

[Sh. Mallikarjun]

- (ii) That this House do recommend to Rajya Sabha to agree to associate 6 members from Rajya Sabha with the parliamentary Committee to review the rate of dividend which is at present payable by the Railway undertaking to General Revenues as well as other ancillary matters in connection with the Railway Finance vis-a-vis the General Finance and make recommendations thereon and to communicate the names of the members as appointed to this House*.

the Railway undertaking to General Revenues as well as other ancillary matters in connection with the Railway Finance vis-a-vis General Finance and make recommendations thereon and to communicate the names of the members so appointed to this House*

The motion was adopted

13.49 1/2 hrs

[English]

CONSTITUTION (SEVENTY-SECOND AMENDMENT) BILL*

MR. SPEAKER: The question is:

- (i) That this House do resolve that a parliamentary Committee consisting of 12 members of this House, to be nominated by the Speaker, be appointed to review the rate of dividend which is at present payable by the Railway Undertaking for General Revenues as well as other ancillary matters in connection with the Railway Finance vis-a-vis the General Finance and make recommendations thereon;

THE MINISTER OF STATE IN THE MINISTRY OF RURAL DEVELOPMENT (SHRI G. VENKATA SWAMY): Sir I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill further to amend the Constitution of India".

SHRI GUMAN MAL LODHA (Pali): Sir, I oppose the Bill at the introduction stage.

[Translation]

- (ii) That this House do recommend to Rajya Sabha to agree to associate 6 members from Rajya Sabha with the Parliamentary Committee to review the rate of dividend which is at present payable by

Sir, my objection to this Bill at its introduction stage is because this Bill relates to the autonomous status of States, Article 40 of the Constitution, enacting laws regarding Panchayat and local bodies, provisions regarding Panchayat Samities and Zila Parishads and terms and conditions for holding elections to these bodies.

Sir, our country has a federal demo-

cratic structure. In such a country, the Centre and States can have different viewpoints. There can be a Zila Parishad at one place and a Panchayat Samiti at another place. Even now the States in our country, like Kerala, West Bengal and Rajasthan have different structures. Therefore, Sir, we raise an objection...*(Interruptions)*...

[English]

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM): On a point of order, Sir, Shri Lodha, the hon. Member, is aware that the stage is only for considering the legislative competence of the Bill. Let us not go into the merits and demerits now. There is enough time for doing that.

MR. SPEAKER: Well, I think Mr. Kumeramangalam is right. It is only the legislative competence that we are discussing.

[Translation]

SHRI GUMAN MAL LODHA: I shall briefly explain my objection. I think it would be grave injustice if the right of states to make Panchayat Laws as given under list 2 of the Seventh Schedule of the Constitution is withdrawn. Even the Royal Commission had given an opinion in favour of an autonomous status. All the subsequent commissions recommended likewise. The Sarkaria Commission also said that in matters related to local bodies, our States should have autonomy. So the founders of the Constitution included it in the State list. The Directive Principles also say the same thing. It would be unconstitutional for the Centre dictate the type of Panchayat System a State should have. Hence my objection to this Bill.

[English]

SHRI CHITTA BASU (Barasat): Sir, I know the limitation of discussion at this stage. That is we are not required to go into the merits and demerits of the provisions of the

Bill. But apparently, this is the violation of the devolution of power between the States and the Centre as determined by the Constitution of our country. Article 246 (2) and (3) determine the jurisdiction of the State Legislature and the jurisdiction of the Parliament. If you look into the Entry 5 of the State List, you will find it mentioned: "local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration." Here, the local self-government and village administration are what is known as 'Panchayat Raj'. Therefore, any legislation covering the villages administration...*(Interruptions)*.

MR. SPEAKER: Chitta Basuji, one question is that if this Parliament is making a law, a statute, there will be a position, if the Parliament is amending the Constitution, that is a different position. Can we amend the Constitution?

SHRI CHITTA BASU: There again I will say that if that is so, it affects the Centre-State relations. It affects the existing relations, the existing balance between the Centre and the State. It also affects the basic structure of the Constitution.

MR. SPEAKER: How?

