

(d) The annual capacities licensed for oxygen and Dissolved Acetylene gases are 60 million cubic feet and 12 million cubic feet respectively.

अमलाई पेपर मिल्स

१६००. श्री उटिया : क्या उद्योग मंत्री यह बताने की कृपा करेंगे कि :

(क) क्या बिड़ला रुद्रसं को मध्य प्रदेश के शहडोल जिले में अमलाई पेपर मिल्स की स्थापना के लिए नाइसेंस दिया गया था ;

(ख) यदि हां, तो कारखाने की स्थापना के लिये कितने बार समय बढ़ाया गया ; और

(ग) उस कागज के कारखाने के कब तक चालू हो जाने की सम्भावना है ?

उद्योग मंत्री (श्री कानूनगो) : (क) जी, हां ।

(ख) तीन बार ।

(ग) ३० जून, १९६४ तक ।

12.03 hrs.

CALLING ATTENTION TO MATTERS OF URGENT PUBLIC IMPORTANCE

(i) JUDICIAL PRONOUNCEMENTS BY SUPREME COURT REGARDING FILING OF AN AFFIDAVIT BY A MAGISTRATE RELATING TO TRANSFER OF A CRIMINAL CASE

Shri Tyagi (Dehra Dun): Sir, I call the attention of the Minister of Home Affairs to the following matter of urgent public importance and I request that he may make a statement thereon:

"The judicial pronouncements made by the Supreme Court in its judgment dated the 4th September, 1963, regarding filing of an affidavit by a Delhi Magis-

trate on behalf of the Delhi Administration relating to the transfer of a criminal case pending in his court".

The Minister of Home Affairs (Shri Nanda): The statement consists of two pages. Shall I read it or.....

Some hon. Members: Yes, yes.

Shri Nanda: One Shri Mool Raj filed a complaint against Shrimati Kaushalya Devi, Shri Dalip Singh and others under Section 420 read with section 120B of the Indian Penal Code in the court of Shri R. N. Singh, Magistrate First Class, Delhi. The case was assigned to Shri M. L. Grover, Magistrate First Class, for trial. Shrimati Kaushalya Devi filed a petition before the Supreme Court for the transfer of the case from the court of Shri M. L. Grover. The Supreme Court then ordered a stay of the proceedings in the Magistrate's court and directed the petitioner to file an application in the proper form under section 526 of the Criminal Procedure Code before the Sessions Judge, Delhi. The Sessions Judge ordered the transfer of the case from the court of Shri M. L. Grover to the court of some Magistrate who did not belong to the Punjab cadre. The case was then transferred by the District Magistrate to the court of Shri S. C. Chaturvedi, Magistrate First Class, Delhi. Shrimati Kaushalya Devi then filed a petition under section 527 of the Criminal Procedure Code before the Supreme Court of India for the transfer of the case from the court of Shri S. C. Chaturvedi to a court subordinate to some High Court other than the High Court which has jurisdiction over the Delhi Territory, namely the High Court of Punjab. When the petition came up for hearing before the Supreme Court an affidavit sworn by the Magistrate Shri S. C. Chaturvedi was filed on behalf of the Delhi Administration. The Supreme Court ordered the transfer of the case from the court of Shri S. C. Chaturvedi to the District Magistrate, Saharanpur, under the

[Shri Nanda]

jurisdiction of the Allahabad High Court, who was, in his turn, directed to entrust the trial of the case to a Magistrate of competent jurisdiction in his district.

