

[Shrimati Lakshmi Menon]

more persons or carrying of weapons, fire-arms, ammunition or explosives.

HYDERABAD SECURITIES CONTRACTS REGULATION (REPEAL) BILL*

The Deputy Minister of Finance (Shri B. R. Bhagat): I beg to move for leave to introduce a Bill to provide for the repeal of the Hyderabad Securities Contracts Regulation Act, 1353 Fasli (VII of 1353 Fasli):

Mr. Speaker: The question is:

"That leave be granted for leave to introduce a Bill to provide for the repeal of the Hyderabad Securities Contracts Regulation Act, 1353 Fasli (VII of 1353 Fasli)".

The motion was adopted.

Shri S. K. Patil I introduce the Bill.

BOMBAY, CALCUTTA AND MADRAS PORT TRUSTS (AMENDMENT) BILL*

The Minister of Transport and Communications (Shri S. K. Patil): I beg to move for leave to introduce a Bill further to amend the Bombay Port Trust Act, 1879, the Calcutta Port Act, 1890, and the Madras Port Trust Act, 1905.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Bombay Port Trust Act, 1879, the Calcutta Port Act, 1890, and the Madras Port Trust Act, 1905".

The motion was adopted.

Shri S. K. Patil: I introduce the Bill.

**COMMITTEE OF PRIVILEGES
SECOND REPORT**

Sardar Hukam Singh (Bhatinda): I beg to move:

"That this House agrees with the Second Report of the Committee of Privileges laid on the Table on the 24th April, 1958".

I may say a few words with regard to this. There is an election petition pending before an election tribunal at Calcutta against the return of one of our hon. Members, Shri Biren Roy. The petitioner has requested the election tribunal to summon certain files from our Secretariat. The election tribunal has requested this House to accord permission for the production of files in regard to the correspondence that this Secretariat had with the Indo-German Trade Centre, Behala, Calcutta, regarding the installation of the automatic vote recording system in the Lok Sabha. Though this contract was not entered into by our Secretariat—it was done by the Director General, yet we have certain papers in our files.

The request received by the Speaker was referred to the Committee of Privileges. The Committee has recommended that this House may give permission for the production of the papers that we have in our possession, though they may be not very necessary or important. But whether they are relevant or not relevant will be for the tribunal to decide. I request that this House does agree with that recommendation.

Mr. Speaker: Motion moved:

"That this House agrees with the Second Report of the Committee of Privileges laid on the Table on the 24th April, 1958".

Shrimati Renu Chakravarty (Basirhat): I have gone through the whole minutes of the Committee's meetings and the report. Therein the almost unanimous opinion is that there is nothing in our records which is relevant to the sections which have been

referred to in the course of the proceedings of the election tribunal. Since this is the unanimous decision, that there is nothing relevant, and in future also on many occasions other papers will be required and at all times the House will, more or less, take this as a precedent, and in view of the fact that all the relevant papers can very probably be got from the DG,S and D, we should say that they should refer the matter to the DG,S and D instead of wanting our files to be sent from here.

Shri Naushir Bharucha (East Khandesh): I have to invite the attention of the House to a matter arising out of this report which is of importance and which requires to be looked into. The hon. Deputy-Speaker has stated that certain files have been called for and the procedure, as recommended by the Committee of Privileges in their First Report, paragraph 10, is that you normally refer such a matter to the Committee of Privileges. Actually, the election tribunal has very mildly made a grievance of it that in spite of the best attempts on the part of the election tribunal to dispose of the election cases, too much time is being taken. It says:

"The way in which this election petition has been dragging its slow length in spite of my endeavour to have an expeditious trial makes me unhappy".

Further the tribunal says, because it feels that the procedure of referring this matter to the Privileges Committee and obtaining the Report of the Committee and the House passing a Resolution on it is cumbersome:—

"All I seek now is Parliament's co-operation to carry out Parliament's mandate".

to expedite the disposal of the election petition.

