

of laxity to our States to equip themselves with the proper machinery so that they could enforce them in the best manner. "If any" we have kept because it will take a long time for some of the States and some parts of some of the States where the law is already in operation. It will take some time. In that sense we have left it to the court, and at every turn we want to leave it to the court at its discretion to give probation to an offender or not. Now a reflection has been cast on the probation officers and I regret very much that we begin reflecting on the machinery when we are going to have it for the morrow. We think that there is widespread corruption in the country and so every probation officer will be corrupt and every probation officer will bring some kind of pressure on the offender and spread corruption more and more. I do not think so. From what I have seen in practice, specially where the Children's Acts are in operation, I think the probation officer steps in as a real guardian of the child even in a more fitted manner than the parents—the father and the mother—in many cases. Here I want to assure the House, because I have seen the Children's Act operating in the city of Bombay for the last five or six years, and I do want to state in this House that without the probation officer, the Children's Act would not operate and the children would not be re-instituted in their families and rehabilitated into society. Therefore there should be no fear on the count that we are going to have probation officers that are going to be corrupt. It is true that we want to take the best element out of society and let them do the probation work. For that you have, of course, to be morally correct. You have to be physically sound and you have to be mentally alert. We do not deny these things, but then we also know that there is this element available in the country and why we should not call upon this element to take up this progressive measure and to help us

in carrying out its provisions in the various parts of the country.

Shri D. C. Sharma (Gurdaspur): The hon. Minister said that some of these probation officers are better than the parents of the children. I do not know what she means by it.

Shrimati Alva: I do say that I have seen it.

Mr. Speaker: Hon. Member knows how mothers are treating children. A probation officer is as good as the mother.

The question is:

"That the Bill as amended, be passed."

The motion was adopted.

BOMBAY, CALCUTTA AND
MADRAS PORT TRUSTS (AMEND-
MENT) BILL—contd.

Mr. Speaker: Shri S. K. Patil to continue his speech.

The Minister of Transport and Communications (Shri S. K. Patil): There was no speech but a point was raised when I moved that this Bill should be taken into consideration as to whether the Bill was a money bill within the meaning of Article 110. A question was asked whether the Government of India will have to give any guarantee and I said that some kind of a guarantee has to be given. The question, therefore, arose whether that brings the Bill within the purview of Article 110. Then, of course, I had to examine that guarantee and therefore I said that it should be held over till today as there were some question raised here.

I feel now on examination that this Bill in the present case seeks merely to regulate the powers of the three Port Trusts to borrow money from sources outside India. The borrowings will be made by the three autonomous bodies that these Port Trusts are the only restriction which is sought to be imposed by the Bill being that the terms and condition of

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such loans should have the previous approval of the Central Government. Nothing is said in this Bill itself about the guarantee to be given by the Government of India. Therefore, having regard to the wording of Article 110(1) the Bill is not a money bill and that it does not fall within its purview. The guarantee that the Government of India give, as has been given in many such cases, is of an executive character.

The Minister of Law (Shri A. K. Sen): Under executive powers.

Shri S. K. Patil: Therefore that does not come but in any case the question arises whether the money is to be spent at any time out of the Consolidated Funds of India. Then alone it can be argued that the permission and the usual procedure of a money bill should have been followed. Under Article 104(3) no money shall be withdrawn from the Consolidated Funds of India except under appropriation made by law. Therefore whether the guarantee is given in the Bill itself even if it were given, and whether it is given in the exercise of executive power as such may come in when money will have to be paid out of the Consolidated Funds of India to discharge the liability. At that stage Parliamentary approval is actually obtained for the discharge of the liability. Now, that is a contingency that we are not envisaging so far as the present Bill is concerned. It makes no reference whatsoever to this particular point of the guarantee and therefore it does not fall within the purview of Article 110(1). It can therefore be proceeded with and there is no substance in the point of order that has been raised.

Shri V. P. Nayar (Quilon) rose—

Shri A. K. Sen: May I add a few words?

Mr. Speaker: Yes or would the hon. Minister wait till he hears some hon. Members?

Shri V. P. Nayar: I want to submit that the interpretation of Article 110

as now given by the hon. Minister seems to be something novel and which the Constitution makers never intended.