2. In the course of their judgment the Supreme Court have observed:

"...it is not easy to understand how the Delhi Administration requested the learned Magistrate himself to make the affidavit, and how the learned Magistrate accepted the said request. the Sub-Divisional Magistrate himself has, in a sense, entered the arena and made a counter-affidavit opposing the transfer application, the complexion of the problem is completely changed....The affidavit of the Sub-Divisional Magistrate is described as an affidavit made on behalf of the Delhi Administration. it is impossible to understand how the Magistrate in whose court the proceedings in question are pending can rush into the arena and make an affidavit disputing the prayer made by the petitioner for transfer of the case.the Magistrate in whose court the proceedings are pending should never forget that he is a Judge and not a partisan for the Administration or the prosecution;The statement made by the learned Magistrate...clearly shows that the Magistrate has assumed a partisan role and has purported to contest the plea which the petitioner wanted to raise....It is an elementary principle of the rule of law that Judges who preside over trials, civil or criminal, never enter the arena. In criminal trials, particularly, it is of utmost importance that the Magistrate who tries the case must remain fearless, impartial and objective;.... if a Magistrate chooses to make an affidavit challenging the application made by an accused person

whose case is pending in his court, makes the said affidavit on behalf of the Administration, and in the affidavit puts in a strong plea opposing the transfer, all essential attributes of a fair and impartial criminal trial are immediately put in jeopardy. It is very much to be regretted that the Delhi Administration chose to request the Magistrate to make an affidavit and that the Magistrate accepted the said request and made the affidavit on the lines we have already indicated. That being so, even without considering the merits of the contentions raised by the petitioner, we think it is expedient for the ends of justice that the case pending against the petitioner and three other persons should be transferred from the court of the learned Sub-Divisional Magistrate, Delhi, to a court of competent jurisdiction in Saharanpur, U.P."

3. I have had occasion to look carefully into the papers. In connection with another matter, the Deputy Government Advocate had advised the Delhi Administration that in all matters where a notice is issued by the Supreme Court for the hearing of a petition, it is the duty of the respondent to give all details whichever are sought by the Court and that should also be done by way of an affidavit which may be filed on behalf of the State sworn by an officer of the State Government duly in advance of the date of hearing. In pursuance of this advice of the Deputy Government Advocate, the Additional District Magistrate, Delhi, had issued an order to all Magistrates that as the Presiding Officers of the lower court concerned were usually conversant with the facts of the case they were the right persons to swear affidavits in connexion with cases pending in their courts.

Shri Tyagi: Foolish. Who did it?

Shri Nanda: Certainly so; but please hear it. When Shrimati Kaushalya Devi's petition for the transfer of the case was filed in the Supreme Court, the Deputy Government Advocate advised that if the Delhi Administration wanted to oppose the transfer petition a *vakalatnama* may be duly executed and a counter-affidavit be sworn by some officer duly conversant with the facts of the case. The trial Magistrate Shri S. C. Chaturvedi was accordingly asked to brief the Deputy Government Advocate with regard to the facts material to this case and also to swear a counter affidavit. A counter-affidavit was drafted by the Deputy Government Advocate and the Magistrate swore to the affidavit which was then filed in the Supreme Court.

4. I may state straightaway that the Magistrate was ill-advised in filing a counter-affidavit before the Supreme Court in the proceedings for the transfer of a case from his court. From the details which I have given above, it will, however, also be clear that the Delhi Administration themselves in the light of the advice of the Deputy Government Advocate had issued standing instructions to Magistrates with regard to the filing of counter-affidavits in such cases, which were erroneous. The Deputy Government Advocate was also mistaken in filing a counter-affidavit sworn by the trying Magistrate himself in these proceedings.

5. I would like, however, to assure the House that although the officers to whom I have referred fell into this error, there is no reason to believe that they acted except in good faith. Suitable instructions to the Delhi Administration have also issued indicating to them the proper procedure to be adopted in such cases in future.

Mr. Speaker: Shri Tyagi.

Shri Tyagi: After hearing the hon. Home Minister and the spirit in which he has made the statement, I have no further questions to ask.

Shri Hari Vishnu Kamath (Hoshangabad): Is the hon. Minister aware of widespread reports in the capital that some highranking Minister or one of his influential relations took such inordinately unwholesome interest in this case as to advise the Delhi Administration to ask the Magistrate to file an affidavit in the case which has been rightly criticized so strongly by the Supreme Court? If it be otherwise, has the hon. Minister cared to enquire under what provision of law or procedure or other enactment the Deputy Government Advocate suggested to the Delhi Administration that an affidavit or counter-affidavit or some such document could be filed in such cases? What is the procedure?

