

Sidheshwar Prasad, Shri
Singh, Shri D. N.
Sinha, Shrimati Ramdulari
Soy, Shri H. C.
Sumat Prasad, Shri
Surya Prasad, Shri

Swamy, Shri M. P.
Tiworthy, Shri D. N.
Tiworthy, Shri K. N.
Tripathi, Shri Krishna Deo
Tula Ram, Shri

Uikey, Shri
Upadhyaya, Shri Shiva Dutt
Verma, Shri M. L.
Verma, Shri Balgovind
Virbhadra Singh, Shri
Yadava, Shri B. P.

Mr. Speaker: The result of the Division is: Ayes—20; Noes—96. The motion is not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

The motion was negatived.

14.51 hrs.

CONSTITUTION (AMENDMENT) BILL, 1962

(Amendment of articles 136, 226 etc.)

by Shri Shree Narayan Das

Shri Shree Narayan Das (Darbhanga): Sir, I beg to move:

“that the Bill further to amend the Constitution of India be referred to a Select Committee consisting of 25 members, namely:

Dr. M. S. Aney, Shri Brij Raj Singh, Shrimati Renu Chakravartty, Shri Basanta Kumar Das, Shri G. N. Dixit, Shri Ganapati Ram, Shri S. Hansda, Shri Hari Vishnu Kamath, Shrimati T. Lakshmi Kanthamma, Shri Madhu Limaye, Shri Harish Chandra Mathur, Shri C. R. Pattabhi Raman, Shri Raghunath Singh, Shri Shivaram Rango Rane, Shri N. G. Ranga, Shri Sham Lal Saraf, Shri Era Sezhiyan, Shrimati Jayaben Shah, Shri Sidheshwar Prasad, Dr. L. M. Singhvi, Shrimati Tarkeshwari Sinha, Shri Sinhasan

Singh, Shri Ravindra Varma, Shri Amar Nath Vidyalkar, and Shri Shree Narayan Das,

with instructions to report by the last day of the first week of the next session.”

Sir, this Bill, for reference to a Select Committee for which I have just moved a motion, was circulated for eliciting public opinion. In the beginning, I would like to say that the majority of opinions are not in favour of the Bill. Even then I want to bring to the notice of this hon. House certain points that I would like to be considered by the hon. Members.

14.53 hrs.

[SHRI SHAM LAL SARAF in the Chair]

The principle on which my Bill stands is that the independence of an elected Assembly requires that the Assembly itself should have exclusive powers to decide controversies about its membership, and this power ought to override the ordinary law enforced through courts. The Constitution-makers, when the Constitution was framed, had this principle in mind when they framed this article or the articles of Chapter XV of the Constitution. I would quote only one article, article No. 329, for the benefit of the House. It reads like this:

“Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such consti-
tuen-

cies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

Sir, this article is based on the principle which I have just stated. The object of the Bill, as has been stated in the Statement of Objects and Reasons, makes it clear that the object is to exclude the jurisdiction of High Courts and the Supreme Court to entertain appeal, revision, writ application or other proceedings under articles 132, 136, 226, 227 and 228 of the Constitution of India against decisions and orders of the authority constituted by the Legislature to decide election petitions under article 329(b) of the Constitution (at present Election Tribunals appointed under the Representation of the People Act, 1951). The argument in support of the Bill is based on the following propositions: (1) That it is the privilege of the Legislature to decide contests in regard to election of its members and, in exercise of that privilege, no jurisdiction could be claimed by any Court; (2) When the legislature delegates by an enactment, the performance of this privileged function to an authority of its choice (now Election Tribunals constituted under the Representation of the People Act, 1951), the said authority would be cloaked with the mantle of the said privilege and should enjoy immunity from the jurisdiction of the courts except to the extent permitted by the legislature itself in the said enactment; and (3) Therefore, when the legislature puts the seal of finality on the decisions of the authority constituted by it, the jurisdiction

of the courts including the special jurisdiction of the Supreme Court and the High Courts under articles 136, 226, 227 and 228 of the Constitution should be excluded.

This principle was accepted by the Supreme Court when it gave a ruling. I am quoting from Juridical Digest—Election Cases 1951—55. There it is said:

"The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

Then it adds:

"When a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

This paragraph that I have read from the judgment of the Supreme Court makes it quite clear that in matters of elections the Parliament or the Assembly which is elected by the people is quite independent to deal with cases relating to election of its members and other matters. But, Sir, as you know, when before the first General Elections, this hon. House, the Provisional Parliament, enacted the Representation of the People Act, 1951, there was a provision in that to the effect that the decisions of the tribunals will be final and conclusive. No appeal was available for anyone aggrieved by the decisions of the tribunals to file appeal petitions.

Shri Hari Vishnu Kamath (Hoshangabad): Not under the statute, but the constitutional remedy was there under articles 136 and 226.

Shri Shree Narayan Das: That is your case. My point is that having in view the provisions of article 329(b) the Parliament at that time thought it proper that the decisions of tribunals should be final.

The Representation of the People Act had this provision—I do not remember the section—that there would be no appeal.

15 hrs.

Shri Hari Vishnu Kamath: Not under the Act but under the Constitution.

Shri Shree Narayan Das: As I have just now quoted the judgement of the Supreme Court, the Supreme Court says:—

“right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.”

This is the basis on which I stand.

The Minister of Law (Shri G. S. Pathak): Mr. Chairman, in case the hon. Member, Shri Shree Narayan Das, does not object, I want to point out one thing that may curtail this discussion. The Government is proposing to confer original jurisdiction on the High Court in the matter of election petitions and the result of that will be that there will be no writ under article

226 which could be filed in the High Court. That being so, no question of amendment of article 329.....

Mr. Chairman: Are you replying to the debate?

Shri G. S. Pathak: I am just suggesting to the hon. Member to consider this point because his Bill would become outdated if Parliament confers jurisdiction on the High Court to entertain petitions. That is what I wished to point out.

Mr. Chairman: When the hon. Member finishes his speech and other Members have spoken, you can clarify it.

Shri Narendra Singh Mahida (Anand): He is making a suggestion.

Mr. Chairman: I could understand that.

Shri G. S. Pathak: I just wished to point that out and that was subject to his consent.

Shri Hari Vishnu Kamath: The Bill will go contrary to the Bill Government is bringing forward.

Mr. Chairman: When a piece of Legislation is before the House, it is always better to know all the viewpoints in spite of the fact that Government may have decided in favour of it. Last of all, when the hon. Minister speaks, certainly he will correct everything and Members who may be liable to agree to that will change their views also.

Shri G. S. Pathak: I would like to suggest to him that he may have this in mind when he is discussing this.

Shri Radhelal Vyas (Ujjain): I want to seek one clarification from the hon. Law Minister. It is good that he is thinking of conferring original jurisdiction on the High Court, but I would like to know whether the provision of appointing special election tribunals will be withdrawn because if simultaneous jurisdiction is conferred on

both the courts, it will not help.

Mr. Chairman: If the hon. Member would have heard me, there was no necessity of raising this question at the moment. Let the hon. Member finish his speech; then, we will see what else is coming up.

Shri G. S. Pathak: I am sorry that I intervened at this stage. I merely wanted to bring that to the notice of the learned speaker.

Shri Shree Narayan Das: Whatever has been said by the hon. Minister I am conversant with that because in answer to a question he has replied that Government is coming forward with a Bill to amend the Representation of the People Act in which this provision will be made and that this is the recommendation of the Election Commission. But I will just inform the House that my Bill was introduced in 1963 and was circulated for eliciting opinion.

The only point I would like to stress before the House is the principle on which the provisions of article 329 were passed and that principle was accepted by the Supreme Court also. A large number of cases cropped up after the first general election, not against an appeal or decision of any court but any order passed by a tribunal was brought before the High Court and in a large number of cases to the Supreme Court also because this was the first time that election cases cropped up in our country. In the course of that we find that a large number of cases were not decided in time. There were cases when the case continued even after the House was dissolved and some cases are even pending. It was in that context that I thought it worth while and proper that the attention of the hon. House and of the Government should be drawn to the fact that such delays should not be there.