SHRI CHITTA BASU: Federalism is one of the ingredients of the basic structure of the Constitution. Therefore, federalism is being affected by this legislation. We have said that the right vests in the State to have a legislation for municipal corporation, for local self government...*(Interruptions)*

MR. SPEAKER: Supposing this kind of change we want to bring about in the Constitution itself, can the State Legislature do it?...

(Interruptions)

SHRI SOMNATH CHATTERJEE (Bolpur): Sir, the trouble is that all the States are not having appropriate Panchayat laws.

[Sh. Somnath Chatterjee]

The concept behind a Constitution amendment is that all the States are either not making laws or are not implementing the laws. But in that name, if you try to encroach into the powers of the State Governments, we object to that. We objected last time also. We have to see whether still mischief is there or not. But at this stage, let it come. *(Interruptions)*

No. mischief? You have all become good boys! *(Interruptions)*

SHRI CHITTA BASU: Therefore, Sir...

MR. SPEAKER: Shri Chitta Basu, this is a constitutional amendment. Who can amend the Constitution—Parliament here or the State Legislatures?

AN HON. MEMBER: There is only a confederation which they are starting. *(Interruptions)*

MR. SPEAKER: It is as simple as that. Who has the legislative competence to amend the Constitution?

SHRI GUMAN MAL LODHA: Sir, after KESHAVANANDA BHARATI case, Parliament cannot amend the basic features of the Constitution.

MR. SPEAKER: The basic structure is not outlined.

SHRI CHITTA BASU: Sir, the Sarkaria Commission also went into the matter. This point was referred to them.

MR. SPEAKER: You can argue on that point when the Bill comes up for the discussion.

SHRI CHITTA BASU: Sir, kindly listen to me. You have raised a question that who can amend the Constitution. The Sarkaria Commission has said that there may be an amendment of the Constitution by Parliament, but the consensus of the State is also

required.

MR. SPEAKER: That is rectification which is necessary in certain cases. Supposing there is a Bill which affects the power of the State Government, it is only then that it has to be ratified by the State Governments.

SHRI CHITTA BASU: That is the question of ratification. But may I know whether this kind of legislation should be sponsored in this House? I am not going into the merits of the case. I would like to say that it falls within the purview of State List in item No. 5. It is violative of the basic principles of federalism and undermines the basic structure of the Constitution. The Sarkaria Commission is also contrary to that. I, therefore, oppose for leave to introduce the Bill.

SHRI SHARAD DIGHE (Bombay North-Central): Sir, my submission on this point is that by passing this Bill we are exercising the Constituent power under Article 368 of the Constitution. If you say that federalism is affected thereby, I submit that federalism is not affected thereby because the power of the State Government to make laws on local governments etc. has been kept intact. This whole Bill says that the State Government may pass a law on these lines. Every section says that the State Governments may ultimately pass a law. Ultimately the power of the State Government is not taken away. Under item 5 in list-II State Government will pass laws on this basis. Also under Article 40 of the Constitution, in the Chapter for Directive Principles of State Policy, it is said:

"The State shall take steps to organise village Panchayats".

Here we are giving them further direction that States should pass laws incorporating these principles. That is the only thing that we are doing. Therefore, this House has got competence under Article 368 of the Constitution.

SHRI PAWAN KUMAR BANSAL (Chandigarh): Sir, the first thing I would like to say

is that you were also pleased to observe that this is a constitutional amendment which we are making and not an ordinary law. Even if we were to amend any Lists of the Schedule VII, Article 368 of the Constitution permits it. But, the basic point involved in this case is the proposed Article 243-G which reads as follows:

"Subject to the provisions of this Constitution, the legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein with respect to: 'the implementation of schemes for economic development and social—justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule'".

Therefore, it does not derogate the powers of the State Legislature, but only enumerates the subjects in Schedule XI on which the States should legislate.

If I may humbly submit with regard to the legislative competency and with regard to Constitution (72nd Amendment) Bill, it is firstly an amendment bill of the Constitution. No other legislature, other than Parliament, has the competency to amend the Constitution under Article 368 of the Constitution. I am sure, nobody disputes that. The only dispute is whether at all this Bill, in any way, affects the basic structure of the Constitution as defined by the Supreme Court in *KE-SHAVANANDA BHARATI* case.

