERJEE : Shri S. M. Joshi and I have received and the central trade unions have received a letter from the member of the Administrative Reforms Commission to express our views on this. So, both the commissions are seized of this problem.

I want to have a ruling from you as to what will happen to these two commissions, whether their present terms of reference are being withdrawn by Government before proceeding with this Bill. I want your ruling on this.

MR. CHAIRMAN : I am giving my ruling. There is no point of order dealing with the resolution.

SHRI S. M. BANERJEE : It cannot be discussed under this rule, namely rule 188.

MR. CHAIRMAN : I have already determined the point. There is no point of order.

श्री जार्ज फरनेन्डोज : अध्यक्ष महोदय,
मेरा व्यवस्था का प्रश्न है 376 और 307
(1) में।

SHRI S. M. BANERJEE : What is the
argument? There should be some argument.
The Deputy Speaker had spent a sleepless
night on his ruling. You should tell us the
argument also.....

MR. CHAIRMAN : I have already
determined that point. He has no right to
challenge it now. Let the hon. Member
resume his seat now.

14-11 hrs.

POINT OF ORDER RE. PETITION

श्री जार्ज फरनेन्डोज (बम्बई दक्षिण) :
मेरा व्यवस्था का प्रश्न 376 और 307 (1)
के अन्तर्गत है। आज सुबह मैंने एक याचिका
इस सदन में पेश की है.....(व्यवधान)....
मैं उसकी भाषा को नहीं उठा रहा हूँ। यह
भाषा पर नहीं है। यह हमको अभी नोटिस
आफिस से मिला है।

MR. CHAIRMAN : He has every right
to raise a point of order on a subject
before the House. The subject which he is
raising is not before the House. His petition
is not before the House.

श्री जार्ज फरनेन्डोज : अध्यक्ष महोदय,
रूल 376 पर मैं खड़ा हूँ। मैं पेटिशन पर नहीं
बोल रहा हूँ। आप रूल 376 देखिए।

'A point of order shall relate to the
interpretation or enforcement of these rules
or such articles of the Constitution as
regulate the business of the House.....'

MR. CHAIRMAN : Let the hon.
Member resume his seat. The meaning of
rule 376 is this.

श्री जार्ज फरनेन्डोज : आप मेरी बात
सुन लीजिए। मैं इस वक्त हाउस के विधान

को लेकर और रूल के एन्फोर्समेंट को
लेकर आपके सामने अर्ज करना चाहता हूँ।
आज सुबह मैंने याचिका पेश की। अभी लोक
सभा सेक्रेटरिएट ने मेरी याचिका को यहाँ
पर सजुसेट किया है.....

MR. CHAIRMAN : The meaning of
rule 376 is this. If there is any subject
before the House or if there is a consti-
tutional question he can raise a point of
order. Since that particular subject is not
before the House, there can be no
discussion on it now, and let the hon.
Member resume his speech.

श्री जार्ज फरनेन्डोज : नहीं, अध्यक्ष
महोदय, मुझे दूसरा कोई समय नहीं मिलेगा
इसको उठाने का। आप मेरी बात को एक
बार सुन लें। मैं रूल के एन्फोर्समेंट को
लेकर सवाल उठा रहा हूँ। आप उसको
पढ़ लें।

"A point of order shall relate to the
interpretation or enforcement of these
rules or such articles of the Constitution
as regulate the business of the House and
shall raise a question which is within the
cognizance of the Speaker".

अब मैं एक वाक्य को पढ़ कर सुना
देना चाहता हूँ जिस को स्पीकर के आफिस
ने बांटा है....

MR. CHAIRMAN : Again, he is
dealing with an extraneous matter.

श्री जार्ज फरनेन्डोज : अध्यक्ष महोदय,
यह मामला सदन के सामने है इस वक्त।

MR. CHAIRMAN : He can raise it by
a separate notice. I shall analyse it. Let
him kindly sit down. The business before
the House is the resolution of Shri S. S.
Kothari and he is in the midst of his
speech; therefore, there can be no point
of order.

SHRI S. M. BANERJEE (Kanpur) :
We are raising a point of order on that.