This raises an important issue. To my mind, it is not necessary to refer such matters to the Privileges Committee, and I think the House must revise the procedure. I am of the

opinion that the Speaker, and in his absence, the Deputy-Speaker, should have full powers immediately to sanction production of all the documents, if he thinks fit, or to withhold them if he thinks that there are documents in respect of which privilege may be claimed. I submit that every time it is not necessary for a Committee to go through the whole question when an election petition is held up or other trial is held up. In this House, we are all anxious to expedite all trials and cut out delay. But I submit that the present procedure is rather cumbersome and it is very necessary that it should be revised.

May I point out that with regard to the production of documents, ordinary heads of department can also claim privilege? They do claim privilege or they do produce documents, whichever they think fit. The normal discretion which is exercised by an ordinary head of department is being denied to the Speaker. I submit that the Speaker, the Deputy-Speaker and even a Chairman on the Panel of Chairmen should be authorised to dispose of these matters and they should not be referred in future to the Committee of Privileges, unless an exceptional case arises in which a very important question is involved.

I therefore request the Chair to evolve a procedure so that we may not be subject to the criticism that the tribunal 'is seeking Parliament's co-operation to carry out Parliament's mandate' to expedite the case. We might be people to impede the speedy disposal of these cases. I do hope that this aspect of the problem arising out of this report will be taken into consideration.

Shri Mahanty (Dhenkanal): May I make a submission apart from what has been stated by Shrimati Renu Chakravartty? I do not wish to repeat those things which have already been stated. I emphasise them. But, there is another aspect of this matter.

The facts of the case are well-known. The Election Tribunal of West Bengal requested the Speaker of the Lok Sabha for the production of

[Shri Mahanty]

some documents in possession of the Lok Sabha Secretariat. The Tribunal had alternatively also proposed that a Commissioner might be appointed before whom the documents may be produced. In fact, a writ of Commission had been issued on April 3, 1958, and the Commissioner was about to proceed to New Delhi for examining 3 witnesses, one among whom was the Secretary of the Lok Sabha. We do not know why that writ of commission was cancelled. Certainly, it was not cancelled on account of any attempt on the part of this House or Parliament. But the issuing officer himself has cancelled the writ. He had given no reason. The Report does not state why the alternative proposal emanating from the Tribunal itself was not accepted by the Privileges Committee.

I yield to none in my anxiety that there should be speedy disposal of this. But our concern is more for the privileges of this House. My friend Shri Bharucha said that it has been said that on account of the Parliament the case has dragged on. This petition was published in the *Gazette of India* on the 4th June, 1957. The Speaker was requested for the production of these documents on the 10th April, 1958. This is a very important aspect of the question. This is almost striking at what has been stated by the Election Tribunal. When it was published in the *Gazette of India* on the 4th June, 1957, this case ought to have been disposed of within six months. That means, by the end of December, 1957, this case ought to have been disposed of under the normal circumstances. But, the Speaker is being requested by the Tribunal to produce these documents on the 10th April, 1958. I am certain that this House or Parliament or any other authority connected with it has nothing to do with this delay. I take very strong objection to what has been stated by the Tribunal about the dragging on of this case, and the anxiety expressed for the speedy disposal of the matter.

Be that as it may, my submission to this House would be that there is nothing wrong in appointing a Commissioner to come before whom these documents could be produced. There may be any number of cases coming up—and they are coming up—and the competent officers of this Secretariat cannot be spared to run about from one end of India to the other with documents. It is fit and proper that a Commission should be appointed. To that extent, I disagree with the motion that has been made by the Deputy-Speaker.

Shri Kasiwal (Kotah): One hon. Member has raised the question of relevancy of the documents called for. It is not open to the Privileges Committee to go into the question of relevancy of these documents. If the documents are in the possession of the Secretariat of this House and if the Privileges Committee is of the view that the documents have to be produced before the Tribunal, then, it is not proper for the Privileges Committee to question the relevancy of these documents. I submit that the question of the relevancy of these documents can be decided only by the Tribunal.

