

welfare officer, there is a manager and there is an officer on special duty who does all this.

Dr. Ranen Sen: The latter part of my question has not been answered. May I know why the other articles are priced higher than in the market?

Shrimati Chandrasekhar: No article is costlier than in the market, and most of the articles which are not available in the market are available here at nominal prices; for example, Colgate tooth-paste which is not available in the market is available in the stores at nominal price.

Shri Tyagi: It is difficult to ruffle the Deputy Minister. She comes after study.

SITUATION ARISING OUT OF SUPREME COURT JUDGEMENT ABOUT RAILWAY SERVICE OF SHRI PRIYA GUPTA, M.P.

Shri P. G. Sen (Purnea): I call the attention of the Minister of Law to the following matter of urgent public importance and I request that he may make a statement thereon:—

The situation arising out of the judgement of the Supreme Court dated the 5th December, 1963, about the Railway Service of Shri Priya Gupta, M.P.

The Minister of Law (Shri A. K. Sen): At the very outset, I express my apology that I was not here earlier, but it was due to a very curious reason. I got a telephone call saying that the other matter would go on until five O'clock and so, I should make the statement on this at quarter past five of the clock. So, I think that the message must have gone.....

Mr. Speaker: Has it been traced as to who telephoned to him?

Shri A. K. Sen: After I go back, I shall try to do so.

Shri Tyagi: It is not our fault or the fault of the House.

17 hrs.

Shri A. K. Sen: Shri Priya Gupta was a permanent employee of the North Eastern Railway. His services were terminated by the General Manager of the said Railway with effect from the 8th August 1956, after giving him one month's pay in lieu of notice. Shri Priya Gupta thereupon moved the High Court at Allahabad by a writ petition praying that the order terminating his service may be quashed and that he may be treated as in service on his post. The writ petition was dismissed both by the Single Judge who heard it in the first instance and by the Division Bench which heard the special appeal filed by Shri Priya Gupta. Shri Priya Gupta thereupon appealed to the Supreme Court by special leave.

The appeal of Shri Priya Gupta was heard by a Bench of seven Judges of the Supreme Court along with several other appeals, as all of them raised a common question of law, namely, whether rule 148(3) and its successor, rule (149)(3), of the Railway Establishment Code, under which the services of the various persons involved in these appeals were terminated was constitutionally valid. The aforesaid rules were held to be invalid by a majority of six Judges to one and, in accordance with the majority view, the Supreme Court on the 5th December 1963, granted the writ petitions of all the persons involved in the appeals and directed orders to be issued in terms of the prayers made by them.

Accordingly, in terms of the prayer made by Shri Priya Gupta, the orders terminating his services stood quashed and he was to be treated as in service on his post.

Meanwhile, on the 2nd March 1962, Shri Priya Gupta was declared elected to the Lok Sabha from the Katihar constituency in Bihar.

The effect of the decision of the Supreme Court is that Shri Priya Gupta was a permanent employee of

[Shri A. K. Sen]

the North Eastern Railway at the time of his election and continued to be so till the 5th December 1963, when the Supreme Court decided his appeal. Unless he has resigned from the service thereafter, Shri Priya Gupta is to be treated even now a permanent employee of the North Eastern Railway.

It is stated, however, by Shri Priya Gupta that the Allahabad High Court has amended his prayers in the petition for declaring him to be still in service so as to treat him to be so only up to that date, which is prior to his standing for election to the Lok Sabha. The correctness of this has not been verified yet. If the prayer has been so amended, then of course Shri Gupta would be deemed to have been in service only up to the date thereof, that is, prior to his standing for election to the Lok Sabha and prior to his being elected to the Lok Sabha. But as I have said this, however, has not been verified yet.

Under article 102(1)(a) of the Constitution, a person is disqualified for being chosen as, and for being, a member of either House of Parliament if he holds an office of profit under the Government of India. Since, as a result of the decision of the Supreme Court, Shri Priya Gupta was an employee of a Government Railway at the time of his election and thereafter, he was not qualified to be elected or to be a member of this House. If any question arises as to whether a member of this House has become subject to any such disqualification, it has to be decided under article 103 of the Constitution, by the President in accordance with the opinion of the Election Commission. Under article 104, if a person sits or votes as a member of this House when he knows that he is not qualified or that he is disqualified for its membership, he is liable in respect of each day on which

he so sits or votes to a penalty of five hundred rupees.