14.00 hrs

And what is being cited now is Entry 5, in List II to justify it. The issue, firstly, is—Have we, by this Bill, in any way curtailed

their rights with regard to making laws on the issue of municipalities, corporations, local bodies and panchayats? It is not so. All we have done is to try to ensure that the Directive Principles of State Policy in Article 40 are brought out in the Constitution in a manner that regular election takes place, these bodies are regularly constituted. But they are not, as it happens in many States. And these bodies do not really exist, they are only on paper. We have not done anything serious in the sense of saying exactly in what minor detail should be the jurisdiction, method of functioning of the panchayats and all that. The real scope of these local bodies is still left for laws to be made by the Government under Entry 5 in list II. This matter has come up earlier, Mr. Speaker, Sir, in this House on the 15th of May 1989, when the legislative competence was discussed. The former Prime Minister, Shri Rajiv Gandhi, had also very clearly...

SHRI SOMNATH CHATTERJEE: What is the number in voting?

SHRI RANGARAJAN KUMARAMAN-GALAM: 205:5 (*Interruptions*) He wants to know the number. Ayes were 205 and Noes were 5, as recorded.

SHRI SOMNATH CHATTERJEE: Which was that Constitution Amendment? Which number?

SHRI RANGARAJAN KUMARAMAN-GALAM: 64. (*Interruptions*) Sir, the issue that is being raised today has already been raised, the House has already considered it.

SHRI SOMNATH CHATTERJEE: What was that Bill?

SHRI RANGARAJAN KUMARAMAN-GALAM: Constitution (Sixty-fourth Amendment) Bill. The House has already considered it and has debated on the matter and found the legislative competence.

And I may humbly submit that really it is not a question of legislative competence, the dispute is on whether it is fair or unfair,

[Sh. Rangarajan Kumaramangalam]

according to them. But even on that, with regard to this Bill, I am sure that the difference of opinion that had existed at that time is no longer there now. *(Interruptions)*

SHRI SOMNATH CHATTERJEE: One clarification from the hon. Law Minister. Supposing a State Legislature does not make that law, what will happen? What will the Central Government do?

MR. SPEAKER: That is the violation of the Constitution.

SHRI SOMNATH CHATTERJEE: Let him say, Sir. I did not get that answer last time, in 1989. I want it now. They seem to be wiser now.

SHRI RANGARAJAN KUMARAMANGALAM: As and when the issue arises, we shall address it. *(Interruptions)* It is not that the Central Government is powerless or helpless. If a particular State Government decide to violate the constitutional provisions...

SHRI SOMNATH CHATTERJEE: It is a State Legislature. He can you compare the State Legislatures?

SHRI RANGARAJAN KUMARAMANGALAM: If a State Legislature decides not to enact and goes beyond the scope of the Constitution and decides to violate the constitutional provisions, I don't need to tell Shri Somnath Chatterjee, who is far senior to me in the legal profession what powers exist. He knows what powers exist.

SHRI SOMNATH CHATTERJEE: Then you will have to dismiss all the Congress Governments.

SHRI RANGARAJAN KUMARAMANGALAM: I have not said it more am I saying it. But he knows very well what powers exist under the Constitution.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (Agra): He said that we have not taken the

matter seriously. That, serious efforts were not made. In the basic structure of the Constitution ...*(Interruptions)*... to disturb that ...*(Interruptions)*...

SHRI RANGARAJAN KUMARAMANGALAM: Will you not listen?

[English]

If I am asked to yield, I will yield. But at least have the courtesy.

[Translation]

It has become usual today. I do not as to why?

SHRI BHAGWAN SHANKAR RAWAT: I am addressing the Chair...

SHRI RANGARAJAN KUMARAMANGALAM: There should be some courtesy. When I am standing.

[English]

He should have the courtesy to ask: 'Would the Minister yield?'

[Translation]

He belongs to the old school.

SHRI BHAGWAN SHANKAR RAWAT: I want to raise a legal point, not a political one. I shall look at the political aspect when the time comes. You said that the State should implement the Directive Principles as given in the Constitution. That is why we are bringing amendment. State Governments are Constitutionally constituted bodies and are working under the Directive Principles. It is their duty and it...

[English]

MR. SPEAKER: Supposing elections do not take place for 20 years?

...*(Interruptions)*...