With regard to the second point which has been raised by my hon. friend, Shri Mahanty, I submit that there is already a precedent when documents had been sent to a court or Tribunal with an officer of the Secretariat of this House. The question therefore, as to whether a Commissioner has to be appointed or whether an officer of this Secretariat is to go to the Tribunal along with the papers, hardly arises. We have already decided, in accordance with the precedent, that an officer of the Secretariat should go with these papers.

Shri P. G. Sen (Purnea): I find from the papers that 10th April was the day on which the Election Tribunal referred the matter to this Secretariat. The time by which the competent authority should have gone there with the papers for production is 12-30 hours this day. Why has this delay

been made by the Privileges Committee in the face of the papers before them?

The Minister of Law (Shri A. K. Sen): Frankly, I do not appreciate the objection raised. The matter is quite clear. First of all, certain documents have been asked to be produced before the Election Tribunal. The manner of production is a question of privilege, and it has been decided by this House, covered by previous reports laid before this House and approved of by this House that in the matter of production of documents we should be governed really by the procedure obtaining in England, so far as Parliament there is concerned. After prolonged sittings of the Privileges Committee, we found out the procedure obtaining here. And, in the absence of any law being made by Parliament to vary the procedure under article 105 of the Constitution, the British procedure would apply.

The procedure is that in cases where records or papers in the custody of Parliament are required to be produced before any court of law or Tribunal, it is for the Speaker to nominate a person who would produce them, with the leave of the House. So far as the relevancy of the document is concerned, Parliament under the Evidence Act or any other Act obtaining in the particular matter would not be competent to decide. Nor would it be proper for Parliament to accept such an odious task of deciding in each particular case which document is relevant to the proceeding in a court. It is entirely a matter for the court to decide whether a particular document is relevant or not.

The privilege of Parliament attaches to the production of the document and not in deciding whether the document is, in fact, relevant or not. It is really in consonance with this procedure which we had followed earlier last year—and it formed the subject-matter of a previous report of the Privileges Committee approved of by this House—that we had really prescribed this particular procedure in this matter also. It is not any

variation of the previous procedure followed by us.

Shri Naushir Bharucha: I am appealing for a variation.

Shri A. K. Sen: For that Parliament has to pass a law under article 105 of the Constitution. Unless that law is passed by Parliament varying that procedure, this procedure will obtain under article 105.

Shri Naushir Bharucha: That is what I am pleading for.

Shri A. K. Sen: That is a different matter. Your pleading will not do; a proper law will have to be passed.

Shri C. D. Pande: That is not a matter between Shri Bharucha and the Law Minister.

Sardar Hukam Singh: Shri Bharucha has taken objection to the present procedure that we have. He wants modification of it. That is an entirely different affair. If the House decides to bring about a change in the procedure that we have it is a different thing for our guidance in future. He has said that this involves a certain amount of delay and that the Speaker ought to have authority. So far as our previous decisions are concerned, they have been approved by this House and they stand. That is, when the House is in session, it shall be the privilege of the House itself, as is the practice in U.K. When the House is not in session and the case is urgent the Speaker is authorised to come to a decision and order directly the production of any document that is required by any court.

Shri Mahanty has taken objection and asked why not a Commissioner be ordered by the Election Tribunal to come and see these documents. On the one hand, it is complained by the Election Tribunal that there has already been delay; and if now we do not produce these documents but write to them that a Commission be appointed that would rather cause further delay. Therefore, the Committee thought that in the interests of speedy disposal of this petition, we might have no objection and that we

[Sardar Hukam Singh]

might recommend the production of the documents.

A suggestion had been made in the letter of the Tribunal itself that if this procedure is not acceptable to the House, then, a Commission would be appointed. But, we thought that because already the Election Tribunal is complaining of a certain amount of delay having taken place, we should send our officer. Our Secretariat has nothing to do with the delay that has been caused and the complaint of the Election Tribunal is not justified so far as this House is concerned, because the letter was addressed to us on the 10th and it was received here on the 11th and within three days the case was referred to the Committee of Privileges, and they convened a meeting. They met the next day and then after taking a decision we had to draft the report. It was to be presented to the House. About a week is naturally taken. It cannot be avoided. Therefore, there has been no delay so far as reference to the Committee was concerned or the decision of the Committee was concerned. It was very prompt.