Mr. Speaker: Hon. Members should realise that it was not in this individual or particular case that the Magistrate had filed an affidavit. There were standing instructions by the Delhi Administration. Erroneous though they were and reprehensible though they might be, they were the instructions perhaps after the advice of the Deputy Government Advocate or wherever he was. Therefore under those instructions this advice also was given and then the affidavit was filed. Therefore, there is no need to bring in the relation of some Minister or somebody else who advised the Delhi Administration. If it were a lonely or a separate case, then it would be a different thing.

Shri Hari Vishnu Kamath: I am glad you have clarified the position. May I know when the Government exactly came to know of the Deputy Government Advocate's instruction? How long ago was it and did they sleep so long over it?

Mr. Speaker: When did the Government come to know of these instructions by this advocate?

Shri Nanda: As far as I know it was out of the judgment of the Supreme Court. Then only the thing came to our notice.

Shri Hari Vishnu Kamath: May I know in how many cases the affidavit was filed?

Shri Nanda: There was no such case.

Shri Hari Vishnu Kamath: Here it is, Sir.

Mr. Speaker: In any other case also had any magistrate filed an affidavit?

Shri Nanda: It has to be verified. There was no case on the same lines. The case which came to our notice earlier was not on the same lines.

Mr. Speaker: The Members are anxious to find out, when it is alleged that it was in pursuance of the instructions of the Delhi Administration, whether occasions had arisen earlier where magistrates had been asked or they had filed affidavits when applications for transfer had been made in the higher court?

Shri Nanda: No such case, where the matter of transfer is there. There are other cases which are of a different character.

Shri Hari Vishnu Kamath: In all humility, Sir, I may say my first part of the question now becomes relevant, whether it was because of some Minister or some relation of his who was so interested in the case that he or she advised the magistrate to file an affidavit.

Shri Nanda: No such thing has come to our notice.

Shri Tyagi: At what level was the Deputy Government Advocate's opinion formed... (Interruptions).

Shri R. Barua (Jorhat): May I know when were the instructions by the Deputy Government Advocate issued?

Mr. Speaker: When was the circular issued?

Shri Nanda: This is on the 1st of July—1-7-63.

Shri Ranga (Chittoor): Specially for this.

Mr. Speaker: Inferences are for the Members to draw. They can ask for information.

Dr. L. M. Singhvi (Jodhpur): The issuing of a general circular to this effect which seems to have been contrived almost for this case, just before this case, seems to represent a perfect subversion of the judicial process. I want to know what steps have the Government taken to see that similar circulars which are in violation of known procedure which have been promulgated by the Punjab Administration? This is Delhi Administration.

Mr. Speaker: Punjab Administration? This is Delhi Administration.

Shri Nath Pai (Rajapur): Punjab is very intimately connected with this.

Dr. L. M. Singhvi: I am sorry; Delhi Administration.

Shri Nanda: As is evident from the last portion of my statement, we have issued strict instructions and given proper guidance to the authorities so that such things may not recur. This was on the 5th July that the transfer of this case arose—the issuing of an affidavit.

Shri Ranga: It is for the benefit of this case that it was issued.

Shri Surendranath Dwivedy (Kendrapara): It is very clear.

Mr. Speaker: Order, order. We should proceed in an orderly manner.

Shri S. M. Banerjee (Kanpur): It has come out in newspapers that Shrimati Kaushalya Devi urged for the transfer of this case because she was the mother-in-law of Shri R. P. Kapoor who had incurred the wrath of the Chief Minister of Punjab. I would like to know what the Government is considering, after so many judgments of the Supreme Court where everyone has asked for transfer of the case from Punjab to other places and whether

the Government have gone deeper into that aspect.....

Mr. Speaker: We are going far away from the question that is before us.

