

Pictures, Bombay; and (viii) Film craft (P) Ltd., Calcutta.

(b) whether Government have received any complaints from these Film Companies that they got less quota of raw films; and

(c) if so, the action taken thereon?

THE DEPUTY MINISTER IN THE MINISTRY OF FOREIGN TRADE AND SUPPLY (SHRI CHOWDHARY RAM SEWAK): (a) to (c). The information is being collected and will be placed on the Table of the House.

12-00 hrs.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

INVALIDATION OF CERTAIN SECTIONS OF GOLD CONTROL ACT

SHRI S.S. KOTHARI (Mandsaur): I call the attention of the Minister of Finance to the following matter of urgent public importance and request that he may make a statement thereon:

The Supreme Court decision invalidating certain sections of the Gold Control Act and the Government's reaction hereto.

THE DEPUTY PRIME MINISTER AND MINISTER OF FINANCE (SHRI MORARJI DESAI): Mr. Speaker Sir, I rise to make this statement on the Calling Attention Notice on the matter arising out of the recent judgment of the Supreme Court declaring certain provisions of the Gold (Control) Act, 1968, invalid.

On 30th April, 1969, the Supreme Court delivered its judgment in three writ Petition matters relating to Gold Control. The petitioners were licensed dealers and/or money-lenders.

The common and the most important plea raised in these Writ Petitions was that the Gold (Control) Act, 1968, was beyond the legislative competence of Parliament under Entry 52 of List I (Union List) and Entry 33 of List III (Concurrent List) of the Seventh Schedule. The Supreme Court

has upheld the constitutional vires of the Gold (Control) Act, 1968 and found it to be entirely within the legislative competence of Parliament.

Apart from this main pleading, the validity of about 26 provisions of the Gold (Control) Act was challenged on the ground of being violative of Article 19(1)(f) & (g) and Article 14 of the Constitution. Most of the impugned provisions have survived the challenge. The provision about which the licensed dealers were most exercised was the one contained in Section 16(7) which requires every licensed dealer and refiner to declare his entire personal belongings of gold articles and ornaments. The validity of this provision has been upheld by the Court.

The provisions declared invalid are—

(i) Clause (b) of sub-section (2) of Section 5:

This is a general provision as distinct from the other specific provisions in the Act, empowering the Administrator to regulate by licence, permit or otherwise the manufacture etc. of gold.

(ii) and (iii) Clause (d) of sub-section (2) and sub-section (6) of Section 27:

Section 27 of the Act deals with the licensing of the dealers. Clause (d) of its sub-section (2) provides for imposing of conditions in the licence issued to the dealers; and sub-section (6) deals with the issue and renewal of dealer's licence and *inter alia*, lays down the guidelines for the same.

(iv) Section 32:

This provides for possession of primary gold by licensed dealers and, *inter alia*, lays down the quantitative limits on the dealers' possession of primary gold other than that in the form of standard gold bars.

(v) Section 46:

This provision is a corollary of Section 32 and provides that the primary gold in the possession of the artisans employed by a licensed dealer shall be subject to

quantitative limit applicable to that dealer under Section 32.

(vi) *Section 88:*

This provides for punishment of abetment by a licensed dealer or refiner who knows or has reason to believe that any provision of the Gold (Control) Act or rule or order made thereunder has been or is being contravened by any person employed by him in the course of such employment.

(vii) *Section 100:*

This provision requires a licensed dealer, amongst others, to take reasonable steps to satisfy himself as to the identity of the person from whom he acquires or receives any gold and raises a presumption in the event of his failure to take such reasonable steps.

I should mention that in its judgment the Supreme Court has observed that the provisions which are declared invalid do not affect the validity of the Act as a whole and that the Act still remains substantially an Act as it was passed by Parliament.

The Government have the greatest respect for the judgment of the highest court of the country and will abide by it in its letter and spirit. Although the deletion of the provisions which have been declared invalid by the Court does not affect the basic scheme of Gold Control, some remedial measures will be necessary to fill the procedural void such as that caused by invalidation of Sections 27(6) and 32. The text of the Court's judgment will have to be carefully studied in consultation with Government's Law Officers with a view to considering what remedial measures are necessary and feasible in the light of the Court's judgment. It may be possible to provide for some of these matters by framing appropriate rules under Section 114 of the Act. Immediately after the judgment was delivered in the Court on 30-4-1969, an application was made for urgent supply of a certified copy. The certified copy of the judgment has not yet become available. It is, therefore, not possible for me to state anything more on this matter at this stage.