Shrimati Renu Chakravartty said that we should not produce these documents. We should claim it as a privilege. They are not very relevant. That was also the opinion of the Committee. But as has been just argued by the hon. Law Minister, it should not be for us to decide which document is relevant and which document would be preferred by the party to be produced before the court. The party might think that the document is being denied or he may say that if these documents had been produced he would have succeeded in his case. So, we should not take it upon ourselves to decide and say that we are not prepared to produce these documents. It should be left to the court. It is the business of the court to see whether any document is really relevant or not. We do feel that the document may not be of much use to the party. Are we to take it upon ourselves and say that this would not be useful to the party and would not help

him in the conduct of his case. That would be rather an onerous duty which we should not take on ourselves. It is the business of the court alone to decide whether a document is to be brought on record or not, whether it would be relevant or not and it would be for the party to say whether it would benefit him at all. Therefore, this question should not be decided by us whether the papers that we have got would be relevant. It is for the courts to say after examining them. Because the Election Tribunal has asked for them, I think there ought to be no ground for our refusing to producing and that is the recommendation of the Committee. I hope the hon. Members would agree with it.

Mr. Speaker: In a matter of this kind we are governed by the Evidence Act. Under that Act any court is entitled to summon documents or witnesses—documents, both private and public. It is then a matter for the person who appears. He must appear with the documents. He cannot refuse to do so and plead before the court that the document ought not to be looked into etc. So far as public documents are concerned, it is common knowledge of a practitioner of law that documents can be summoned from any public office, from the Collector, etc. He sends those documents in a sealed cover. If he claims certain privileges, it is open to him to make representations to the court. The court looks into it and decides on such things. If it decides against it, it will exhibit it there, if it is relevant.

We are in a little better position than a public office having particular documents. But in these matters we are governed by some precedents of the House of Commons. There they say that it is the privilege of the House to send the document. As a matter of fact, even with respect to witnesses who are Members of Parliament and who are called upon by the other House or by any other Legislature to give evidence, the matter is

coming up in the form of another Report and that will be placed before the House for consideration. If any Member of Parliament is asked to be a witness in any of the legislatures, then the permission of the House has to be taken, besides the other gentleman consenting to appear as a witness. But it is for the court to decide. It is open to a court to summon any document. It is for the House to decide as to whether these documents are to be sent and in what form they have to be sent. Therefore, it is not the right peculiarly of the Speaker, as in some other cases, such as the Collector etc. who decide. It is for the House to decide. If the House so chooses to empower the Speaker to decide these matters, that is another thing. We are making a departure from the practice in the House of Commons.

Under the Evidence Act, no one shall be permitted to give any evidence derived from any public official records relating to any affair of the State except with the permission of the officer or the head of the department concerned who shall give or withhold such permission as he thinks fit. That is according to section 123 of the Evidence Act. According to section 124, no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by their disclosure.

These are matters in which some kind of discretion has to be exercised and some enquiry has to be made. Therefore, the Speaker naturally sends it, as soon as it comes up, to the Privileges Committee to examine what has to be done so far as this matter is concerned. Therefore, I do not propose taking the responsibility of saying whether this ought to be disclosed or not, whether you should claim privilege so far as this document is concerned, whether this document is in public official record or relates to an affair of the State. All these are matters in which I would certainly like to have the advice of the competent authority—the Privileges Committee of the House. It

has made a report. It could have said: withhold. No power on earth could then do anything. It is for them to decide whether that particular document is relevant or not relevant, necessary or not necessary. As a matter of fact, nowhere is it stated that the Tribunal should state for what purpose it is required. The document is called for. They need not have even said that they wanted this file for examining how far it was useful. It is for them to decide. Therefore, under those circumstances, let us not be under the impression that we will withhold or prevent law from having its course.