As I have just now stated, the principle is that any assembly of elected members is supreme in this aspect at least, because if the court is allowed to interfere in matters relating to the conduct of business and other things,

it will be detrimental to the independence of this body. As I have said, the framers of the Constitution had also this in mind. The words used in article 329 are "Notwithstanding anything in this Constitution". I am not a lawyer, but as a layman, I think, this expression "Notwithstanding anything in this Constitution" debars the courts from taking action with regard to election petitions, but the Supreme Court and the High Courts have held otherwise. In the important case in which our friend, Shri Hari Vishnu Kamath was the appellant and Syed Ahmed Ishaque and Others were respondents.

Shri Hari Vishnu Kamath: The Law Minister was the counsel on the other side, opposite to me.

Shri G. S. Pathak: I am opposite to you even now.

Shri Hari Vishnu Kamath: Here also you are opposite to me.

Mr. Chairman: Do I take it that hon. Members are not interested in this debate?

Shri Hari Vishnu Kamath: Yes, yes of course.

Mr. Chairman: Then, I think, you should hear him.

Shri Hari Vishnu Kamath: But such interpellations are allowed

Shri Shree Narayan Das: In that the Supreme Court held:—

"The view that Article 329(b) is limited in its operation to initiation of proceedings for setting aside an election and not in the further stages following on the

decision of the Tribunal is considerably reinforced, when the question is considered with reference to a candidate, whose election has been set aside by the Tribunal. If he applies under Article 226 for a writ to set aside the order of the Tribunal, he cannot in any sense be said to call in question the election; on the other hand, he seeks to maintain it."

The ruling given by the Supreme Court has been accepted all through and is being accepted.

In the majority of countries in the world the practice has been to define the powers of the judiciary to try election cases under the respective Representation of the People Act. I want to make it quite clear that I do not want that the courts should not deal with these matters. My only point is that the courts should deal with the matter only to the extent that this hon. House gives jurisdiction to the High Courts and the Supreme Court. That is the only point.

Now that the hon. Minister is going to give that power by amending the Representation of the People Act to the High Court, it is good; I welcome it. But even then my Bill will become redundant or unnecessary only in case the hon. Minister gives the power of appeal against the decision of the High Court to the Supreme Court so that the Supreme Court may not find it necessary at any time to evoke the powers given to that body under the provisions of article 136. That is a general power given to deal with ordinary cases arising out of so many laws in the country. With regard to election petitions, I think, the hon. House should assign some powers to the High Courts and the Supreme Court.

Those bodies should exercise that power only to that extent. Every time,

as against the judgment of the returning officer, as against the judgment of the tribunal or an interim order of the tribunal—such cases are brought to the notice of the House—every candidate who is made the respondent cannot come to Delhi to just appear before the Supreme Court. It is a costly affair. In our country, the litigation is very costly. Once the person has got elected after having spent so much money he has to carry on litigation on petitions which are heard in the High Courts and Supreme Court. That makes matters worse.

My purpose will be served if this honourable House gives powers of dealing with election petitions to the High Courts and the Supreme Court so that, in that case, the High Courts and the Supreme Court will not hear any appeal.

Mr. Chairman: He should try to conclude now.

Shri Shree Narayan Das: I do not want to take much time of the House. I only say that the principle which I have just stated and which was accepted by the Supreme Court in its judgment which I just referred to should be upheld. For the uniformity of judgement, for the uniformity of justice, it is necessary that the High Courts and the Supreme Court should be given some powers. But, I think, this principle has not been behind article 329 as it was not the intention of the Constitution makers to have the single authority of High Courts and Supreme Court to interpret the law. The provisions of the Constitution cannot go against it.

I would request the Minister that the principle which I have just adumbrated will be accepted by him and that when he comes forward with the amendment of the Representation of People Act, that will be borne in mind. We should try to see that the election petitions are tried in a very short time so that the purpose of elections may not be defeated.

With these words, I move the motion for reference of my Bill to the Select Committee.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Constitution of India, be referred to a Select Committee consisting of 25 members, namely:—

Dr. M. S. Aney, Shri Brij Raj Singh, Shrimati Renu Chakravartty, Shri Basanta Kumar Das, Shri G. N. Dixit, Shri Ganapati Ram, Shri S. Hansla, Shri Hari Vishnu Kamath, Shrimati T. Lakshmi Konthamma, Shri Madhu Limaye, Shri Harish Chandra Mathur, Shri C. R. Pat-tabhi Raman, Shri Raghunath Singh, Shri Shivram Rango Rane, Shri N. G. Ranga, Shri Sham Lal Saraf, Shri Era Sezhiyan, Shrimati Jayaben Shah, Shri Sidheshwar Prasad, Dr. L. M. Singhvi, Shrimati Tar-keshwari Sinha, Shri Sinhasan Singh, Shri Ravindra Varma, Shri Amar Nath Vidyalankar, and Shri Shree Narayan Das.

with instructions to report by the last day of the first week of the next Session".

Shri Hari Vishnu Kamath: Mr. Chairman, Sir, I have no hesitation in saying at the very outset that this Bill is a retrograde, reactionary piece of legislation that the hon. Member seeks to get passed in this House.

The Constitution has vested certain powers, very necessary powers, in the High Courts and the Supreme Court and, if the House will pardon me a personal note, the decision that the election tribunal took in my case of 1952 was so severely castigated by the Supreme Court that it was said, to give a classic phrase, that it was a shrieking error on record. But for the Supreme Court power in the Constitution, I could not have challenged the election tribunal's decision and I would not have been able to come back here in 1955 as I did after fighting the by-election.

If this Bill is passed by the House, it will be a strange thing in a parlia-

mentary democracy where we regard the higher judiciary as the last bastion of democracy and it will seek to deprive the higher judiciary, the High Courts and the Supreme Court, of the powers vested in them under the Constitution. It is a strange reasoning given in the Statement of Objects and Reasons by Shri Shree Naryan Das who has years of experience in this House, longer years than I have, and he says:

"The Bill is intended to exclude the jurisdiction of High Courts and the Supreme Court in election disputes save as provided for by or under any law made by the appropriate Legislature."

I wonder, when he included this sentence in the Statement of Objects and Reasons, whether he thought that the Vidhan Sabhas, the Legislative Assemblies in the States could also pass laws with regard to the High Courts and the Supreme Court. Otherwise, he would not have used the words "the appropriate Legislature". He would have used the word "Parliament". I do not know what he had in mind.

Shri Shree Narayan Das: That is in accordance with article 329(b).

Shri Hari Vishnu Kamath: I do hope he does not seek to invest the Vidhan Sabhas with any sort of legislative powers in this regard. Then he has rightly said that the decision of the election tribunal under the present Act, under the extant legislation, is final and conclusive. That is so. But it is known to you and to everyone in this House that it is final only as far as that statute is concerned. Under that Act, there is no appeal. Later on, of course, it was modified so as to give powers to the High Court to entertain an appeal. Even under the old Act, under the original Act, the Representation of the People Act, 1951, the constitutional powers vested in the High Courts and the Supreme Court were not taken away and they remained in tact.

I would, therefore, request my hon. friend to consider whether it is his

[Shri Hari Vishnu Kamath]

intention in bringing this Bill to denude the higher judiciary, the High Courts and the Supreme Court, of these very essential, very necessary, and very vital powers that are vested in them for very compelling reasons. As I remember, Justice Mehr Chand Mahajan, whom you know so well, the Chief Justice of India at that time, when he heard my appeal, remarked that some tribunals have been swayed by ulterior considerations, have been influenced by those considerations and have been pressurised also. There was an argument that the Supreme Court and the High Courts should have no powers to entertain an appeal. But he over-ruled it. He said that this is very necessary, the power must be there and the Supreme Court must be there to guard the rights of citizens and to redress patent injustice where it has been committed by lower courts or tribunals.

Without taking any more time of the House, I would only suggest that in view of the statement of the Minister a little while ago that the Government itself is not contemplating a measure, to introduce a measure, which would seek to vest original powers, original jurisdiction, with regard to the election petitions in the High Court itself, if this Bill is passed by the House, it will go completely diametrically opposite, completely contrary, to the purpose of the Bill that the Government is going to introduce owing to very salutary pressure from various quarters including we Members who have said that the High Court should try directly the election petitions so that much time will be saved. We know the case of Sardar Pratap Singh Kairon, the election petition which challenged his election in the last Vidhan Sabha in 1967 elections, which was even pending when the 1962 general elections took place. Unfortunately, he was assassinated and everything lapsed. There are many such instances in India where petitions go on pending or hanging fire for years together

and this is one of the ways by seeking to vest jurisdiction in the High Courts themselves to try election petitions.

