

[Shri Raj Bahadur]

for the requirements of Kandla traffic, it may be shifted elsewhere. But at present, we do not propose to shift it. We have also got a big dredger for Kandla now and it is working there.

The question of free trade zone at Kandla is at present under consideration. But as hon. Members will appreciate, we have got to assign due priorities to various schemes in the face of the emergency. We could not take up that particular matter on the basis of urgency or priority as required by certain other more important things. At the moment, our desire is that we should try to keep our ports ready for any situation that might confront us, at any time.

Shri Jashvant Mehta raised another important point. He said there was some shortfall in the second Plan allocations as far as expenditure was concerned and so in the first Plan. But let him remember that the port capacity that we have developed is the main criterion by which we shall judge the adequacy of our ports. Even in 1960-61, our major ports have handled as much as 33.5 million tons of traffic. The installed capacity at the end of the second Plan period was supposed to be of the order of 41 million tons and by the end of the third Plan it will be 49 million tons. The maximum traffic that we have handled has been of the order of 33.5 million tons. Add to this the capacity of the minor ports. I can confidently assure the House that the port capacity will not be found wanting in any exigency or emergency that might confront us at any time, at present or in future. I am sure with the completion of the works in the third Plan, we shall be able to fulfil our targets that we have placed before ourselves.

The rest of the points pertain to certain clauses in the Bill. It would not be appropriate for me at this stage to say much about them. I would only say that these points will be taken full note of by the Select Committee.

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

15.44 hrs.

[MR. SPEAKER in the Chair]

Mr. Speaker: The question is:

"That the Bill to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith be referred to a Select Committee consisting of the following 21 members, namely:

Shri Tridib Kumar Chaudhuri, Shri Sudhansu Bhushan Das, Shri Shivajirao S. Deshmukh, Dr. P. D. Gaitonde, Shri V. B. Gandhi, Shri Indrajit Gupta, Shri Him-matsinhji, Shri P. G. Karuthiruman, Shri Lahri Singh, Shri Rama Chandra Mallick, Shri Niranjan Lall, Shri Raghunath Singh, Shri Raj Bahadur, Shri C. R. Raja, Shri M. Thirumala Rao, Shri S. V. Krishnamoorthy Rao, Shri H. Siddananjappa, Dr. L. M. Singhvi, Shri Ravindra Varma, Shri Vishram Prasad and Shri Jag-jivan Ram,

with instructions to report by the first day of the next session."

The motion was adopted.

15.45 hrs.

#### SUSPENSION OF PROVISO TO RULE 74

The Minister of Law (Shri A. K. Sen): Sir, I beg to move:

"That the first proviso to Rule 74 . . .

Shri Hari Vishnu Kamath (Hoshangabad): On a point of order, Sir.

Shri A. K. Sen: I have not moved it.

**Shri Hari Vishnu Kamath:** He cannot move it without the consent of the Speaker, under rule 388. Have you given your consent, Sir?

**Mr. Speaker:** I have not so far given my consent.

**Shri A. K. Sen:** I have not moved the motion yet.

**Shri Hari Vishnu Kamath:** Before he moves the motion, the consent of the Speaker should be obtained, under rule 388. If you have given the consent, Sir, it is all right.

**Mr. Speaker:** Yesterday also I told him that I had given my consent in that case. In this case, of course, I had straightaway said that I was not approached with that. But now I find that my observation is not correct, because it must have come to me and I must have permitted that to be put here. That implies my consent. Unless I had consented to that, it could not have been put on the Order Paper.

**Shri Hari Vishnu Kamath:** In future, when a Minister or a Member moves such a motion, it should be ensured that just as in the case of calling attention notice, the form of the motion should be, "Under rule 388, I beg to move . . ." Without that, it is not proper.

**Mr. Speaker:** We will see that reference is also made to the rule in future.

**Shri A. K. Sen:** I was just going to submit what you have already stated, namely, that this motion could not have been put on the Order Paper without your consent. We have followed this practice throughout.

I beg to move:

"That the first proviso to Rule 74 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion 2398(Ai) LS—4.

for reference of the Constitution (Fifteenth Amendment) Bill, 1962, to a Joint Committee of the Houses be suspended."

This will be a technical provision necessary for the purpose of enabling the Joint Committee to be set up. It has been the tradition of this House to associate the Council of States—the Rajya Sabha—also with all constitutional amendments. These are fairly important amendments and there is no reason why we should break away from that tradition now.