It is said by Shri Mahanty that we must have allowed them to send a commission. Even then this procedure is inescapable. If the Commission comes here and wants to examine Shri Kaul or the Secretary or the Joint Secretary, are they to do so on their own without the permission of the House? Even then they have to take my permission and I have to take the permission of the Privileges Committee or the advice of the Privileges Committee. The thing is inescapable there too.

Therefore, the only question is whether a commission should come all the way. What is the harm if I send a clerk from here? I cannot understand what is its meaning. After all, all these courts have been appointed in accordance with the Constitution which we frame and in accordance with the Constitution we are legislating from day to day. We are the persons who legislate and they are the persons that interpret the legislation. In those circumstances, let us not be under the impression that one is inconsistent with the other. All of us are engaged in the same common purpose. Therefore, as both the hon. Deputy Speaker and the hon. Law Minister have pointed out, this is the only course that has to be adopted. I shall see if in future automatically the Speaker or the Deputy-Speaker may take the responsibility of sending the documents except in cases where they want the advice of the Privileges Committee.

[Mr. Speaker]

That will be for the future. will consider that. So far as this report is concerned, I shall place it before the House for its acceptance. The question is:

"That this House agrees with the Second Report of the Committee of Privileges laid on the Table on the 24th April, 1958."

The motion was adopted.

COMMITTEE OF PRIVILEGES
THIRD REPORT

Sardar Hukam Singh: Sir, I beg to move:

"That this House agrees with the Third Report of the Committee of Privileges laid on the Table on the 24th April, 1958."

Sir, there is another case. The question was raised in the Legislative Assembly of Bombay. One member, Shri Deshpande, raised a question of privilege that Shri Chaudhuri another member had been taken into custody by the police but that fact had not been intimated to the Speaker of the Assembly. The Speaker first ascertained the facts and then because the police denied taking the hon. Member into custody, he had thought it fit to refer the matter to the Privileges Committee of that Assembly. The Privileges Committee there decided to examine one of our hon. Members here—Shri L. V. Valvi—as a witness because it is stated that he was present at the time when the hon. Member Mr. Chaudhuri was taken into custody.

Now, a request has been made to the hon. Speaker, Sir, by the Secretary of the Legislative Assembly, Bombay, that permission might be given to Shri Valvi to appear before the Privileges Committee of the Bombay Legislature. Privately Shri Valvi has agreed to appear—he has given his consent but, according to the precedents that are followed in the House of Commons when a Member has to appear before another House or a Committee thereof the permission of the House to which he belongs is to

be sought first; otherwise, if he appears before such permission is given to him that is rather considered as a contempt of the House itself. Therefore, the permission of this House has been sought in this particular case that Shri Valvi be granted permission to appear before the Privileges Committee of the Bombay Legislature.

This case was also referred to the Privileges Committee of this House. They discussed many things including the precedents that we have in the United Kingdom. They have only two Houses—the House of Lords and the House of Commons—and certain doubts were expressed whether we should adopt totally what is happening there because we have many legislatures in the States also. Ultimately we thought that at least this practice, that when a member of this House has to appear before the other House, permission of this House must be sought first, must be followed. We are bound to follow this practice until we have framed our own laws.

Therefore, the Committee has recommended that Shri Valvi be given permission to appear before the Privileges Committee of the Bombay Legislative Assembly so that that enquiry might be completed. That recommendation is now before this hon. House and I request that this report might be adopted by the House.

Mr. Speaker: The question is:

"That this House agrees with the Third Report of the Committee of Privileges laid on the Table on the 24th April, 1958."

The motion was adopted.

ESTATE DUTY (AMENDMENT)
BILL—contd.

Mr. Speaker: The House will now resume further discussion on the motion for reference of the Estate Duty (Amendment) Bill, 1958 to a Select Committee. Out of 4 hours