I would, therefore, appeal to the mover of the Bill, my hon. friend, Shri Shree Narayan Das to give second thought to this matter to reconsider the Bill that he has moved today for consideration, in the interest of democratic traditions, in the interest of powers that should vest in the High Courts and the Supreme Court for guarding the rights and liberties and redressing injustices committed by the lower courts, where the Constitution has vested these powers in them, and to keep those powers unsullied, to keep those powers unabrogated. I would appeal to him in the interest of keeping these powers in tact as the last bastion of democracy, to withdraw the Bill after it has been discussed and considered within the time allotted to it. I therefore, oppose this Bill, and I oppose the motion for consideration or for reference of the Bill to a Select Committee, and I hope the hon. Mover will withdraw the Bill when the time comes.

Shri G. N. Dixit (Etawah): The principle behind the Bill brought forward by Shri Shree Narayan Das is commendable. There must be quick finality in election matters. I think the Law Ministry is also alive to this principle, and the Law Minister even earlier today had himself stated that the Law Ministry was planning to bring forward a Bill before this Parliament for election trials to be conducted by the High Court itself rather than by having special tribunals appointed for the purpose.

So far as the principle goes, it is all right, but when we come to practice, I find difficulty for these provisions. I think it has not been possible for my hon. friend, the Mover to have all those matters before him which are necessary to fulfil the purpose for which he has brought for-

ward this Bill. The first point is that once the High Court itself tries an election petition, the withdrawal of these powers from the High Court, which he has proposed becomes redundant and unnecessary. The only suggestion which I would like to give to the Law Ministry would be this that once they give this power to the High Court to try an election petition, they should also provide that it shall not be appealable to a larger Bench than the High Court itself. Otherwise, even if a writ will not lie, if a single judge tries it, there may be a letters-patent appeal to the Division Bench and then some difficulty will arise, and, therefore, if this principle is accepted, then there should be no appeal in the High Court itself. So far as the Supreme Court is concerned, I think withdrawal of the power under article 136 is not practically necessary, because if the hon. Mover is conversant with the practice prevailing in the Supreme Court, he will find that it is this that it is only in very very rare cases that under article 136 a special leave petition is admitted. It is not admitted at all on facts. There must be a question of law, and a substantial question of law, a very important question of law which will affect the whole country, and then only that special leave petition under article 136 will be admitted. Secondly, on facts while no appeal will lie under article 136, in practice the position is this that hardly one or two petitions out of hundred petitions are admitted in such matters. Therefore, so far as the finality is concerned, article 136 does not come in the way of this principle. But in some cases it is necessary that this provision must be there. Suppose the High Court or the tribunal decides one way or the other. With all due respect, I would like to make the submission that the selection of the High Court judges, apart from the tribunals is not such as you would like to leave the finality in the hands of those judges. That is very unfortunate. But as the position stands there are judges and judges, and everywhere we find the judges of

the High Court giving perverse judgments, wrong judgments, wrong not only in law, but even perverse on facts, and the Supreme Court had admitted petitions under article 136 on this ground also that the judgment has been perverse on facts. After all, to the Supreme Court you will have to give that power, that if there is a judgment even of a High Court, which is constitutionally wrong, which is beyond jurisdiction, which is a nullity and which is void or which is perverse on facts then the Supreme Court must have the power to quash that judgment. Therefore, you cannot and should not withdraw the power under article 136 in the interests of justice.

Therefore, my submission is this that the principle is correct, and the Law Minister, when he brings forward the Bill, must keep this in view that there must be quick finality in the matter of election. Let the matter be decided by the High Court as a tribunal, but the provision under article 136 must remain as it is.

Shri Man Singh P. Patel (Meisana): As far as I understand it, the principle of the Bill purports to be, if I have understood aright, that because the High Courts and the Supreme Court are entertaining appeals in the form of writ petitions or under different articles of the Constitution, the normal judgement on election petitions takes a very long time and involves a long procedure. We have had experience of the election petitions arising out of the last three general elections, and I must submit that it has been a very sad experience, namely that the object of the Constitution-makers has not been realised in actual performance. No election petition is normally decided at least before two years. Even the constitution of the tribunals which normally consist of the district judges takes about three to four months. Under the Representation of the People Act as it stands, there is no provision for appeal for either the rejection of a nomination

[Shri Man Sinh P. Patel]

paper or the acceptance of a nomination paper. Owing to a slight mistake, either deliberate or intentional or by inadvertence, on the part of an electoral executive officer, we have seen that a number of petitions are being accepted by the district judges simply because there was a small procedural mistake in regard to the nomination paper. We have seen also cases being delayed where one nomination paper is rejected, for either addition of parties or subtraction of parties, in such petitions.

As I have understood it, the main anxiety of the hon. Mover is that the normal procedure of the ordinary courts as contemplated by the Constitution-makers should not apply to the election petitions, and, therefore, he desires to amend these three or four articles of the Constitution, namely articles 136, 226, 227 etc. From this, it is clear that he feels that a single amendment of article 329 does not serve the purpose desired by him. I am in full agreement with him as far as the spirit and intention behind the Bill is concerned. But the hon. Minister has himself suggested one thing, namely that Government are contemplating to give original jurisdiction to the High Courts. My hon. friend Shri Dixit who is an experienced and learned lawyer of this House also feels some doubt whether by the giving of this original jurisdiction to the High Court, the purpose will be served or not. I have got even greater fear on this score. Let us look to the work-load of the High Courts. Let us also see the number of writ petitions or appeal petitions accepted by the High Court and taken up for hearing. I quite appreciate the anxiety of the hon. Mover that there should be quick disposal of the election petitions; and there may be one appeal provided for or second appeal provided for, but it should be by a special enactment. To my misfortune, the hon. Mover has sought for reference of this Bill to a Select Committee; I am not in a

position to support this motion because I do not see how that would serve the purpose in view.

But Government must learn this lesson after the three general elections that what was desired by the Constitution-makers has not been realised and no quick disposal of election petitions has been possible. Election petitions are filed even for frivolous reasons, and even by these powers of original jurisdiction being given to the High Court, I do not think that the desired object can be achieved.

What does the hon. Mover desire? There should be a special enactment. In the same enactment, the Government can come forward by giving the original powers to the High Court in a specific way where the normal procedure may not apply. Not only that. A special provision of appeal may be provided. After all, what are the High Courts?

My hon. friend Shri Dixit, fears that the selection of Judges may be either proper or improper. There are perverse judgments, he said, on facts, but I say on law. I have got experience in respect of three concurrent judgments. Sometimes the High Court or the Supreme Court even while hearing calls upon the Government rather than the original convicted accused to make the submission. There is the District Judge, High Court and Full Bench. Judgments are delivered, after all, by human beings. Human beings are likely to err unintentionally, inadvertently or by circumstances also. No doubt, we have full faith in the normal judgments of the High Courts. As far as the judiciary is concerned, we are proud of it also.

15.32 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

But the desired effect of the hon. Mover can only be achieved not by conferring original jurisdiction of disposal of these appeals to the High Courts but by a special enactment as

desired also under art. 329. Art 329(b) contemplates that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. You have provided this in the Representation of the People Act. Either the Act itself may be amended as such, that is, instead of constituting election tribunals, they can create a definite, complete procedural enactment whereby a petition may be heard at the earliest opportunity, preferably within six months. If the facts are to be considered, there should be a specific time-limit incorporated in the enactment itself by which judgment is to be delivered.

I do understand that it will be very difficult for Government to contemplate that a time-limit can ever be provided within which a judicial pronouncement is to be delivered. But after all, considering the present work-load either with the tribunals or even in the High Courts, the normal intention of quick disposal of election petitions is not served. It is the fundamental right of an elected person, deprived by fraudulent methods of his right to represent the people, by a wrong declaration by an officer, whereby another person gets himself elected against the provisions of the Constitution by fraudulent methods, corrupt practices etc., it is the fundamental right of such a person who has been deprived of his right to get redress quickly.