Mr. Speaker: Now, does the hon. Minister say that there will be a guarantee for these loans by the Central Government? Let us be sure about the facts. Whether there is no guarantee at all is not specifically mentioned in the Bill. I thought all this controversy arose on account of the statement by the hon. Minister, which I read from the records, that it means a guarantee and that for these borrowings permission has got to be sought and the loans have got to be guaranteed by us. If loans are to be guaranteed by us, if specific reference is made to the guarantee in the Bill it would not be contended that it does not come under Article 110(1) (b). On the other hand, if there is going to be guarantee of the loans but we are not going to introduce this in this Bill, it may take away the jurisdiction of this House and also vest the jurisdiction in the Rajya Sabha by not making it a money bill thus enlarging the jurisdiction of the other House which it has not and curtailing the jurisdiction of this House which it has and then indirectly by executive order go on guaranteeing. I am afraid once there is a policy that a guarantee is contemplated how is that guarantee not put into the Bill, and by appropriation over the head of the Parliament why should the executive exercise its right. I am not able to follow that.

Shri A. K. Sen: It is only an enabling provision. At the same time It limits the authority of these autonomous bodies in the matter of borrowings. It enables these autonomous bodies to borrow money outside India from the International Bank and so on subject to the provision that the sanction of the Central Government is given. The power is a limited power. If in a particular case, the International Bank asks for the

guarantee of the Government and the Government feel that it is a fit and proper case in which a guarantee should be given, it may be given. But that has nothing to do with a Bill. If you come to Article 110, let us examine it because I have argued this point before you before also....

Mr. Speaker: My only point is that you avoid its coming under Article 110 by removing the word "guarantee". As a matter of fact, you are going to do so.

Shri A. K. Sen: It is done in hundreds of cases. If you will go on to Article 292, it is contended that the Government can only guarantee by bringing a Bill....

Mr. Speaker: My point is narrow. You need not bring a Bill, as a matter of fact, for loans and borrowings. The executive authority borrows and it can also guarantee. But once a Bill is brought and it involves a guarantee for enabling a particular person to raise a loan and it involves a guarantee on the part of the Central Government, should they take advantage of Article 292, ignoring this power?

14 hrs.

Why don't you bring it in the Bill? I do not say that a Bill is necessary for borrowing, not even for guaranteeing. When once there is a Bill authorising a local body or a Port Trust to borrow involving this House or the Government in the matter of guaranteeing—guaranteeing means ultimately paying back—why don't you include it in the Bill? Why take away jurisdiction and all that? I am putting the question. I will come to the hon. Member. It is not as if it is obligatory to bring a Bill. Once there is a Bill, it involves also guaranteeing at a future date—why don't you introduce it and seek the permission of the House to allow that portion?

Shri A. K. Sen: May I deal with the whole matter? I personally do not feel that there is any basis for suggesting that the Government is trying to do something indirectly which it cannot do directly.

Mr. Speaker: No, no.

Shri A. K. Sen: Let us examine first the scope of article 110. Reading it once again, it says:

"For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only.....

I had addressed you earlier on this; there is a good deal of significance on the word 'only'.

"provisions dealing with all or any of the following matters, namely—

We are really concerned with clause (b). Therefore, the Bill must be one dealing only with—

"(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India,....."

First of all, this Bill has nothing to do with the regulation either of borrowing of money by the Government or the giving of any guarantee by the Government. It does not purport to do it at all.

"or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;"

It must be, secondly, an amendment of an existing law which really is concerned with any financial obligations undertaken or to be undertaken by the Government of India. It does not purport to do any such thing. What is suggested is that if these powers are given to the Port Trust authorities, in certain cases, the Government may in its discretion feel like guaranteeing the loan for which there may be application, as it happens in so many cases. You will remember that this Parliament passed an Act combining the Indian Iron and Steel Co., and the Steel Corporation of Bengal, in order to facilitate certain works for which the World Bank had granted loans. The loans were

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ultimately guaranteed by the Government. The Bill has nothing to do with the regulation as to how the Government should guarantee loans or how the Government should borrow money. I cannot see how article 110 has any application in this matter.

Shri Narayananakutty Menon: (Mukundapuram): What about (d)?

Shri A. K. Sen: Let us deal them with one after another. I hear a voice, what about (d). Clause (d) deals with the appropriation of moneys out of the Consolidated Fund of India. This Bill has nothing to do with appropriation of any money. It confers certain powers on certain autonomous bodies to raise loans in certain conditions. If and when they have raised such a loan and if and when the Government thinks it fit in a particular case to guarantee such a loan, what will happen? This Bill has nothing to do with. If it was a Bill only concerned with regulating how the Government should guarantee loans raised by autonomous corporations like the present one, I can understand the force of such a contention. I fail to see how article 110 can be attracted in and of this point of order.

