

Estimates Committee on the Ministry of Information and Broadcasting—Board of Film Censors, Bombay.

12.05 hrs.

CENTRAL LABOUR LAWS (EXTENSION TO JAMMU AND KASHMIR) BILL*

THE MINISTER OF LABOUR AND REHABILITATION (SHRI HATHI): I beg to move for leave to introduce a Bill to provide for the extension of certain labour laws to the State of Jammu and Kashmir.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to provide for the extension of certain Central labour laws to the State of Jammu and Kashmir."

श्री शिव चन्द्र झा (मवुबनी): अध्यक्ष महोदय, मैं विधेयक के इंट्रोडक्शन का विरोध करना चाहता हूँ।

अध्यक्ष महोदय : सारे बिल्स पर आपका विरोध मैंने देखा है। मैंने देखा है जब भी कोई विधेयक इंट्रोडक्शन स्टेज पर आता है आप जरूर उसको अपोज करते हैं। कहीं किसी विधेयक में कोई फंडामेंटल चीज आए तो यह ठीक है लेकिन यह प्रैक्टिस हर विधेयक के सम्बन्ध में अच्छी नहीं है। हाउस में टाइम की बड़ी कमी है। मैं आप को मना नहीं करता लेकिन आप हर एक में अपोज करते हैं। दो एक मिनट में आप को इस पर भी जो कुछ कहना हो कह दें।

श्री शिव चन्द्र झा : थोड़ी देर के लिए मान लीजिए यदि ऐसे विधेयक आते हैं जिन के मुताबिक सदस्य समझते हैं कि इनका विरोध करना चाहिए तो क्या यह जनतंत्र का तकाजा नहीं है कि हम विधेयक का हम विरोध करें? एक तो आप पहले यह गौर करेंगे कि हम लोग कांस्ट्रिक्टिव विरोध करते हैं सरकार के विधेयकों पर। इन

विधेयकों में बहुत सी खामियां रहती हैं और हमारे लिए यह लाजिमी हो जाता है कि हम उन खामियों को दिखाएं। चाहे एक सदस्य दिखाए चाहे तमाम मिल कर दिखाएं। तो हमारा यह हक हो जाता है। उसके लिए इस तरह की बात आप कहते हैं, मुझे हैरानी हो जाती है, कि हर विधेयक का हम विरोध करने लग जाते हैं...

अध्यक्ष महोदय : मेरा आपसे निवेदन यह है कि जब हाउस ने लीव दे दी, बिल इंट्रोड्यूस होता है, यह एक फार्मल चीज होती है। इसमें बहुत ही कोई कांस्ट्रिक्ट्यूशनल और फंडामेंटल प्वाइंट होता है तब कहीं जा कर इस स्टेज पर विरोध किया जाता है। लेकिन मैंने सारे बिल्स देखे हैं। हर बिल पर आप एतराज उठाते हैं। मैं आपसे अर्ज करूँ कि एकाध छोड़ भी दिया करें आप।

श्री शिव चन्द्र झा : मेरा इसमें तफर का है। अध्यक्ष महोदय, यदि आप तफसील में जाएंगे तो देखेंगे, हमारे लिए यह लाजिमी हो जाता है क्योंकि हम एक एक सेंटेंस को पढ़ेंगे, एक एक शब्द को पढ़ेंगे, जिस मेहनत के साथ इन्होंने विधेयक बनाने की कोशिश की है क्या यह हमारा फर्ज नहीं होता है कि हम उतनी ही मेहनत के साथ यह देखें कि क्या वह विधेयक संविधान के दायरे में आता है या नहीं, क्या इस विधेयक पर अंगुली तो नहीं उठाई जा सकती है, तो यह बात समझ में नहीं आती है कि हर विधेयक का विरोध न किया जाय।

दूसरी बात इम्पार्टेंट क्या है अनइम्पार्टेंट क्या है, एक तो यह बैंक नेशनालाइजेशन का विधेयक ही यहाँ आया जो इम्पार्टेंट था... (व्यवधान)... तो इस में तो तफरक है।

यह विधेयक जो है इस के ऊपर मेरी आपत्ति यह है कि इस तरह के विधेयक

[श्री शिव चन्द्र झा]

पहले भी बहुत से आए हैं जब यहां पर कहा जाता है कि यह विधेयक is hereby extended to and shall be in force in the State of Jammu and Kashmir.