This is a sovereign body. Elections are held for this sovereign body as well as for the sovereign legislatures in the respective States. There should necessarily be a special enactment. I am sure if Government come forward with an assurance that they will give second thoughts to this, not as at present contemplated by the hon. Law Minister as disclosed in his statement that they are thinking of giving ori-

ginal jurisdiction of election petitions to the High Court, if Government will give a further thought and scrutiny, to see that if necessary either the Representation of the People Act will be amended, or new legislation will be brought forward, the purpose will be served. I hope then that the hon. Mover will withdraw the Bill.

श्री बांका लाल बरबा (कोटा) :

उपाध्यक्ष महोदय, जो बिल नारायण दास जी ने रखा है, मैं उसका सक्त विरोध करता हूँ। उन्होंने उसको बहुत तोड़-मरोड़ कर रखा है, और बहुत समझाने की कोशिश की है कि खर्च भी ज्यादा लगता है, टाइम भी ज्यादा लगता है। परेशानियाँ ज्यादा होती हैं। लेकिन उन्होंने इस बिल के अन्दर यह नहीं देखा कि संविधान की धारा के तहत जो अधिकार दिया हुआ है, सुप्रीम कोर्ट और हाई कोर्ट को इस खर्च के बारे में उन धाराओं को, उन अधिकारों को किस तरह से बदल सकते हैं। जो कोर्ट फैसले करती हैं, अगर उनके ऊपर हाई-कोर्ट और सुप्रीम कोर्ट नहीं होगी, तो फिर राज्यों के उच्च अधिकारी, मंत्रीगण, नेता लोग, जिनके हाथ में पावर्स हैं, वे हर तरह से जजों पर दबाव डाल कर फैसले करा लेंगी। फिर तो विरोधियों का डाल-बांका ही नहीं रहेगा, क्योंकि हमने एक नहीं कई पीटीशनर्स ऐसी देखी हैं, जिन में विरोधियों की नीचे की कोर्ट्स में सुनवाई नहीं होती है, हार जाते हैं, लेकिन वे बेचारे सुप्रीम कोर्ट और हाई कोर्ट में जाकर रिट करते हैं, तो वे कामयाब हो कर विधान सभाओं और पार्लियामेंट में जा कर बैठते हैं। अभी कई उदाहरण इस प्रकार के सामने आये हैं। क्योंकि वहाँ उन पर हर तरह का दबाव डाला जाता है, जो गवाह होते हैं उनको बहकाया जाता है।

मैं यह मानता हूँ कि इस में टाइम ज्यादा लगता है और तीन-तीन और दो-दो साल लग जाते हैं, लेकिन मैं यह नहीं चाहता कि टाइम के लिये कोई ऐसा समय नियुक्त किया

[श्री भोकार लाल बेरवा]

जाये कि इस याचिका की सुनवाई 6 महीने या साल भर में हो जाय ताकि इन को भ्रष्टाचार मिले ।

दूसरी बात मैं यह कहना चाहूंगा— अभी कहा गया है कि इस के अन्दर खर्च ज्यादा पड़ता है, तो खर्च कम करने केलिये सरकार ऐसा प्रयत्न करे कि जिसमें खर्च के अन्दर किसी प्रकार की कटौती हो सके, ताकि इलेक्शन का मारा हुआ जो व्यक्ति है, जो पेटिशन से मरता है, उसको कन्सेशन दिया जाय ताकि वह उच्च न्यायालय में पहुँच सके । क्योंकि उच्च न्यायालय तक जाने केलिये उसके पास इतना खर्च होना चाहिये, जितना कि उसने चुनाव में खर्च किया है, इतना खर्च वह बर्दाश्त नहीं कर सकता । नीचे की कोर्ट्स के फैसले हैं, वे उसको प्राप्त नहीं होते हैं, क्योंकि वह विरोधी है, अपोजिट पार्टी का है । अगर कोई खाम ऐसा मामला है, जो ट्रिब्यूनल ने अपने आधार पर दबाव में न धाक दिया है, तब तो वह जरूर जीत जाता है, बर्ना 60 परसेंट विरोधी हार जाते हैं और सुप्रीम कोर्ट में जा कर, चाहे उन के फैसले को डेढ़ साल लगे, दो साल लगे, तीन साल में फैसला हो, लेकिन वह जीत कर आता है । इसलिये मेरा निवेदन है कि सरकार इन दो बातों पर ध्यान दे, पहला तो यह है कि उनकी एक लिमिट तय की जाय । ज्यादा से ज्यादा सुप्रीम कोर्ट का फैसला 6 महीने के अन्दर हो जाये । चाहे इस के लिये प्लग से जज को नियुक्त किया जाय, लेकिन तीन महीने के अन्दर फैसला हो जाय, फिर 6 महीने के अन्दर मीटिंग हो जाय, दो महीने में गवाहियां हो जाय और इस तरह से 6 महीने या साल भर में इसका फैसला हो जाना चाहिये ।

दूसरी बात खर्च की है, इस के अन्दर 25 या 30 परसेंट जो भी गवर्नमेंट ठीक सक्से, रेवेन्यू स्टैप्स में या फीस के लिये

कन्सेशन देना बहुत जरूरी है । इस लिए मैं निवेदन करूंगा कि नारायण दास जी जो बिल लाये हैं और जिस उद्देश्य को लेकर बिल लाये हैं, वे इस हाउस के अन्दर फिर से दोबारा विचार करें । इस से क्या होगा? विरोधियों पर इसका असर पड़ेगा और विरोधी ही इस से अब तक दबे चले आ रहे हैं । अगर उनके इस अधिकार को छीन लिया गया तो शायद विरोधी फिर चुनाव लड़ना ही पसन्द नहीं करेंगे, । शायद उनका मतलब भी यही है ।

इस लिये मैं उन से नम्र निवेदन करूंगा कि वे यह बिल वापस ले लें और इन शब्दों के साथ मैं इसका सख्त विरोध करता हूँ ।

Shri Narendra Singh Mahida: The object of the Mover is to have a speedy disposal of election petitions. At the same time, he says that jurisdiction of the High Courts and the Supreme Court in election disputes should be avoided and the power should be given to the appropriate legislature.

Shri Shree Narayan Das: Not appropriate legislature, but any court, High Court or Supreme Court.

Shri Narendra Singh Mahida: I have a bitter experience in this connection. An election petition, on very flimsy grounds, was filed against me. In this respect, I would suggest, through the Minister to the Election Commissioner, that they should scrutinise the election petitions very strictly. Because an election petition was filed stating that the mention of star in the party flag a polar star or Dhruv star has a religious bearing. I had to fight the dispute right from the tribunal to the Supreme Court. I won in the tribunal, lost in the High Court, and again won in the Supreme Court. Ultimately I was maimed about Rs. 14,000. There were such petitions against assembly members also.

So, the object of the Mover is to avoid delays and also keep down the expenditure, but I would draw his attention to the fact that if the tribunal is avoided and the High Court took up the matter, the taking of evidence etc. in the High Court will be very expensive. If you pay a lawyer a thousand rupees per day in a High Court normally lawyers do charge that fee. I think, the recording of evidence etc will last for days; it will prove a costly affairs. I would suggest to the hon. Mover and to the Government that the present arrangement of a trial court or a tribunal, and an appeal to the High Court or Supreme Court should be examined. Delays should be avoided. We were assured by the hon. Law Minister just now that the Government is thinking in terms of enacting a legislation like the one the Mover has in mind. It would serve the purpose of the Mover and the Mover will have no cause for grievance. He may therefore withdraw this Bill. I earnestly request the Ministry to look into the expenditure on election petitions. To my mind the poor man stands no chance in these election matters. He cannot stand for election because elections are so costly. Even the Election Commissioner has sanctioned Rs. 25,000 for Lok Sabha seat expenditure. I donot think any Indian with a low income can think about the election. Soon after the election is over, there is the possibility of facing an election petition. Now how can a poor man fight the election petition. Gandhiji wanted Daridhra Narayans to come here in Lok Sabha. How is it possible? Therefore, I request the Government to see that election costs are drastically reduced. When a poor man has to fight an election dispute, he should be able to face the dispute with minimum expenditure. If he wins the costs in the High Court and the Supreme Court should be fully compensated. This is the main idea behind this Bill. If the Government is coming with an enactment, there is no need for this Bill. I therefore, oppose this move and I hope he will withdraw this Bill.