SHRI S.S. KOTHARI: The Supreme Court has held that the powers conferred

upon the Gold Control Administrator under Section 5(2)(b) of the Act were legislative in character, extremely wide and excessive delegation of legislative powers had taken place. Therefore, this section and others have been held constitutionally invalid. It is hardly surprising that such delegation of powers which was treated as valid under the Defence of India Rules have been declared as invalid under the common law of the land. May I observe that the invalidation of certain important sections of the Act by the Supreme Court constitutes an indictment of the Government's policy of what I should once again call 'fiscal brinkmanship'. What I mean is that Government brings in legislative measures which are on the borderline of constitutionality. That is my principal objection. Why should they take chances and risks and bring in legislation which is on the borderline of constitutionality? I need not go over what has taken place during the last few days in the house; Members are aware of it.

Secondly, I urge upon the Deputy Prime Minister to consider that since certain sections of the Act have been declared as invalid by the Supreme Court, should not the Government in good grace withdraw the Gold Control Act completely. I have some reasons for making this demand. Firstly, it has caused undue misery and hardship to hundreds of goldsmiths; some have even died. My principal objection is this. The fundamental objectives for which the Gold Control Act was brought by the Finance Minister before Parliament have not been fulfilled at all and it has not served its purpose. It has not been able to check smuggling nor could it reduce the disparity between the internal price and the international price of gold. Finally the lure of gold and its storage value have not diminished. Because of inflation, the value of the rupee has depreciated. It is on this account that there is so much of disparity between the internal and the international price of gold. As regards smuggling, it can be better checked by administrative measures.

MR. SPEAKER: I thought you were discussing the Supreme Court judgment. Please come to the question.

SHRI S. S. KOTHARI: I am coming to that. I would say that the Government should not confer upon the administrator excessive powers which would render the administrator dictator, Governor, and pontiff, all rolled into one. Why should you give such dictatorial powers to the executive head? Therefore, I would deprecate the tendency of the Government to delegate such powers and they should in the natural course be clearly defined in the Act; and Parliament itself should legislate in respect thereof.

Secondly, we should not confer excessive powers on the administrator, as otherwise, fundamental rights would be violated. Then, finally, the Government should not act on expediency and ignore human aspect in the matter of legislation. It does not pay in terms of economic welfare or political gains.

May I also most humbly submit to my colleagues that they should be more vigilant in passing any Act,—

MR. SPEAKER: This is not a public meeting where you speak to the audience and appeal to them. This is Parliament where a Calling Attention is being taken up. It is not a mass meeting. You will have to keep certain norms.

SHRI S.S. KOTHARI: I am referring to that because the Supreme Court has questioned the constitutionality of our measures. Now, will the Government squash the Gold Control Act? Secondly, will the Government think fit to appoint an *ad hoc* committee of Members of Parliament to examine the entire scheme of the Gold Control Act and decide as to what measures should be taken in the future? Thirdly, would the Government liberalise the licences to the goldsmiths to enable them to enter into the profession without let or hindrance? Finally, whether the Government would agree not to place any limit upon the amount of primary gold that the artisans and goldsmiths can hold?

SHRI MORARJI DESAI: So far as it relates to the earlier questions that the hon. Member has put, my answer is in the negative. About the last question he has put, I can only reply to it after I see the judgment.

श्री कंबर लाल गुप्त (दिल्ली सदर): पहले दो सवालों के लिये जो उपप्रधान मंत्री तथा वित्त मंत्री महोदय ने कहा कि उनका जवाब "नहीं" में है तो उन्हें कारण तो बतलाना चाहिए कि ऐसा क्यों है ?

MR. SPEAKER: He said that he has not even seen the judgement.

SHRI K. NARAYANA RAO (Bobbili): During the discussion of the Gold Control Bill, several Members in this House on both sides of the House had expressed their views that some of the provisions of the Gold Control Bill would not be constitutional. This is what we have anticipated. The Supreme Court has struck down certain sections of the Act. In this connection, may I also submit to the hon. Finance Minister that this is not the full story. Still, some more sections are yet to be struck down for the simple reason that this is a petition which, as the hon. Minister himself has said, has been filed by dealers and moneylenders. Under this particular Act, several other sections of society have also been affected.