Shri T. K. Chaudhuri (Berhampore): May I point out...

Mr. Speaker: Order, order; what is the hurry?

Shri A. K. Sen: It must be only concerned with a law trying to regulate the borrowings by the Government or guaranteeing by the Government. This Bill purports to do nothing of the sort. On the contrary, it confers certain limited powers on certain autonomous bodies to borrow moneys. Whether after they exercise that power, in a particular case, the Government may be called upon or feel called upon to guarantee such a loan is a matter with which this Bill is not concerned at all. Nor does this Bill seek to control or regulate such guarantees. If only the Bill seeks to regulate the power of guaran-

teeing, then, I can understand article 110 being attracted. Otherwise, the Government in its discretion is fully entitled to guarantee any loan that it thinks fit. If Parliament thinks that it can be regulated, it can bring a law and for such a law, the consent of the President is necessary.

Mr. Speaker: What is the article of the Constitution under which Parliament should pass an Act empowering the Port trusts to borrow?

Shri A. K. Sen: There are already the Port Trust Acts, Central Acts. The existing Acts are now being amended by inserting a provision seeking to incorporate a limited power of borrowing. That is the purport of this Bill. Take clause 2. In the Bombay Port Trust Act, which is a Central Act, this provision has to be inserted.

Mr. Speaker: Is there any provision that it ought not to borrow?

Shri A. K. Sen: There are various limitations.

Mr. Speaker: That they shall not borrow by themselves?

Shri A. K. Sen: Not from outside.

Shri T. K. Chaudhuri: No, no.....

Mr. Speaker: Order, order.

Shri A. K. Sen: The power of borrowing is strictly limited and completely absent in regard to borrowing outside the country. They have no power to borrow outside the country. They could only borrow, as you know, by issuing debentures inside the country under the statutory conditions laid down. That power is now being granted subject to the sanction of the Centre. How is it a case of a Bill trying to regulate the power of guaranteeing? As I said, under the Constitution, under article 292, the Government has power to guarantee and if Parliament chooses to bring a Bill to regulate that power of guaranteeing and the power to borrow, and if that is the only provision of the

Bill, I can understand article 110 being made applicable. Simply because the power is granted and the Government may, if it thinks proper, feel called upon to guarantee, therefore article 110 is attracted—frankly speaking, I have not been able to understand that argument.

Shri V. P. Nayar: The hon. Minister said that the Bill has no provisions which intend to regulate borrowings as is covered by sub-clause (b) of article 110, and that he cannot understand the point of order. As you read article 110, you will find that the Constitution-makers have defined specific matters which would turn an ordinary Bill into a Money Bill. From clauses (a) to (f), you see a Bill which otherwise is an ordinary Bill, would be converted into a Money Bill by virtue of certain qualifications. The Constitution-makers did not stop there. They went on to include along with specific matters, certain other matters which are not specifically referred to as such. That is to say, in sub-clause (g) of the same article, they say, 'any matter incidental to any of the matters specified in sub-clauses (a) to (f).' I concede the point of the hon. Law Minister that by itself it does not regulate borrowing. But, the hon. Law Minister himself and the hon. Minister who spoke earlier said that possible at a future date, there may be borrowing. I do concede that under article 292 there is power for the Government to borrow. This is very rightly observed in the Statement of Objects and Reasons, that the Government have inherent power. Under the Madras Port Trust Act which is a Central Act, at present there is power to raise money internally. We are now amending this particular clause to enable them to borrow money from outside. We are committing the Government of India although the Government of India has power to borrow. It is, I submit, in this context that the word 'incidental' has a very peculiar meaning. It includes several other things which are not specifically provided for. It

should not be construed that the word "incidental" is a grammatical variation in the ordinary sense of the word "incident", just as you say rent is incidental to residence.

Mr. Speaker: Is it not *eiusdem generis*?

Shri V. P. Nayar: It is not. They have specified certain conditions which would normally make a Bill a Money Bill, in which case it cannot originate in the other House, and it is mandatory that the President's sanction should be obtained. Therefore, I say that in the abundance of their wisdom, the framers of the Constitution have included sub-clause (g) to cover matters incidental to any of the matters specified in sub-clauses (a) to (f). Why should there be this sub-clause at all if in the sub-clauses from (a) to (f) the framers had exhausted all the provisions whereby a Bill would become a Money Bill? I submit the word "incidental" must not be read in accordance with the meaning as it is commonly understood. The word "incidental" has a very peculiar meaning which makes the scope of this very wide. Any Bill which has a provision which is in any way related to, or which will have a possible bearing on any of the provisions enumerated above, namely sub-clauses (a) to (f), will naturally attract the provisions of sub-clause (g), and therefore will make it a Money Bill making the President's consent essential. Otherwise, there was no necessity for this Bill to originate in this House. The other House was sitting.