The reason why the proviso to rule 74 has to be suspended is, there is a provision in the Bill relating to the age of Judges, increasing it to 62 for the purpose of retirement, from 60. This would involve possibly in some particular cases increase in pension. Under our Constitution, pension is a charge on the Consolidated Fund of India, though, if any amount is paid from the Government of India's Consolidated Fund, it is recoverable from the State wherefrom the particular Judge has retired. Of course, the increase cannot be quantified because it depends upon each case, each particular judge, the number of years he has put in before he reaches the age of 62. Therefore, technically it comes within article 110 of the Constitution, and therefore it would attract the proviso to rule 74, namely, that without the suspension of that rule there cannot be a Joint Committee representative of both this House and the Rajya Sabha. That is the reason why we have moved for the suspension of the proviso to rule 74. I have no doubt that all of us would desire that representatives of the Rajya Sabha be associated with the amendments of the Constitution and it would be improper to keep them out. Therefore, Sir, for the purpose of removing the purely procedural difficulty this motion, I commend, should be accepted by the House.

**Mr. Speaker:** Motion moved:

"That the first proviso to Rule 74 of the Rules of Procedure and

[Mr. Speaker]

Conduct of Business in Lok Sabha in its application to the motion for reference of the Constitution (Fifteenth Amendment) Bill, 1962, to a Joint Committee of the Houses be suspended."

**Shri Hari Vishnu Kamath:** Sir, I rise on a point of order. It is an irony of fate that such a motion should be made on the very day after a similar motion had been made. Yesterday, when a motion was made by the Finance Minister for suspension of the proviso to rule 66, you were so good as to observe, when I raised the point:

"I agree with the hon. Member so far as this motion is concerned; it should be very rarely resorted to."

And, further, you made a very illuminating remark:

"This request by the Government for the suspension of the rules should be seldom made."

It is unfortunate that within 24 hours the Government should come up with another motion, an identical motion, for suspension of another rule. As I said yesterday, I do agree that the rules are not absolutely sacrosanct. But we should also remember that in a parliamentary democratic set-up they should not be lightly set aside or suspended. And, I believe, in this Parliament, since April last, this is perhaps the fifth occasion on which a motion for suspension of a rule is being made, if my memory is not mistaken.

Now, Sir, the Minister has pleaded for acceptance of the motion on the ground of incompatibility of the proviso to the rule with the motion he is about to make. But as I shall shortly submit to you and to the House, the motion attracts not merely the provisions of this rule but also the provisions of the Constitution which is a much more serious matter, and therefore the House will have to seriously consider the motion made by the Law Minister today.

Sir, the proviso to rule 74 reads as follows:

"Provided that no such motion as is referred to in clause (iii) shall be made with reference to a Bill making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of Article 110 of the Constitution:"

Therefore, on the ground of this proviso itself it is clear that because the motion is for reference of the Bill to a Joint Committee the Law Minister has sought to get round it by asking for suspension of this proviso.

What is article 110, because the article mentioned in this proviso is article 110. It says:

"(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely . . ."

Then the matters are given in (a) to (g).

The Minister has relied upon this proviso which refers to article 110 of the Constitution. Article 110 should be read with articles 107 and 109 of the Constitution. In article 107 it is said:

"Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament."

What about article 109? Kindly look at it carefully. It says:

"(1) A Money Bill shall not be introduced in the Council of States."

Then, sub-clause (2) of the article is categorical on this point. It says:

"(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States . . ."

After this House has passed the Bill it shall be transmitted to the Council of States. That means all the stages must be included in passing a Bill, not merely the first stage but all the stages up to the last stage, up to the third reading, because only then will a Bill be deemed to have been passed by a House. Sir, I do not want to cast any reflection upon the status of the other House. It may not have an inferior status, but the status under the Constitution has got to be upheld of either House of Parliament.

And, may I invite the attention of the Minister to the Statement of Objects and Reasons?

**Mr. Speaker:** He may kindly be brief.

**Shri Hari Vishnu Kamath:** It is a very important point, Sir, because it involves not merely the rules of procedure but also the Constitution. The Statement of Objects and Reasons refers to the proposals relating to articles 276, 297, 311 and 316 of the Constitution which were originally contained in the Constitution (Fifth Amendment) Bill. They had to drop that Bill. They did not pursue that Bill for reasons best known to them. Now, they have tried to incorporate all those various provisions, and jumble all those provisions into this one Bill merely for, a sort of, I do not wish to use a strong word, expediting this measure. Sir, expedition is well and good, but expedition should not be at the cost of vital provisions of the Constitution.

Will you also mark, Sir, another lacuna, another defect in this Bill? The Financial Memorandum invites attention to the clauses which involve public expenditure, expenditure from the public exchequer. They are clauses 3, 4, 6 and 8. But if you refer to the body of the Bill, you will see that those clauses which have been referred to in this Financial Memorandum are not printed in thick type as required by rule 69 of the Rules of Procedure.