Mr. Speaker: Shri P. G. Sen has any question to put? —No. I have a question to put.

According to the order of the highest court, Shri Priya Gupta continues to be in service. Now he has not attended the House—he has not come inside. But he has been signing our registers outside in the Lobby daily. If he comes and claims his salary, what is the position?

Shri A. K. Sen: I asked him frankly —I might disclose this to the House— what the position was, because in the original petition he wanted a declaration that he was still in service. I can read out the original petition as was filed and disposed of by the Allahabad High Court.

Mr. Speaker: I would like to have the opinion of the Law Minister. Now there is a question before the House, whether Shri Priya Gupta is a Member of this House at present or not. Should it not be referred to the Election Commission for final decision?

Shri Nambiar (Tiruchirapalli): I would make a submission. According to the Railway Servants' Conduct Rules, if a railway servant stands for election or has stood for election, without getting the previous permission of the Railway Administration, that itself is a reason for removal from service. Therefore, though the Supreme Court has stated that he has to be taken back on the basis of the petition filed before them, according to another rule of the Railways, he cannot be, in so far as he has violated the conduct rules because he stood for election without obtaining permission from the Railway Administration. This also should be taken into consideration.

Shri Hari Vishnu Kamath (Hoshangabad): I heard you just now say that there is a question before the

House, and you would like to state your own reaction to that.

Mr. Speaker: Not that I should state my reaction, but that I should get the opinion of the Election Commission.

Shri Hari Vishnu Kamath: Before it is referred to the Election Commission, I will only make a request to you and to the House. In the first place, the House should ascertain from Shri Priya Gupta whether he has resigned—that is what I heard the Law Minister to say, whether he had resigned from railway service before he filed his nomination. If, unfortunately, he did not do so, if he resigns today with retrospective effect from that date, will it be in order? Then he will continue to be a Member of the House. I request that this may be held over till tomorrow when we will ask him—He is a Member of my Group—to be present.

Shri Bade (Khargone): The Supreme Court has accepted his writ and declared that he continues to be in service even though the Railways had dismissed him. But have the Railways taken him back on their rolls? Simply an order passed by the Supreme Court does not mean that he is accepted back. Therefore, we should find out whether the railways have taken him back with retrospective effect.

श्री काशी राम गुप्त (अलवर) : अध्यक्ष महोदय, एक और जानकारी भी करने की जरूरत है। श्री प्रिय गुप्त बतला रहे थे कि उनका केस १९६० तक के लिए हुआ है और उससे आगे के लिए नहीं हुआ है। अगर १९६० तक के लिए हुआ है, तो यह सवाल ही पैदा नहीं होता कि वह सर्विस में हैं या नहीं। सुप्रीम कोर्ट ने जो फैसला दिया है, वह १९६० तक के लिए दिया है। !

अध्यक्ष महोदय : ये इन्टीकेट क्वेस्चन्ज ग्राफ ला हैं। इनके बारे में हम यहां बैठ कर फैसला नहीं कर सकते।

श्री काशी राम गुप्त : मैं ने तो कुछ तथ्य दिये हैं।

अध्यक्ष महोदय उनके बारे में फैसला यहां नहीं हो सकता है।

We cannot decide these intricate questions of law here, whether he should be deemed to be in service at present, whether he has done this or that, and what is the effect of the regulations of the Railways even after the Supreme Court's decision. The only course open to him is under article 103:

"If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

"Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion".

Shri Hari Vishnu Kamath: It may be put off till tomorrow.

Shri Kashi Ram Gupta: I am mentioning a fact. If it is a fact that the case has been decided only up to 1960, then the question does not arise.

Mr. Speaker: Then too how can we take a decision? We have to refer it to the President and his decision shall be final. I hope the House would agree.

Shri Nambiar: Till then he can sit here?

Mr. Speaker: If he sits, he does so at his own responsibility.

Shri Hari Vishnu Kamath: It can be decided tomorrow.

Mr. Speaker: We cannot go into these questions and decide. I would like to have the opinion of the Law Minister.

Shri Hari Vishnu Kamath: If he has resigned with effect from that date?

Mr. Speaker: Even then, we cannot decide. We cannot say whether he is really a Member at this moment; if he has resigned, what is the effect of the resignation; from what date it takes effect; whether it takes effect from a date prior to the filing of nomination. All these things are to be seen.