मैं जानना चाहता हूँ क्या जम्मू और काश्मीर हिन्दुस्तान में नहीं है ? यह जो सेंट्रल लेबर लाज बने हैं अब तक क्या काश्मीर में लागू नहीं होते थे ? यह सरकार का दृष्टिकोण बुनियादी तौर से गलत है कि हम कानून और नियम बनाते हैं और उस में यह लिख देते हैं कि सिर्फ जम्मू तथा काश्मीर के लिए नहीं बनाते और फिर साल भर बाद उसके लिए बनाते हैं । तो इसका क्या मतलब होता है । यह जो बोनस ऐक्ट है, पेमेंट ऑफ बोनस ऐक्ट, 1965 इसमें कहते हैं :

"It extends to the whole of India except the State of Jammu and Kashmir."

1965 में जो बोनस ऐक्ट बनाया गया वह सारे हिन्दुस्तान में लागू होगा लेकिन काश्मीर में नहीं लागू होगा । क्या वह हिन्दुस्तान का अंग नहीं है । यह बुनियादी तौर पर आपत्ति मंरी है । दूसरी बात यह है कि जब जम्मू और काश्मीर में लागू करने जा रहे हैं तो काश्मीर का जो हिस्सा अभी पाकिस्तान के अन्दर है क्या उसमें यह लागू होगा या नहीं होगा ? सरकार उसके लिए क्या कदम उठा रही है ? सरकार इसकी सफाई दे और इन कारणों से यह विधेयक आपत्तिजनक हो जाता है ।

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON): This objection has often been raised here. It is not on account of a policy of Government that Central legislations have specially to be extended to Jammu and Kashmir. When the Constitution was enacted by the Constituent Assembly, there were only two articles of the Con-

stitution, namely article 1 and article 370 which would apply to Jammu and Kashmir. With respect to the other princely States, the entire Constitution extended to those States. The object of the Constituent Assembly in enacting article 370 was to emphasise the fact that there was an instrument of accession by which Jammu and Kashmir became part of India, and I need not explain...

SHRI BAL RAJ MADHOK (South Delhi): The instrument of accession was there not only for Jammu and Kashmir but for every State.

SHRI GOVINDA MENON: With respect to all other States the instrument of accession got abrogated on the 25th November, 1949 on account of those States accepting the entire Constitution. If you look into the White Paper on Indian States, you will see that the instruments of accession respect of those States whose relationship with India was governed by such instruments were abrogated on account of those States accepting the Constitution of India framed by the Constituent Assembly as being applicable to them. But in the case of Jammu and Kashmir alone, the covenant provided that only those provisions of the Constitution which referred to Kashmir would apply to that State. It was done in that manner for historical reasons which I need not explain here.

Since Shri Bal Raj Madhok has raised the question, may I draw his attention to the Proclamation issued on the 25th November, 1949 by the Ruler of Jammu and Kashmir. It read thus:

"I now hereby declare and direct that the Constitution of India, shortly to be adopted by the Constituent Assembly of India...."

—'shortly to be adopted' was the phrase used because this was on 25th November, 1949—

"...shall, in so far as it is applicable to the State of Jammu and Kashmir, govern the constitutional relationship between the State and the contemplated Union of India and shall be enforced in that State by me, my heirs and successors in accordance with the tenor of its provisions."

As against this, I shall read the Proclamation by another Prince, namely the Ruler of Mysore. It reads thus:

"I now hereby ordain that the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the State of Mysore as for the other parts of India and shall be enforced as such by me, my heirs and successors in accordance with the tenor of its provisions."

So, you will see that when the Constitution was....

SHRI BAL RAJ MADHOK: All these facts are known to us.

SHRI GOVINDA MENON: If they were known, he would not have objected. Since on the 25th November, 1949, the Constitution was adopted by the sovereign authority of Kashmir, namely the Ruler thereof, only to the extent of....