Shri D. C. Sharma (Gardaspur): The election law, I submit very respectfully, should be kept in tact. The hon. Law Minister just now announced that he was going to invest the High Courts with original jurisdiction but I do not think it is warranted by the facts of the case at issue. When he brings forward that Bill and if I am here and if you give me a chance, I will oppose that Bill tooth and nail. I feel that the present procedure of an election tribunal or an appeal to the High Court and if necessary an appeal to the Supreme Court should stand as it is and there should be no tinkering with this law. There should be no modification of this law because after all laws are a matter of checks and balances and I believe that checks and balances we have in the law as we have it today, I am sure ultimately the poor man will get justice. We do not have any Vikramadityas here who used to sit on a throne and knew what the truth is. We do not know that that type of person is in this world now. Therefore, I believe that if more chances are given to a person to prove his innocence and the more chances are given to a person to prove that the other man is guilty, the better will it be and there should be no curtailment of the rights of a litigant one way or the other. I know that the law as it stands here is some thing very practical and something which we have inherited from the British government. Therefore, I believe that there should be no change in it. Now, I ask you one question. Suppose, the assembly passes a law that the original jurisdiction should rest with the High Court and then they can also go to the Supreme court. Suppose the same thing is done by the Lok Sabha, suppose the same thing is done by the Rajya Sabha—I agree that something like that will be done also by the Vidhan Parishads as long as they are

[Shri D. C. Sharma]

going to be there. We are living in an age of democratic decentralisation and we are already talking of the grass-roots of democracy. We want that we should build democracy upwards and we should build it from the panchayats up to the Lok Sabha.

Now, if you give the right to the Assembly or to the Lok Sabha, to pass a law which suits it, or which suits them, why will you not give this right to the municipal committee to pass a law like that? Why do you not give this prerogative to the Zila Parishads to pass a law like that? Why do you not give this special privilege even to the panchayats to have a law which will suit them? I think if we accept the principle which has been so ably enunciated by my hon. friend Shri Shree Narayan Das, we will be going down hill. We will be going on the sliding scale, and I do not know where we shall land ourselves; perhaps we shall land ourselves in an abyss or in a pit.

The question of expenses has come up. I want to ask one question. Who asked me to fight the election? Who asked my hon. friend over there who was talking about the election, to fight the election? Why do you fight the elections? Why do we go to law courts? The impulse for fighting the elections comes from within. I know why I fought this election. I know why my hon. friends have fought the elections. The impulse to fight the election is corresponding to the impulse to serve the people. And when you think of service, you do not think in terms of expenses. You do not think in terms of *quid pro quo*; you do not think that you should have as much money as is corresponding to your service that you rendered. The Lok Sabha, the Assemblies, are not bodies which are functioning on the principle of "for services rendered". Not that. Therefore, if a man chooses to lie on this bed, I think he has to

suffer all the pleasures and the pains of that bed. If he thinks that there is too much of what you call "expenditure," he should keep away from it. But my hon. friend said this Bill will work against the persons who are in position. Certainly not. I know twice there was a move to file an election petition against me. Why? Because the persons who were fighting me were much more happily placed than I was. Sometimes, some escape; sometimes they do not escape. Therefore, the question of expenses comes in. If you want to avoid the expenses, all the expenses of a candidate have to be paid by the Assembly or the Lok Sabha to which he is returned. If there is any election petition against him, that should also be paid for by the Lok Sabha or the Assembly to which he is returned. It should be made obligatory for the Lok Sabha to pay the expenses also.

An hon. Member: What will happen to a defeated Member?

Shri D. C. Sharma: I think he will go to Heaven; he would not come here. I was submitting that the question of expenses should not be viewed like that. I believe that Shri Shree Narayan Das is a very thoughtful person, but sometimes his thought overruns his sense of realism, and therefore this Bill is an instance of that. I believe that you should let the election law remain as it is. When the Law Minister, after so many years of apprenticeship comes up here—I am not talking about the Minister of State—I will be the first man to oppose that Bill, because that will take away from me one of my privileges. After all, democracy does not mean deprivation of privileges, but it means preservation and consolidation of all those privileges which are right, legitimate and natural.

श्री मन्मू लिवये (मुंगेर) : उपाध्यक्ष महोदय, इस विधेयक के साने के पीछे फायद माननीय सदस्य का मकसद यह है कि चुनाव

अदालतों के सामने जो याचिकायें आती हैं उन का फैसला जल्दी नहीं होता, समय और पैसा उस में काफी बरबाद होता है। इसी लिये शायद वह यह विधेयक लाये हैं जिस के फलस्वरूप चुनाव के कानून पर भाष्य करने के बारे में उच्च न्यायालय तथा सर्वोच्च न्यायालय का कोई अधिकार नहीं रहेगा। लेकिन मुझे पता नहीं है कि हमारे देश में जो न्याय पद्धति है उस की बुनियाद क्या है उस के बारे में उन्होंने कुछ सोचा है या नहीं और इस को देखा है या नहीं कि इस तरह की बात का इस न्याय पद्धति की बुनियाद पर क्या असर पड़ेगा। अखिरकार जो चुनाव अदालत होती है, चुनाव सम्बन्धी कानून को लागू करती है जो केमेज उन के सामने आते हैं उन में, औद्योगिक अदालतें होती हैं, औद्योगिक विवादों के सम्बन्ध में जो औद्योगिक कानून हैं उन को वह लागू करती हैं। अखिरकार यह सारे कानून के मामले हैं। तो क्या हर एक राज्य में अलग अलग कानून रहने वाले हैं या इस देश में कानून के मामले में कोई समानता नहीं रहने वाली है? न्याय पद्धति एक रहे, कानून के सिद्धान्त एक रहें इसी लिये हमारे संविधान में सर्वोच्च न्यायालय का निर्माण किया गया।

मैं विधेयक का प्रस्ताव करने वाले जो सदस्य हैं उन का ध्यान धारा 141 और 144 की ओर खींचना चाहता हूँ। यह धारायें निम्न प्रकार हैं :—

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

"All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."

इन दो धारों का क्या मकसद है? मकसद यह है कि विभिन्न राज्यों में चाहे चुनाव अदालत हो, चाहे रेवेन्यू ट्रिब्यूनल हो, चाहे

औद्योगिक अदालत हो या उच्च न्यायालय हो, उन के द्वारा जो फैसले किये जायेंगे उनके विरुद्ध अपील करने का अधिकार संविधान के अन्दर रखा गया है, और इस का एक मात्र उद्देश्य यह है कि सर्वोच्च न्यायालय को मौका मिले यह बतलाने का कि कानून क्या है। संविधान के अन्दर यह बात है कि सर्वोच्च न्यायालय के द्वारा जो कानून घोषित किया जायेगा फैसलों के जरिए—कानून केवल बनाया नहीं जाता घोषित किया जाता है, कानून बनने हैं विधान सभाओं में, लोक-सभा में और राज्य सभा में, कानून बनने के बाद जो विभिन्न केसेज आ जाते हैं उन के ऊपर सर्वोच्च न्यायालय फैसला करता है—सर्वोच्च न्यायालय के वह फैसले ममूचे देश के लिए कानून बन जाते हैं। इसलिये अगर आप सर्वोच्च न्यायालय के अधिकार क्षेत्र से चुनाव अदालतों और उन के फैसलों को हटा देंगे तो विभिन्न राज्यों में अलग अलग कानून हो जायेंगे और जिस को आप समानता या यूनिफार्मिटी कहते हैं उस तरह की चीज बिल्कुल नहीं रहेगी।

इस से अच्छा है कि आप एक देश और एक राष्ट्र की बात न करें, आप इस देश को तोड़ दीजिये विभिन्न राज्यों और विभिन्न प्रदेशों में। मैं कहता हूँ कि जो कोई ऐसा प्रस्ताव रखता है कि सर्वोच्च न्यायालय का कार्य क्षेत्र कम किया जाये, घटाया जाये, या चुनाव कानून सम्बन्धी जितने भी मामले हैं उन में सर्वोच्च न्यायालय का कोई अधिकार न रहे, तो हमारे देश में जो न्याय पद्धति है और उस की जो बुनियाद है, जिस के सम्बन्ध में संविधान बनाने वालों ने मोच ममज कर इन दो धाराओं को रखा, वही समाप्त हो जानी है। कानून के जितने मामले हैं, चाहे औद्योगिक कानून हों, चाहे चुनाव सम्बन्धी कानून हों, कानून के जितने भी साधारण सिद्धान्त हैं उन को तो सभी केमेज में लागू करना होगा है।