Shri S. M. Banerjee: It has come in the papers.

Mr. Speaker: Because it has come in the papers, the question should be put. I will not allow that. (*Interruption*).

Shri S. M. Banerjee: Let the Chief Minister survive.

Mr. Speaker: That is not my concern. I am only concerned whether the question survives or not. (*Interruption*).

Shri Nath Pai: Is it a fact that Shrimati Kaushalya Devi happens to be the mother-in-law of Mr. R. P. Kapoor, an I.C.S. official from Punjab who has incurred the wrath and displeasure of the Chief Minister of Punjab and may I know in how many cases has the Supreme Court passed strictures against the Punjab Chief Minister before the Government makes up its mind to remove him?

Mr. Speaker: That is not relevant.

Shri Nath Pai: It is extremely relevant. The first part of my question is relevant.

Mr. Speaker: No.

Shri Nath Pai: I am very sorry that you are saying like this.

Shri S. M. Banerjee: On a point of order. . . .

Shri Nath Pai: The case has come from Punjab to Delhi. . . .

Mr. Speaker: I do realise that. However excited we might be and however strongly we might feel on a

particular point, then too, we have to proceed according to the rules that we have got. A particular issue is before us. How can the Members expect that I should open it out to other matters that are not relevant here? They may excuse me in this respect, and I hope they will realise their own responsibilities also. I do know that they feel exercised, and I might also be one of them sometimes, but this cannot be brought up here.

Shri Nath Pai: The first part of my question may be answered. The whole unfortunate case has come to Delhi because of a certain background. She has had the case transferred to Delhi because of a certain background. So, I want a reply to the first part of my question which is legitimate.

Shri S. M. Banerjee: I rise to a point of order. . . . (*Interruptions*).

Mr. Speaker: The hon. Member rises always to a point of order, and subsequently it is found to be no point of order at all

Shri S. M. Banerjee: How can you anticipate what I am going to say?

Mr. Speaker: The first question is whether Shrimati Kaushalya Devi is the mother-in-law of. . . .

Shri Nath Pai: . . . one Mr. Kapur?

Shri Nanda: I have heard that. It is so.

Shri Nath Pai: What was the reply?

Mr. Speaker: He says that he has also heard that.

Shri S. M. Banerjee: My point of order is this, namely that this calling-attention-notice was tabled on the basis of a judgment of the Supreme Court where Shrimati Kaushalya Devi appealed to the Supreme Court for transfer of her case, because she felt that she was the mother-in-law of Mr. R. P. Kapur who had incurred the displeasure or wrath of the Chief Minister, and, therefore, she should

[Shri S. M. Banerjee]

ask for a transfer of the case. So, if any matter arises out of a particular subject for which we have tabled this calling-attention-notice, are we not entitled to discuss it and put questions on that?

Mr. Speaker: That is what I have stated that that does not extend; the particular issue that we have before us does not include that.

Shri Nath Pai: We are only going into the root cause of it.

श्री राम सेवक यादव (बाराबंकी) :
अभी माननीय मंत्री जी ने बताया है कि १ जुलाई १९६३ को सर्कुलर जारी हुआ था। मैं जानना चाहता हूँ कि यह बयान हल्फी पहले दाखिल की गई या इसके बाद में ?

Mr. Speaker: He wants to know whether the affidavit was filed before this or after this?

The Minister of Law (Shri A. K. Sen): Before the circular? No, it was after the circular. The circular was on 1st July, and the notice of this application for transfer was issued by the Supreme Court only on the 25th July, that means, 25 days after the circular.

Shri Surendranath Dwivedy: When was the affidavit filed?

Shri A. K. Sen: The affidavit was filed on the 27th August.

Shri Kapur Singh (Ludhiana): Since this magistrate acted under instructions and not *suo motu* and in perversity, may this House be assured that he will not be put into jeopardy directly or indirectly to appease the just displeasure of the Supreme Court?