Now, therefore, may I submit for your earnest consideration, that inasmuch as on his own showing, this is a Bill which falls within the ambit of article 110; and the President has recommended it for consideration under article 117. Therefore, articles 107, 109, 110 and 117 are attracted because article 110 should be read with article 109, and clause (2) of article 109 is categorical and absolutely ineluctable. It cannot be bypassed, surmounted or overcome; it is ineluctable. A Money Bill has to be passed by the House of the People, and unless Lok Sabha passes such a Bill the Rajya Sabha cannot take cognizance of it. That being so, it would have been better for the Government to have brought two Bills, to have split this into two amending Bills and brought them separately, one could have gone to a Joint Committee and the other could have gone to a Committee of the Lok Sabha alone.

I, therefore, submit that you will kindly take these vital matters, not merely the Rules of Procedure but the Constitution by which we are bound, into consideration. The motion for suspension of this rule should not be accepted; it is not in order.

16 hrs.

**Mr. Speaker:** I have heard the hon. Member with very great attention. Sub-clause (1) of article 109 says:

"A Money Bill shall not be introduced in the Council of States."

If it is a Money Bill, certainly, it cannot be introduced in the Council of States; it must be introduced here in this House. Then sub-clause (2) says:

"After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States....."

There also I entirely agree with the hon. Member. If it is a Money Bill

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then, certainly, first it should be passed by this House and then transmitted to the other House. But if it is not a Money Bill but only a Financial Bill then, certainly, that bar of article 109 does not apply.

Now let us read article 110. What is a Money Bill?

"For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters.....".

Then sub-clauses (a) to (g) have been mentioned. So, if the Bill contains only the provisions from sub-clause (a) to (f) then, certainly, it would have been a Money Bill. But, according to the arguments of the hon. Member, the Bill that we have got contains many things jumbled into it, besides those contained in sub-clauses (a) to (f). The hon. Member concedes that it has got many more things in it. Therefore it is not a Money Bill; it is a Financial Bill. So, article 109 has no application, so far as this Bill is concerned.

Then I come to the suspension of rule 74 and whether there is sufficient justification for it or not. The hon. Member reminded me, that within twenty-four hours after my giving the rule that Government should very rarely come before the House for the suspension of that rule, this request is being made to the House. But, the hon. Member would realise, this is quite distinct from the one that we had yesterday. There the hon. Member could argue that there has been some negligence or omission on the part of the Government, the Government could easily have brought that Bill here earlier and got it passed here and then send it to the other House. But that charge cannot be levelled against the Government in this case. Whenever they come before this House with this they have to ask for the suspension of this rule. Further, it is not to save any time or to get any other benefit which they could not have got if they had come earlier.

When it is a Financial Bill, it is the privilege of only this House to form its own Select Committee because a Joint Committee is barred under this rule. Even now, if we so desire, we can constitute a Select Committee of our own. Then, when the Bill is passed by this House, it would go to the other House. They have also a right to constitute a Select Committee of their own. Further, when important Bills like Constitution Amendment Bill are discussed, normally they are sent to the Select Committee. So, they will constitute another Select Committee there and after that Committee reports they will take it up for consideration and passing. So, to avoid that duplication of constituting the Select Committee twice, it has been considered that when Bills like the Constitution Amendment Bill come up for consideration we might have a Joint Committee in the first instance so that the other House might not have any necessity afterwards, when it goes to them, to constitute another Select Committee. So, it is a privilege of this House. If we insist, we can certainly have a Select Committee of our own. It is only a waiver of our privilege. So, I do not know how we can attach any blame to the Government or make some accusations against the Government in this regard. Therefore, this is quite different from the case that we considered yesterday. So, I hope the House would agree that, under these circumstances, we might have a Joint Committee. There is nothing that we are losing. We are not giving up any of our rights or anything of that kind. Under such circumstances, the objection of the hon. Member is not valid in the present case.

**Shri Hari Vishnu Kamath:** Not so valid?

**Mr. Speaker:** Yes, not so valid in the present case.

**Shri Narendra Singh Mahida (Anand):** Will it be taken as a precedent?

**Mr. Speaker:** Every case has to be considered on its own merits; not hypothetically.

**Shri Hari Vishnu Kamath:** May I just request you to throw a little more light on the ruling which you have just given? I do not ask from you..

**Shri A. K. Sen:** Not after the ruling.

**Shri Hari Vishnu Kamath:** What do you mean? I am not making a request to you.

**Shri A. K. Sen:** Not after the ruling.

**Shri Hari Vishnu Kamath:** I have been here longer than you. I know the rules better than you do.

Sir, the ruling which you have just now given is perfectly acceptable to us, and we bow to your ruling. But, as my hon. friend just now stated, will it not be a bad precedent, not merely a precedent but a bad precedent? It will be open to the Government just to escape the obligation of the Rules of Procedure and the Constitution to bring in only one little matter inside a Constitution Amendment Bill, which will put it outside the purview of articles 109 and 110 of the Constitution?