SHRI BAL RAJ MADHOK: The ruler was not sovereign on that day. He was only a constitutional head there.

SHRI GOVINDA MENON: ... only to the extent that Constitution applied to Jammu and Kashmir this happened. If the Ruler of Kashmir is claimed by Shri Bal Raj Madhok not to have been sovereign, then the Instrument of Accession becomes an invalid instrument. He should be prepared to know that at the time the Constitution was enacted and these

instruments were perfected, there were certain reasons why India and the Constituent Assembly of India and the Government of India had to emphasise on the Instrument of Accession between the Ruler of Jammu and Kashmir and India. That is why article 370 has been framed in the manner in which it has been framed. It is the attempt of Government to see that this special position of Jammu and Kashmir is eroded little by little and by patient statesmanship in the course of a few years so that the entire position will be eroded and Jammu and Kashmir will become like any other State in India.

श्री शिव चन्द्र झा : कब तक होगा ?

यह तो बि कुल नपुंसकता का पालिसी है।

SHRI SRINIBAS MISRA (Cut-tack): On a point of order. Let it be made clear that I do not oppose the Bill—I want it to be extended to Jammu and Kashmir—but we do not want that the constitutional lacuna should be allowed to remain. Art. 370 deals with the limitation of the power of Parliament to make laws for the State. They are limited to those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the "Instrument of Accession". Where is the declaration?

SHRI HATHI: Come to the second part.

SHRI SRINIBAS MISRA: 'Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify'. Where is the specification?

SHRI HATHI: It is there.

SHRI SRINIBAS MISRA: No. The Jammu and Kashmir Order is something else. 'Such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify'.

That is under 370(i) (d) and 370(i) (b) only specifies regarding the legislative powers of Parliament. Where is that order?

SHRI GOVINDA MENON: It is a public document. That order was issued in 1954 and has been amended from time to time. The subject matter of this Bill referred to entries 22, 23 and 24 of the Concurrent List has been included in that order as amended.

MR. SPEAKER: This question has been raised and answered here on previous occasions.

The question is:

"That leave be granted to introduced a Bill to provide the extension of certain Central Labour Laws to the State of Jammu and Kashmir".

The motion was adopted.

SHRI HATHI: I introduce* the Bill.

12.18 hrs.

MATTER UNDER RULE 377

Time-lag in assumption of office by the President-elect

SHRI D. N. PATODIA (Jalore): In the matter of the presidential election, I wish to draw your attention to an anomalous situation, a situation of constitutional impropriety that has arisen on account of keeping a gap between today, the 20th August when the result will be announced and 24th August when the President will assume office. During these four days, the President-elect will be prevented from taking his office.

The situation that has arisen is not comparable to any similar situations in the past in the course of the last five presidential elections. In each of the past cases the election took place

when the previous President was in office. He was in office for a fixed period of five years, and in each of the previous cases it so happened that the term expired on 18 May after the five years. So irrespective of the date of the announcement of the result, the new President could assume office only on 13 May.

But here the situation is entirely different. For the first time in India after independence, the vacancy has been caused by the death of the President. On account of the vacancy, at the moment the Chief Justice is discharging the functions of the President. So when election is being held, the vacancy is there. After a particular candidate, whoever he may be, is elected as President and holds a certificate in his hand issued by the Election Commissioner, he will still be prevented from assuming office, and during these four days, another gentleman, who happens to be the Chief Justice will be discharging those functions when already the person duly declared elected as President is available. This will, to say the least, be a constitutional impropriety. A vacancy exists. There is no elected President in office. The Constitution would never support a situation where a President-elect should be prevented from assuming office for four days.

Suppose we are faced with some sort of an unexpected emergency and this situation continues, it means that when a President-elect has been declared elected and is available, he is not permitted to function as President but that the Chief Justice of India will be left to deal with the situation and function as President. Suppose the President elect gets a certificate from the Election Commissioner and telephones the Chief Justice: I have been declared elected, please administer the oath of office

*Introduced with the recommendation of the Chief Justice of India discharging the functions of the President.