Mr. Speaker: He cannot ask for that assurance now

श्री श्रींकार लाल बॅरवा (कोटा) :
मैं जानना चाहता हूँ कि यह डिप्टी गवर्नमेंट

एडवोकेट कौन से सूबे के हैं और कब से डिप्टी गवर्नमेंट एडवोकेट हैं ?

अध्यक्ष महोदय : दिल्ली के सूबे के होंगे और किस के ?

Shri Nanda: He was appointed on the advice of the UPSC.

Mr. Speaker: Is he the Deputy Government Advocate of Delhi?

Shri Nanda: Yes, he is for Delhi also.

Shri Surendranath Dwivedy: The hon. Member wants to know the State to which he belongs.

Shri Kapur Singh: My question is based upon the general knowledge that Governments are wont to adopt measures wherein they are tempted to put innocent people into jeopardy as scapegoats.

Mr. Speaker: On a question, I cannot compel Government to give any assurance on any subject saying that they would not do this or they would not do that. That was my objection.

Shri Kapur Singh: We can get some kind of indication that a wrong thing would not be done.

Mr. Speaker: Of course, we expect that from Government, in fact, from every Government.

Shri Lahri Singh (Rohtak): May I know whether it is under consideration of Government to take action against that Government advocate for issuing these erroneous instructions?

Shri Nanda: I have stated that we have informed the Chief Commissioner as to what should be done in future. Of course, the Supreme Court came down naturally with a very heavy hand on this because it was wholly improper. This is being realised. If anything more has to be done about competence etc. certainly the autho-

rities immediately concerned can do that. This deputy government advocate is attached to the Supreme Court and looks after cases in Delhi and other cases.

Shri Tyagi: Has he been dismissed or not?

(ii) Reported photographing by Chinese Embassy official of communist flags on government property in Delhi.

Shri Hem Barua (Gauhati): I call the attention of the Prime Minister to the following matter of urgent public importance and request that he may make a statement thereon:

The reported fact of Chinese Embassy officials taking photographs of communist flags on government property in Delhi on the 12th September 1963.

The Prime Minister, Minister of External Affairs and Minister of Atomic Energy (Shri Jawaharlal Nehru): Apart from what has appeared in the public press—newspapers—I have been unable to get any special information on this subject. I have enquired and have not got it yet. But presuming that what has appeared in the papers is correct.....

Mr. Speaker: If he desires to make that statement later on, today or tomorrow, he might do so.

Shri Jawaharlal Nehru: I do not think so. I accept the report as correct. I say there is nothing further we can do about it.

Shri Tyagi: Was the police there? Did the police interfere?

Mr. Speaker: Order, order.

Shri Jawaharlal Nehru: Early in the morning, the press report says, some people, Communists presumably, put up a few flags—red flags—on those posts that have been put up for VIP receptions. Just then, a

Chinese Embassy official was passing by in a car. He took some pictures of it.

Shri Nath Pai: How did he happen to pass just then?

Shri Hari Vishnu Kamath: Collusion between them.

Shri Jawaharlal Nehru: Immediately, a number of people apparently went towards the car and the car went away. It was there for a very short time. The flags were taken off. According to this report that was all that happened (*Interruptions*).

An Hon. Member: They are in a hurry!

Shri Hem Barua: In view of the fact that espionage work in our country is, of late, intensified by the Chinese jointly with Pakistan and certain other pro-Peking political elements in our country, may I know whether the Government propose (a) to sever diplomatic relations with China in the interest of the security of our country....

Mr. Speaker: That is not relevant. He should put a question that is relevant.

Shri Hem Barua: I am coming to (b).

Mr. Speaker: If (b) is the relevant part, why should he put (a)?

Shri Hem Barua: Do Government propose to take stern measures, instead of legalising subversion which Government has so far been doing, against those subversive elements in our country?

An Hon. Member: And the communist party.

Shri Jawaharlal Nehru: I am afraid I am not intelligent enough always to follow the hon. Member's questions....

Shri Hem Barua: Shall I repeat it?