श्री श्रीनारायण दास : 329 धारा को भी तो देखिये। वह भी तो संविधान में है।

श्री मधु लिमये : ठीक है। इसीलियं मैं प्रार्थना कर रहा हूं कि सर्वोच्च न्यायालय के अधिकारों को आप चुनाव कानून के क्षेत्र में कम करने की कोशिश न करें।

दूसरा संशोधन है धारा 226 के बारे में। 226 धारा बहुत ही महत्वपूर्ण धारा है। जहां तक बुनियादी अधिकारों का सवाल है, उन के बारे में तो धारा 32 है। कोई भी नागरिक सीधा सर्वोच्च न्यायालय के पास भी जा सकता है। लेकिन हमारे जो हाई कोर्ट हैं उन को न केवल बुनियादी हकूकों की रक्षा करने के बारे में अधिकार दिया गया है बल्कि अन्तिम जो वाक्य है उस में दो अधिकार हैं उन को :

"for the enforcement of any of the rights conferred by Part III and for any other purpose".

यह जो दूसरा हिस्सा है वह बहुत महत्वपूर्ण है। उस में केवल बुनियादी अधिकार नहीं, बल्कि संविधान से जितने भी दूसरे अधिकार प्राप्त हो गये हैं, या कानून से जितने अधिकार प्राप्त हो गये हैं उन सभी संबंधित और कानूनी अधिकारों की रक्षा करने के लिए हर एक व्यक्ति को धारा 226 के अन्दर हाई कोर्ट के सामने जाने का अधिकार है। जिस बात से इस अधिकार में कमी आ जाये या वह घट जाये, मैं समझता हूं कि देश की न्याय पद्धति के लिए वह बड़ी घातक होगी।

अब सवाल प्रायेणः समय बगैरह के घटाने का। उस के बारे में मेरी राय यह है कि चुनाव प्रदालतों को बिल्कुल खत्म कर दिया जाना चाहिए और चुनाव सम्बन्धी जितने भी मामले हों उन को उच्च

न्यायालय के सामने भेज देना चाहिए। अब इस के बारे में आप जरूर कोई ऐसा नियम बनाइये। चुनाव को ले कर जितनी पेटिशन बगैरह की गई उन के बारे में सरकार को चाहिए कि वह कानून मंत्रालय से या गृह मंत्रालय से कहें कि जितनी पेटिशन बगैरह हों उन का अध्ययन कर के उन का विश्लेषण कर के, सदन के सामने रखें कि इन इन मामलों को ले कर अधिक चुनाव पेटिशन हुए हैं। फिर आप चुनाव कानून में कोई ऐसी तद्दली कीजिये जिससे कि चुनाव पेटिशन करने की नीबत ही न प्राये। अगर आप उच्च न्यायालय और सर्वोच्च न्यायालय के अधिकार को हटा देंगे तो होगा क्या ? आज जो चुनाव प्रदालतों पर काम करने वाले जज हैं मैं उन की बुराई नहीं कर रहा हूं, लेकिन बिल्कुल स्पष्ट बात है कि औद्योगिक प्रदालत हो या चुनाव प्रदालत हो, उन में जो न्यायाधीश हैं उन के ऊपर हमारे नागरिकों को ज्यादा विश्वास नहीं है जो कि थोड़ा बहुत हाई कोर्ट या सुप्रीम कोर्ट के बारे में है।

16 hrs.

वेम मैं निवेदन करूंगा कि जिस ढंग से सरकार अपना काम चला रही है उस से जल्दी ही समय आने वाला है कि सुप्रीम कोर्ट और हाई कोर्टों पर भी लोगों का विश्वास नहीं रहेगा। उस का कारण यह है कि आप राजनीति और न्यायालयों को मिला रहे हैं। जो प्रादमी न्यायाधीश रह चुका है, बम्बई हाई कोर्ट का चीफ जस्टिस रह चुका है उसको आप राजनीति में ले प्राये, उस को आप ने संसद् मदस्य बना दिया, राजदूत बना दिया, उस को मंत्री तक बना दिया। नतीजा यह हुआ कि आज कल जो सुप्रीम कोर्ट के न्यायाधीश हैं या भूतपूर्व न्यायाधीश हैं उन के मन में लालच पैदा हो जाती है, कि हम भी सुप्रीम कोर्ट या हाई कोर्ट में बैठने

के बाद मंत्री बन सकते हैं, हम संसद् सदस्य बन सकते हैं या राजदूत बन सकते हैं। इस का नतीजा यह होगा कि जब वह फैसला करेंगे तो दो व्यक्तियों के झगड़ों का तो निष्पक्ष फैसला वे कर सकेंगे। लेकिन जहाँ जहाँ शासन का मामला आयेगा, स्टेट का मामला आयेगा इसका लाजिमी नतीजा होगा कि उनके ऊपर बुरा असर पड़ेगा और कभी भी व्यक्ति के अधिकारों की हिफाजत वह कर नहीं पाएँगे। हमेशा वह राज्य के हक में अपना फैसला देते जायेंगे। इसलिये भाज वैसे ही चुनाव भ्रदालतों के बारे में और औद्योगिक भ्रदालतों के बारे में तथा उनके जो न्यायाधीश होते हैं उनकी जो काबलियत है, निष्पक्षता है, उसके बारे में शक है और अगर आप चाहते हैं कि यह एक शक खत्म हो जाय तो फिर इस तरह का विधेयक आपको बिल्कुल नहीं लाना चाहिए बल्कि आप इस तरह का विधेयक लाइए जिससे किसी भी सुप्रीम कोर्ट के जज के या हाई कोर्ट के जज के राजनीति में भा कर मंत्री, राजदूत वगैरह बनने पर रोक लग सके। उस पर रोक लगाने वाला विधेयक आप लायेंगे तो न्याय पद्धति पर लोगों का विश्वास बढ़ेगा।

साथ ही साथ मैं कहूँगा कि हमारा जो चुनाव कानून है उसमें काफी परिवर्तन की गुंजाइश है। शायद आप ही कोई संशोधन के रूप में कोई कानून या विधेयक लाने वाले हैं, शायद नन्दा साहब लायेंगे या कानून मंत्री लायेंगे। चुनाव को सस्ता बनाने के लिए और पेटिशन की संख्या घटाने के लिए चुनाव जिस दिन हो, उस दिन जो उम्मीदवार है और उसका जो इलेक्शन एजेंट है उनको आप एक एक गाड़ी रखने की इजाजत दीजिए, बाकी उस दिन उस क्षेत्र में एक भी गाड़ी नहीं चलनी चाहिए न ट्रक चलनी चाहिए। एक दिन आप उसके ऊपर रोक लगाइये।

दूसरी बात यह है कि भाज काफी पैसा बर्बाद होता है चुनाव में और पैसे की वजह

से काफ़ी एलेक्शन पेटिशन बनते हैं कि अधिक खर्च कर लिया। तो मैं यह निवेदन करूँगा कि बॉटरों का नम्बर निकालने में भासानी हो इस लिये कांड बांटे जाते हैं उसमें बहुत पैसे खर्च होते हैं, आप कानून बनाइये कि कोई दल या उम्मीदवार कांड नहीं बांटेगा और सरकार की तरफ से कांड बांटे जायेंगे। आप इसके लिए श्री इन्तजाम कीजिये कि उम्मीदवार दो पत्र या दो निवेदन कह लीजिए, सरकारी खर्च से हर एक जो बॉटर है, मतदाता है, उसके पास पहुँचा पाये। नहीं तो गरीब आदमी कैसे चुनाव लड़ेगा? चुनाव खर्चिले होते जा रहे हैं और इसी से काफी झगड़े और चुनाव पेटिशन होते हैं। तो अध्यक्ष महोदय, आपके माध्यम से विधेयक के जो प्रस्तावक हैं उनसे मैं विनती करूँगा कि कानून में समानता की दृष्टि से और राष्ट्रीय एकता को सुरक्षित रखने की दृष्टि से वे अपने विधेयक पर पुनर्विचार करके उसको वापस लें।

The Minister of State in the Ministry of Law (Shri C. R. Patilabhi-Raman): Mr. Deputy-Speaker, Sir. This Bill of Shri Shree Narayan Das, if I may call it as an old Bill, was introduced on the 16th November, 1962 by my hon. friend. If I may say so with respect, the pros and cons of this Bill have been argued thoroughly by both sides of the House and I am in this fortunate position.