**Shri Ranga (Chittoor):** This is not the first time they have done it.

**Mr. Speaker:** What do they gain by that?

**Shri Hari Vishnu Kamath:** I do not know, may be for reasons best known to the Government themselves.

**Mr. Speaker:** Do the Government gain any advantage by that?

**Shri Ranga:** In time.

**Shri Hari Vishnu Kamath:** My point is that they should not jumble things like that.

**Mr. Speaker:** That is a different thing.

**Shri Hari Vishnu Kamath:** Article 107, to which I referred, refers to this matter as well, indirectly. It says:

"Subject to the provisions of articles 107 and 117 with respect to Money Bills and other financial Bills....."

This is, perhaps, a financial Bill, not a Money Bill. But article 107 says subject to these provisions. So, these provisions will hold good.

**Shri A. K. Sen:** If they apply.

**Shri Hari Vishnu Kamath:** Then only the ~~article~~ will also apply.

**Mr. Speaker:** Article 109 is not applicable, because it is not a Money Bill. Article 117 is applicable as it is a financial Bill. Therefore, that rule comes in the way. Normally, we have a committee of this House, because Joint Committees could not be constituted. Now, in order to facilitate matters and both Houses might not have different Select Committees on different occasions, we want one Joint Select Committee to be formed in the beginning. That is the only object.

**Shri Hari Vishnu Kamath:** If it is not a Money Bill and the proviso to rule 74 does not apply to it, why should Government make a motion for suspension of the rule?

**Mr. Speaker:** Rule 74 is both for Money Bill and financial Bill.

**Shri Hari Vishnu Kamath:** Apart from clauses (a) to (f) of article 110, as you have yourself stated, some other matters are also included in the Bill.

**Mr. Speaker:** Probably, I have not been able to make myself clear, though I have no doubt in my mind. If a Bill contains only those provisions which are contained in clauses (a) to (f) of article 110, then it is a Money Bill. But if it contains some other provisions also, then it will not be a Money Bill

[Mr. Speaker]

but it will be covered by article 117 as a financial Bill. The proviso to rule 74 is applicable to both Money Bills as well as financial Bills. Now we are constituting a Joint Committee because it is a financial Bill. If it had been a Money Bill, then it would not have been possible at all to do it, even by the suspension of the rule. That would have been a bar by the Constitution itself. But now the bar is only of the rule and not of the Constitution.

**Shri Tyagi** rose—

**Mr. Speaker:** What does he want?

**Shri Tyagi** (Dehra Dun): I want to speak on the Bill.

**Mr. Speaker:** Unless this rule is suspended we cannot take up the discussion. Does he want to speak on the suspension of the rule?

**Shri Tyagi:** Your ruling is final in that case.

**Shri Narendra Singh Mahida:** May I seek a further clarification?

**Mr. Speaker:** I am putting the motion to the vote of the House now. The question is:

"That the first proviso to Rule 74 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion for reference of the Constitution (Fifteenth Amendment) Bill, 1962, to a Joint Committee of the Houses be suspended."

*The motion was adopted.*

16.11 hrs.

CONSTITUTION (FIFTEENTH  
AMENDMENT) BILL

**The Minister of Law** (Shri A. K. Sen): Sir, I beg to move:

"That the Bill further to amend the Constitution of India be referred to a Joint Committee of the

Houses consisting of 45 members: 30 from this House, namely Shri Brij Raj Singh Kotah, Shri S. N. Chaturvedi Shri Homi F. Daji, Shri Ram Dhani Das,, Shri R. Dharmalingam, Shri Kashi Ram Gupta, Sardar Iqbal Singh, Shri Madhavrao Laxamanrao Jadhav, Shri Madeppa Bandappa Kadadi, Shri Hari Vishnu Kamath, Shri Paresh Nath Kayal, Shri Nihar Ranjan Laskar, Shri Harekrushna Mahatab, Shri M. Malaichami, Shri Mathew Maniyangadan, Shri Bibudhendra Misra, Shri F. H. Mohsin, Shri H. N. Mukerjee, Shri D. J. Naik, Shri V. C. Parashar, Shri Ram Swarup, Shri S. V. Krishnamoorthy Rao, Shri C. L. Narasimha Reddy, Shrimati Yashoda Reddy, Sayed Nazir Hussain Samnani, Shri Ramshekhar Prasad Singh, Dr. L. M. Singhvi, Shri U. M. Trivedi, Shri Balgovind Verma, Shri Asoke K. Sen and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

I may mention here, before I say anything else, that Shri Tyagi has put in a notice for an amendment of the third paragraph so that the report may be made not by the last day of the first week of the next session but by