[Translation]

SHRI BHAGWAN SHANKAR RAWAT: I also want to say the same thing, Sir. Please let me have my say. Don't politicise it. This Bill seeks to bring about unwarranted interference on the part of the Central Government. If there had been a proposal to hold elections under the auspices of the Election Commission, which is a statutory body, then it would have been understandable...

[English]

MR. SPEAKER: How do you say that this House cannot pass this Constitution (Amendment) Bill?

[Translation]

SHRI BHAGWAN SHANKAR RAWAT: Sir, I am talking of the basic structure only. That is what you have also tried to say. You could have let me finish what I wanted to say. The State Governments have asked the Centre to conduct the elections. If the Central had said that under the Constitutional amendment, the Election Commission would conduct the elections, then it would have been in their powers. The Centre has not used that power.

[English]

MR. SPEAKER: When we discuss the clauses and at the consideration stage, you can say all these points. Now, you have to say whether this House has or has not the jurisdiction to make this law.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT: Sir, it does not have the jurisdiction. You had given a ruling that such points could be referred to the Supreme Court. Although such a point has not been referred to in the Religious places of Worship Bill. You said that a decision would be taken later. I think time is very important and lot of resources are spent for this purpose.

MR. SPEAKER: Mr. Rawat, please don't raise that point. Time is limited and there are many other Bills for consideration. There have been many rulings in this House. You need not tell me the rules. We don't take such decisions. From your speech if the Members feel that there is no jurisdiction and vote in your favour it will not be enough.

[English]

Now, the point is, whether this House has the jurisdiction or not, that has to be decided only by the High Court or the Supreme Court.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT: My contention is that if the House does something with brute majority. Which is against the basic structure of the Constitution, it will not be legalised.

MR. SPEAKER: Now don't use that point for making a speech. You can talk about whether it is the correct jurisdiction or not.

[English]

SHRI RANGARAJAN KUMARAMAN-GALAM: In fact, I am not able to understand whether this unfortunate definition of 'basic structure' is going to come in here and that is to the effect that implementing one of the Directive Principles of State Policy will be considered violating the basic structure of the Constitution. That, I think, would be the most unfortunate interpretation that can ever come. We are well within the scope of the legislative competence and we are not interfering into the rights of the States.

MR. SPEAKER: Yes; it is correct.

Now, the question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

SEVERAL HON. MEMBERS: 'Aye'

SOME HON. MEMBERS: 'No'

[Translation]

DR. LAXMINARAYAN PANDEYA (Mandsaur): Mr. Speaker, Sir, it violates the rights of State Governments and is against the basic structure of the Constitution. It will vitiate the relations between the Centre and the State. Thus, we don't want to be a party to it and we walk out of the House.

Dr. Laxmi Narayan Pandeya and some other hon. Members then left the House.

(Interruption)

[English]

MR. SPEAKER: Please understand the way in which they are handling it. I think the 'Ayes' have it. The 'Ayes' have it.

The motion was adopted

SHRI G. VENKAT SWAMY: I introduce the Bill.

14.07 hrs

CONSTITUTION (SEVENTY-THIRD) AMENDMENT BILL*

[English]

THE MINISTER OF URBAN DEVELOPMENT (SHRIMATI SHEILA KAUL): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill further to amend the Constitution of India".

SHRI GUMAN MAL LODHA (Pali): Sir, I have given notice to oppose it.

MR. SPEAKER: Lodhaji, I am afraid that this is being used as a device to speak.

SHRI GUMAN MAL LODHA: I oppose on the same grounds. The local bodies autonomy comes under Schedule VII, List II, item No. 5. The basic structure of the Constitution is being violated. Therefore, we oppose it.

[Translation]

SHRI BHAGWAN SHANKAR RAWAT (Agra): Mr. Speaker, Sir I want to raise a legal point. Though you have given powers yet you have found a new idea interfering.

MR. SPEAKER: Have you given any notice?

SHRI BHAGWAN SHANKAR RAWAT: I want to make a request, with your permission.

MR. SPEAKER: I have allowed you earlier.

[English]

I have allowed you earlier, because did not want to dampen your spirit.

The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India".

SEVERAL HON. MEMBERS: 'Aye'

SOME HON. MEMBERS: 'No'

[Translation]

DR. LAXMINARAYAN PANDEYA: Mr. Speaker, Sir, I reiterate that it is a direct intervention in the affairs of State Govern-