The Bill seeks to amend articles 136, 226, 227, 228 and 329 of the Constitution so as to bar the jurisdiction of the High Courts and the Supreme Court in election disputes except as provided by the Representation of the People Act, 1961.

It may be some interest to the House to know what the present position is. They are already aware of it. Section 86 of the Representation of the People Act deals with the appointment of election tribunals. Usually, it is done from among the list of District Judges as recommended

[Shri C. R. Pattabhi Raman]

by the High Court and in some exceptional cases the Election Commission does appoint a person who has been a Judge of the High Court as a member of the Tribunal.

I do not want to dilate further so far as section 86 is concerned. If the House will look into section 116 of this Act, which was introduced by the Amendment Act 27 of 1956, it will find that it provides for appeal to the High Court from every order made by the Tribunal. Under section 116B, the decision of the High Court on appeal shall be final and conclusive. When a regular appeal is provided for by section 116A, the High Court ordinarily would not exercise its writ jurisdiction under article 226 or supervisory jurisdiction under article 227 of the Constitution.

It may be of interest to know that the Supreme Court has observed as follows:

"It is a sound exercise of discretion to bear in mind the policy of the Legislature to have disputes about special rights as in election cases decided as speedily as may be. The High Court should not, therefore, entertain petitions under Article 226 lightly in this class of cases."

That is the case of Sangram Singh Vs Election Tribunal.

Then, in Dinabandhu Sahu Vs. Jadumoni Mangaraj case of 1954, the Supreme Court observed as follows:

"The Supreme Court does not, when hearing appeals under Article 136, sit as a court of further appeals on facts and does not interfere with findings given on a consideration of evidence, unless they are perverse or based on no evidence. This is particularly so when the findings under challenge are those of Election Tribunals."

So, it is not as if the Supreme Court has not been aware of it. Just by saying this I will not be truthful because there is no doubt that a lot of time is taken in these cases. Some

instances were given by the Members. My esteemed friend, Shri Hari Vishnu Kamath, gave the case of the late Chief Minister of Punjab. I know of another case where after the election to the Second Lok Sabha, the election petition of the First Lok Sabha was decided. I am aware of those cases. Normally, the Supreme Court would not grant special leave unless the question involved is of considerable public importance or relates to interpretation of the Constitution. Article 136 deals with special leave. Article 132 deals with ordinary cases. Therefore, to abolish article 136 which would mean to take away the special powers conferred on them, as has been pointed out by Mr. Madhu Limaye also, is a retrograde step. I need not dilate on this.

Then, the House may be interested to what is the position in England. Until 1868, the election disputes were tried by the whole House of Commons or by a Committee of Members. Then, this was found to be unsatisfactory and election disputes were transferred by statute to the courts of law. At present, under U.K. Representation of the People Act, 1949, the election disputes are tried by a Bench of two Judges of the King's Division of the High Court and by a special leave, appeal lies to the Court of Appeal on a question of law. The decision of the Court is final and conclusive. This is under Sections 107 and 137 of the U.K. Representation of the People Act, 1949.

When the Election Tribunal is constituted by a single member who is a District Judge, it is appropriate that there should be appeal to the High Court as provided for under section 116A of the Representation of the People Act, 1951 to which I referred. Article 228 empowers the High Court to transfer a case from a subordinate court to the High Court. This article will not be applicable to the tribunals. So, I am not going to dilate on that.

The Supreme Court will grant special leave in very limited cases and, therefore, I do not think it is necessary to bar jurisdiction.

It is rather interesting to take up the position of election petitions in England. In earlier days, there were numerous petitions. Then, last year, it was found that there practically was no petition at all. If I may say so, it is not that we are less mature or less evolved than the English people. But by a process of trial and error, the election petitions have dropped to almost nil. There may be one or two stray cases in respect of the House of Commons with 615 Members. The election petitions are few and far between. They are being discarded by the Members themselves. That is the position in England.

We are endeavouring to have the necessary enactment. Actually, we wanted to bring forward one or two amendments but we just could not get time. We are hoping very much that by July we would be able to bring forward an amendment, an enactment, by which High Courts alone will deal with election petitions. That will be, if I may say so, as has been pointed out already, a complete answer to Shri Shree Narayan Das's measure. Once that happens, what will happen is that (a) it will not be lightly resorted to and (b) there will be the usual process for an election petition to be tried by a Judge. Actually, in the present Act itself, there are two provisions to the effect that it must be disposed of quickly, if possible within six months, and if possible, within three months. The provisions are actually there, but I know they have not really meant much because they have been merely writings on paper and they have not meant much in practice. But the moment the tribunal is removed, as we hoped very much it will be removed, because we are convinced that it is unnecessary and time-consuming, then what will happen will be simply this that you will have to move a petition in the High Court, and the High Court will dispose of it,

and if the High Court is able to have a Bench for this purpose, that would be an end of the matter. Then, there can be the usual appeal under article 136 to the Supreme Court. All that will be there, and that is all that can be availed of. That will be a fairly quick thing. If I may say so, the precedents would be useful for either discouraging or encouraging the election petitions. I sincerely hope and I am convinced that the hon. Mover will withdraw this Bill. He has been persisting with this. If I may say so, he is one of our very senior Members. If I remember aright, he had spoken earlier on a similar Bill brought forward by Shri Tangamani, when also he had taken the same stand. I am afraid that I am not able to accept this Bill, and I have to oppose it. But I hope that the hon. Mover will withdraw this Bill.

श्री श्रीनारायण दास उपाध्यक्ष महोदय, मैं उन सभी माननीय सदस्यों का जिन्होंने कि इस विधेयक के सम्बन्ध में अपने विचार प्रकट किये हैं आभार मानता हूँ। मैं इतना प्रवश्य साफ कर देना चाहता हूँ कि इस विधेयक के लाने का मतलब मेरा यह नहीं है और यह नहीं था कि हमारे देश में जो उच्च न्यायालय हैं या सर्वोच्च न्यायालय काम कर रहे हैं साधारणतया उन के कामों की मैं किसी तरीके की निन्दा करूं या उनके अधिकार छीन लूं। मैं समझता हूँ कि जिस सिद्धान्त के आधार पर मेरा यह विधेयक आधारित है उस सिद्धान्त की विवेचना या तो मैं ठीक से कर नहीं सका या माननीय सदस्यों ने उस को समझने की कोशिश नहीं की।

जैसा कि सभी माननीय सदस्यों ने कहा है कि इंग्लैंड में जो पालियामेंट है उस के जो चुनाव होते थे और चुनाव सम्बन्धी जितने झगड़े होते थे वे सब इंग्लैंड की पालियामेंट खुद तय करती थी। उस समय में इंग्लैंड के किसी कोर्ट ने पालियामेंट के उस काम में किसी तरीके की दम्नाघंदाजी नहीं की। इस का मतलब यह था कि

[श्री श्रीनारायण दास]