First of all, about the restriction placed on the goldsmiths, they are yet to be decided by the court. These provisions have not been commented upon in the courts. Similarly, this Act purports to impose a restriction on a broad section of people on the purchase of gold over and above a given quantity. About the nature of the restriction on the ordinary citizen, that has to be decided by the courts of law. (*Interruption*) The Supreme Court has declared that the invalidation of this section would not affect the entirety of the Act. But in this context, I would draw the attention of the hon. Minister to the observation of the Supreme Court as to what is to be done about this, particularly in the context of section 76. I quote from the judgement:

"It appears, however, to us that if sections 27(2)(i) and 27(6) of the Act are invalid, the licensing scheme contemplated by the words of section 27 cannot be worked in practice. It is, therefore, necessary for Parliament to react a fresh legislation imposing in appropriate conditions and restriction

for the grant and renewal of licences to the dealers."

Therefore, even though technically the Act is safe, the working of the provisions will be impractical. This is my reading of the entire judgment. In view of the fact that this Act cannot be worked in practice, what I want to submit is this.

I would draw attention to the nature of the restriction imposed for acquiring a certificate to become a goldsmith. According to section 39(4)(2), a certificate can be issued only to a person who at the commencement of this Act is a member of the family of a certified goldsmith and had been assisting him for not less than one year. The implication of this is that for a person to get a certificate, he must be a member of a family of a certified goldsmith...

MR. SPEAKER: I am not an appellate court over the Supreme Court. I thought you are seeking some clarification. I will give you two minutes. You can say what you want. I will close my ears.

SHRI K. NARAYANA RAO: The validity of this particular provision which I have referred to is going to be challenged. In the light of all this, instead of amending the Act piecemeal because of the Supreme Court judgment, may I request the Deputy Prime Minister to keep the Act in abeyance and get advisory opinion about the entire Act, including the other provisions which have not been challenged in the recent case?

SHRI MORARJI DESAI: I have already said that until I go through the judgment and examine it carefully, I cannot give any opinion, as my hon. friend can easily give. He can give it, but I cannot.

श्री रघुवीर सिंह शास्त्री (बागपत) : श्रीमन्, जब इस विधेयक पर यहाँ संसद् में विचार हो रहा था और अनेक सदस्यों ने इसकी विभिन्न धाराओं के सम्बन्ध में जो आपत्तियाँ और चिन्ताएँ प्रकट की थीं सुप्रीम कोर्ट के निर्णय से वह सच्ची साबित हो गयी हैं।

मोरारजी भाई अपने स्वभाव के अनुसार जिस तरह की हलकी बात कर रहे हैं, सुप्रीम कोर्ट के विषय में कल भी उन्होंने कहा था कि कोई खास बात नहीं है और उससे मूल योजना पर कोई प्रभाव नहीं पड़ता है और आज भी उन्होंने इस वक्तव्य में कहा है कि उसके ऊपर कोई विशेष प्रभाव नहीं पड़ता है। साथ ही उन्होंने यह भी कहा है कि सर्वोच्च न्यायालय के इस निर्णय को सरकार सर्वाधिक सम्मान देगी और अक्षरशः और तत्त्वतः उसका पालन करेगी लेकिन हमें यह डर है और वह यह है कि अब दो तरीके गवर्नमेंट के सामने हैं एक तो यह कि इस ऐक्ट में अमेंडमेंट करके उसे पार्लियामेंट के सामने लायें। दूसरा तरीका यह है कि 114 धारा के अनुसार गवर्नमेंट उन नियमों में संशोधन करे। अब हमारी राय में यह तरीका ठीक नहीं है कि सरकार नियमों में संशोधन करके टेबुल पर रख दे बल्कि उचित यह होगा कि सरकार इस ऐक्ट में संशोधन करके पुनः पार्लियामेंट के सामने विचारार्थ उसे पेश करे जिससे सदस्यों को अधिक से अधिक अपने विचार प्रकट करने का मौका मिल सके। हमें डर है कि मोरारजी भाई जैसा कि उनका स्वभाव है या तो वह अपने आप में गीता के शब्दों के अनुसार बड़े स्थितप्रज्ञ हैं या उनमें इतना ऊंचा अपने को समझने की बात है कि वह सुप्रीम कोर्ट को कुछ नहीं समझते हैं। इन बातों को देखते हुए मैं समझता हूँ कि यह आवश्यक है कि मोरारजी भाई यह आश्वासन दें कि जो अमेंडमेंट होगा उसमें सुप्रीम कोर्ट की जो भावना है, सुप्रीम कोर्ट की जो स्प्रिट है उसको अवश्य रखा जायगा और उसमें वह उनकी जो अपनी भावना है उसको उसमें किसी तरह से घुसेड़ने का यत्न नहीं करेंगे क्योंकि हमें डर है कि सुप्रीम कोर्ट की भावना नहीं रहेगी बल्कि वह उनकी अपनी निजी भावना अक्षरशः और तत्त्वतः रहेगी। मैं चाहता हूँ कि जो ऐक्ट है उसी में अमेंडमेंट लायें और हाउस के सामने उसे विचारार्थ पेश करें और इस तरह से केवल नियमों में मंत्री महोदय संशोधन करके संतोष न कर लें।