Shri A. K. Sen: It is difficult for us to give an answer because facts have not been ascertained fully. He says that at the time when his petition was disposed of by the Allahabad High Court, he was asking for leave to appeal to the Supreme Court and wanted to amend the prayer suitably. These facts are to be ascertained.

Mr. Speaker: Even if these facts are known, since the question has arisen . . .

Shri A. K. Sen: Yes, Sir; it is a fit case to be referred to the President.

Mr. Speaker: I think the House would agree. The Law Minister will refer it to the President. We take up the next business.

17.11 hrs.

PAKISTANI INFILTRATION IN ASSAM*

श्री प्रकाशबीर शास्त्री (विजनी) : अध्यक्ष महोदय, जिस गम्भीर प्रश्न की ओर मैं आज इस सदन का ध्यान आकर्षित करने जा रहा हूँ, इससे पहले भी कई बार इस सदन में श्रीर सदन के बाहर भी इस गम्भीर प्रश्न की चर्चा चली है। लेकिन जब जब यह चर्चा आई है तब तब इसको साम्प्रदायिक दृष्टि से नहीं केवल राष्ट्रीय दृष्टि से ही देखा गया है। आज भी जब यह प्रश्न चर्चा का विषय बना है तो केवल राष्ट्रीय सुरक्षा की दृष्टि से ही बना है और इसी दृष्टि से ही मैं सरकार का ध्यान इस ओर फिर आकर्षित करना चाहता हूँ। मुझे दुःख है कि जितनी सावधानी इस विषय में पहले से बरनी जानी चाहिये थी, सरकार ने नहीं बरनी है। सरकार इस विषय

में सोती रही है। इसका परिणाम यह हुआ है कि बेरोकटोक लाखों पाकिस्तानी भारी संख्या में आ कर असम में बस गए हैं और अब जब उनको निकालने या हटाने का प्रश्न सामने आया है तो सरकार इस बात से डरती है कि उनको एक साथ हटाने से दुनिया में हमको क्या कहा जाएगा, या संसार में हमारी प्रतिष्ठा को धक्का पहुँचेगा। दूसरे शब्दों में कहें तो यों कह सकता हूँ कि सरकार इस समय गीता के अर्जुन की तरह से मोह में फंसी हुई है। परन्तु इसका परिणाम आगे चल कर क्या होगा। कि यह समस्या केवल असम की ही नहीं है, षडयंत्रपूर्वक या योजनाबद्ध यह जो समस्या बनी है, वह पश्चिमी बंगाल, विपुला, राजस्थान और भारत के अन्य सीमावर्ती जिलों की भी उसी तरह है। वहाँ भी संख्या लगभग इसी तरह से बढ़ी है। यह सारा षडयंत्र उसी पृष्ठभूमि में तैयार किया गया है जो मुस्लिम लीग के जन्मदाता जिन्ना का स्वप्न था। असम के मैदानी जिलों में और कुछ पहाड़ी जिलों में भी जो संख्या बढ़ी है उसको मैं १९६१ की जनगणना के जो आंकड़े हैं उनको ज्यों का त्यों संक्षेप में पढ़ कर सुनाये देता हूँ। सामान्य वृद्धि असम के अन्दर ३४.४५ प्रतिशत हुई है और वहाँ मुसलमानों की वृद्धि ३८.५६ के हिसाब से हुई है। इस में कई जिले इस प्रकार के हैं जिन में मुस्लिम जनसंख्या की वृद्धि हैरानी में डालने वाली है। मिले हुए खासी और जयन्ती हिल्स में ८७.९३ प्रतिशत की वृद्धि हुई है। संयुक्त मिकिर और उत्तर कछार हिल में ९६.७७ प्रतिशत, गारो हिल्स में ५९.२४ प्रतिशत और मिजो हिल्स में ५४.९६ प्रतिशत वृद्धि हुई है। गोलपाड़ा, कामरूप, दरांग, लखीमपुर, नौगांव आदि जिलों के कई थानों में भी इसी प्रकार भयंकर रूप से मुस्लिम जनसंख्या की वृद्धि हुई है। गोलपाड़ा के कोकराझार, मिडली और विजती में ८७.३० प्रतिशत, नार्थ सालमारा में

*Half-an-hour Discussion.