जैसे हमारे देश में सत्ता के तीन विभाग हैं, एक न्यायालिका है, एक कार्य-कारिणी है और एक व्यवस्थापिका है यह तीनों अपनी अपनी जगह पर स्वतंत्र हैं और तीनों का कार्य-संचालन संविधान ने बनाया हुआ है। अब जैसा कि माननीय सदस्य ने इस पर कहा था और सब जानते हैं कि वह एक अच्छे वकील हैं तो 329 दफा का जो मैंने जिक्र किया तो मैं उनका ध्यान शब्द "नोटविस्टिंग" की तरफ खींचना चाहूंगा जोकि उस के 329 के प्रारम्भ में ही लिखा हुआ है। उन्होंने मेरा ध्यान 141 और 144 की तरफ खींचा है तो मैं कहना चाहूंगा कि जैसे 141 और 144 संविधान की धाराएं हैं वैसे ही 329 भी संविधान की धारा है। संविधान की धारा 329 में शुरू में लिखा हुआ है Notwithstanding anything in this constitution. इसके जरिये एलैक्टोरल मैटर्स में कोर्ट्स के इंटरफ़ीरेंस पर बार लगा दिया गया है। संविधान बनाने वाले चूँकि चाहते थे कि एलैक्टोरल मैटर्स के बारे में कोर्ट्स का जुरिस्टिक्शन हट जायें इसलिए यह 329 का प्राविजन उन्होंने रखा था। जैसा कि इंग्लैंड में पहले था और जैसा कि फ्रांस में बहुत दिनों तक था कि विधान सभा या पार्लियामेंट चुनाव के सम्बन्ध में झगड़े वह स्वयं तय करती थी लेकिन चूँकि बहुत मतभेद हो गया पार्टियां बन गयीं इसलिए उन्होंने समझा कि इस में न्याय नहीं होने वाला है तो एक विशेष अदालत की सृष्टि की गई, इंग्लैंड में भी अदालत की सृष्टि की गई लेकिन पार्लियामेंट के कानून के ज़रिए से की गई। रिप्रेजेंटेशन आफ पीपुल ऐक्ट के ज़रिए से की गई और यहां भी हमने एलैक्शन सम्बन्धी झगड़े तय करने के लिए रिप्रेजेंटेशन आफ पीपुल ऐक्ट बना कर उसमें ट्रिब्यूनल की सृष्टि करके हम ने यह अधिकार दिया। तात्पर्य यह सिद्धान्त हयारा यह है कि संसद या विधान सभा के चुनाव सम्बन्धी जो झगड़े हों

वह अदालत के द्वारा तय तो ऊँकर किये जायें जिस अदालत को हम पार्लियामेंट के अन्दर से कायम करें। अब वह उच्च न्यायालय हो या सुप्रीम कोर्ट हो उस में मुझे कोई आपत्ति नहीं है वह निष्पक्ष से निष्पक्ष होना चाहिये। लेकिन मैं उम्मीद करता था कि हमारे माननीय विधि मंत्री 329 दफा पर कुछ प्रकाश डालेंगे। यह संविधान बनाने वालों और 329 दफा बनाने वालों का अखिर मतलब क्या था जो उन्होंने वह शब्द इस्तेमाल किये Notwithstanding anything in this constitution? इसका मतलब यह था कि दफा 226 227 और 228 वगैरह के अन्दर दिये हुए अधिकार चुनाव संबंधी झगड़ों में लागू नहीं होंगे। उसी के आधार पर जब 1951 में रिप्रेजेंटेशन आफ पीपुल ऐक्ट बना हमने उसमें यह दिया कि ट्रिब्यूनल का फैसला अखिरी होगा। बहुत से ऐसे सदस्य भी हैं जो कि कानून के अच्छे जानकार हैं और मैं जानना चाहूंगा कि क्यों उन्होंने उस समय इस वाक्य का जिक्र कर दिया कि ट्रिब्यूनल का फैसला अंतिम होगा और यह कि किसी कोर्ट में उस की अपील नहीं हो सकती? ऐसा क्यों किया? ऐसा उन्होंने इसलिये किया क्योंकि उन लोगों ने समझा कि यह जो 329 दफा संविधान की है वह हाई कोर्ट, सुप्रीम कोर्ट या जो दूसरी देश में अदालत है उन अदालतों के अधिकार को इस इलैक्टोरल मैटर्स के क्षेत्र में नहीं आने देना चाहते हैं इसलिए उन्होंने उसमें यह रखा। लेकिन जब उन्होंने बताया कि सर्वोच्च न्यायालय या हाई कोर्ट ने इस 329 का जो अर्थ लगाया वह संविधान बनाने वालों की जं मंशा थी उस के खिलाफ जाता है तब उस के लिए हमने पीपुल रिप्रेजेंटेशन ऐक्ट को अमैंड करके उस में हमने अपील का अधिकार हाई कोर्ट को सुनने के लिए दिया। लेकिन अब उससे भी काम ठीक से नहीं चलता है और एलैक्शन कमिशन ने सरकार से सिफारिश

की है कि श्रीर कहा है कि जो ट्रिब्यूनल में देरी होती है श्रीर बड़ी गड़बड़ी होती है इस सिये हाई कोर्ट को यह मौलिक अधिकार श्रीरिजनल पावर श्रीफ हियरिंग एपेलेशन पेटिशन की देदी जाय तो उस के लिए हमारी गवर्नमेंट अब पीपुल ऐक्ट को धमंड करने जा रही है । इसलिए मैं माननीय मित्रों से निवेदन करूंगा श्रीर श्री मधुलिमये से निवेदन करूंगा कि उनके दिमाग में जो सलत-कलमी है उसे वह निकाल दें । हम चाहते हैं कि हमारी संसद् श्रीर विधान सभाओं के चुनाव बिलकुल निष्पक्ष श्रीर न्यायसंगत हों । हम यह चाहते हैं कि चुनाव के सम्बन्ध में जो मामले या झगड़े खड़े हों उनका ऊंची से ऊंची प्रदालत के जरिये निर्णय हों । हम यही चाहते हैं कि हमारे जो उस सम्बन्ध में निर्णय हों उन में सुसम्झता ध्राये श्रीर इसलिए सुप्रीम कोर्ट को भी धपील करने का अधिकार दिया जाय तो भी हमें उस में कोई ध्रापति नहीं है लेकिन मैं चाहता हूं कि इस सम्बन्ध में जो भी हम कानून बनायें संसद् में उसी कानून के धन्दर में यह सुप्रीम कोर्ट श्रीर हाईकोर्ट को काम करना चाहिए । वह मेरे बिल का सिद्धान्त था ।

जिस सिद्धान्त का मैं प्रतिपादन करता हूँ उसे एक धपनी किताब "Free Election" में WJM Machekzie में प्रतिपादित किया है । उसे मैं यहां कोट कर रहा हूँ :—

"There is a tradition that the independence of an elected assembly requires that the assembly itself should have the exclusive power to decide controversies about its membership. It may be asserted in extreme cases that this power ought to over-ride the ordinary law enforced through the courts".

जिस सिद्धान्त का यहां पर प्रतिपादन किया गया है बिल इसी सिद्धान्त पर ध्राधारित है । श्रीर मेरी मंजा पूरी हो गयो जो सदन के सामने यह चीज था गई श्रीर उस पर बहस हो गयी । माननीय मंत्रीने कहा है कि

अब रिजोलेशन ध्राफ पीपुल ऐक्ट का संशोधन हो रहा है जिसके जरिए से हम अधिकार चाहते हैं कि हमारे देश के जो उच्च-न्यायालय हैं या सर्वोच्च न्यायालय है उन्हें हम स्वयं यह अधिकार दें कि हमारे चुनाव के सम्बन्ध में जो झगड़े हों उन पर निष्पक्ष होकर निर्णय करें तो मैं इस कदम का स्वागत करता हूं श्रीर ऐसा करके मेरे विधेयक के पीछे जो सिद्धान्त है उस को एक तरीके से कबूल किया जा रहा है । इसलिये मैं चाहता हूँ कि यह बिल प्रैस न किया जाय श्रीर मैं ध्राप सं श्रीर सदन से निवेदन करूंगा कि जो विधेयक मैंने सदन के सामने बिचारार्थ रक्खा था उसे मुझे वापिस लेने की धनुमति दी जाय ।

Mr. Deputy-Speaker: Has he the leave of the House to withdraw the Bill?

Hon. Members: Yes.

The Bill was, by leave, withdrawn.

16.2 hrs.

INDIAN TELEGRAPH (AMENDMENT), BILL

(Amendment of Section 5) by Shri Shri Yashpal Singh

श्री यशपाल सिंह (कराना) : उपाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि मुझे इंडियन टेलिग्राफ (एमेंडमेंट) बिल , 1965 का वापस लेने की धनुमति दी जाये । जब मुझे पहले बुलाया गया था, तब मैं धपनी सीटपर नहीं था

Mr. Deputy-Speaker: The question is:

"That leave be granted to withdraw the Indian Telegraph (Amendment) Bill, 1965."

The motion was adopted.

Shri Yashpal Singh : Sir, I withdraw the Bill.