श्री मोरारजी देसाई : जो आश्वासन माननीय सदस्य चाहते हैं वह आश्वासन मैं उन्हें नहीं दे सकता। मैं इतना ही आश्वासन दे सकता हूँ कि संविधान और संसद् के नियमों के मुताबिक जो जरूरी होगा वही मैं करूंगा।

12.19 hrs.

PAPERS LAID ON THE TABLE

NOTIFICATIONS UNDER EXPORT (QUALITY-CONTROL AND INSPECTION) ACT 1963
ETC, ETC

बैदेशिक व्यापार तथा पूर्ति मंत्रालय में उप-मंत्री (श्री चौधरी राम सेवक) : मैं निम्नलिखित पत्र सभा-पटल पर रखता हूँ—

(1) निर्यात (किस्म नियन्त्रण और निरीक्षण) अधिनियम, 1963 की धारा 17 की उपधारा (3) के अन्तर्गत निम्नलिखित अधिसूचनाओं की एक-एक प्रति—

(एक) स्टेनलेस स्टील के बर्तन (निरीक्षण) संशोधन नियम, 1969, जो दिनांक 15 अप्रैल, 1969 के भारत के राजपत्र में अधिसूचना संख्या एस० ओ० 1428 में प्रकाशित हुए थे।

(दो) अन्नक निर्यात(निरीक्षण) संशोधन नियम, 1969, जो दिनांक 15 अप्रैल, 1969 के भारत के राजपत्र में अधिसूचना संख्या एस० ओ० 1431 में प्रकाशित हुए थे।

[Placed in Library. See No. LT—1020/69.]

(2) (एक) उद्योग (विकास तथा विनियमन) अधिनियम, 1951 की धारा 18 क की उपधारा (2) के अन्तर्गत बंगाल नागपुर, काटन मिल्स लिमिटेड, राजनन्दगांव के

प्रबन्ध के बारे में अधिसूचना संख्या एस० ओ० 741 (हिन्दी और अंग्रेजी संस्करण) की एक प्रति, जो दिनांक 20 फरवरी, 1969 के भारत के राजपत्र में प्रकाशित हुई थी।

(दो) उपर्युक्त अधिसूचना की सभा-पटल पर रखने में हुए विलम्ब के कारण दशनि वाला एक विवरण (हिन्दी और अंग्रेजी संस्करण)।

[Placed in Library. See. No. LT—1021/69.]

12.20 hrs.

ESTATE DUTY (DISTRIBUTION)
AMENDMENT BILL

THE DEPUTY PRIME MINISTER
AND MINISTER OF FINANCE (SHRI
MORARJI DESAI): Sir, I beg to move:*

“That the Bill further to amend the Estate Duty (Distribution) Act, 1962, be taken into consideration.”

This Bill relates to the distribution of the net proceeds of Estate Duty among the States as recommended by the Fifth Finance Commission. The Commission was, among other things, required to make recommendations in regard to the changes, if any, to be made in the principles governing the distribution among the States of the net proceeds of Estate Duty in respect of property other than agricultural land. In its interim report, which together with an explanatory memorandum on the action taken thereon was laid before the Lok Sabha on 15th November, 1968, the Commission has made final recommendations in this regard. The Commission has increased the share attributable to Union territories from 2 per cent to 3 per cent taking into account the population of the Union territories as

*Moved with the recommendation of the President.