Mr. Speaker: Though it does not come under article 110, it comes under article 117. Is that the hon. Member's point?

Shri V. P. Nayar: It comes under article 110(1)(b) read with article 110(1)(g). Sub-clauses (a) to (f) are specific conditions which make a Bill a Money Bill. They do not stop there. They also include some other matters—any matter (The hon. Minister

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cannot say that this is any matter incidental to any of the matters specified in sub-clauses (a) to (f). You cannot by any stretch of the imagination take it away from the provisions of sub-clauses (a) to (f) because they are incidental.

I would only say that the word "incidental" has a particular meaning in this context. It must be differentiated from the word "incident" as you normally use it.

The hon. Ministers themselves stand committed to it because they say that at a future date, although article 110(1)(b) will not be offended against, there is a possibility of this particular legislation leading to a separate loan being raised from outside India.

Therefore, I submit that although it may not be strictly confined to the scope of a Money Bill as defined in article 110(1)(b) in so far as any guarantee is not specifically provided for under this particular enactment, it does come within the scope of sub-clause (g) which has been included in the Constitution with a specific purpose, *viz.*, to restrict the scope of the discussion of any Bill which can be considered to be a Money Bill.

Therefore, I submit that the point of order should be upheld.

Shri T. K. Chaudhuri: I would draw your attention and the attention of the House to certain very pertinent and material facts which, I would not say deliberately, but somehow or other escaped the attention of the hon. Ministers.

I do contend that the specific purpose of this Bill is to enable the Government, or to empower the Government, to give guarantees for the loans to be raised by the different port trusts mentioned here from the International Bank. Of course, incidentally some other banks have also been mentioned in a general way, but this Bill has become necessary because under the Charter of the Bank for International Development and Reconstruction it is

obligatory that all loans which are made to institutions which are not Governments have to be guaranteed by the Governments of those countries, and India being a Member of the World Bank cannot escape from that obligation.

It is just not an incidental matter that as and when the time arises the President by virtue of his executive power will guarantee certain loans. Here, the specific purpose of this Bill is to enable the Government to guarantee these loans, which guarantees are obligatory. The International Bank cannot make any loans, would not make any loans, particularly the loans which have been negotiated by two of the port trusts, unless the Government gives guarantees. That is obligatory.

I may draw the attention of the House to a publication of the World Bank. Unfortunately I could not obtain the articles or the Charter of the World Bank, but here is an official publication of the Bank—The International Bank for Reconstruction and Development—Policies and Operations—in which, at page 55, it is specifically said: "If the prospective borrower is not a Government, the Bank requires an indication from the Government that it will guarantee a loan for the project before starting any serious investigation".

In the Statement of Objects and Reasons it has been specifically mentioned that the Calcutta and Madras Port authorities have negotiated loans from the International Bank to cover the foreign exchange expenditure on the development projects, but these loans cannot take effect, cannot be made or would not be made by the Bank unless the Government gives guarantee.

In the Explanatory Memorandum of the General Budget we have a list of the loans that have been made by this Bank to us, and here you will find as also in the publication which I have just now quoted that . . .

Mr. Speaker: It is not denied that you will have to give a guarantee to the International Bank for any loan raised by the Port Trusts. That guarantee, they say, they are entitled to give under article 292 in exercise of their executive power. If that guarantee is introduced in this Bill, certainly it becomes a Money Bill, but under article 292 it is not obligatory for them to introduce a guarantee clause. It may flow out of it, but it is in exercise of the executive power. We might call it the moral obligation of the Government, but when a Bill is introduced, is it obligatory on their part to give a full view of the guarantee in the Bill itself? Is it obligatory on them to include the guarantee also in the Bill and take the assent of the House? That is the simple point. It is understood that without a guarantee not a pie will be given by the International Bank. They are not saying anything against it, but inasmuch as no specific provision is made in this Bill, could we say it involves a guarantee merely because it involves a guarantee later on. This is not a case where there is a provision relating to guarantee, but independently of this Bill, the Government exercises its right under article 292 to give guarantees. Can we say the guarantee must be introduced in this Bill, and if it is so introduced it comes under the mischief of article 110(1)(b) and therefore it becomes a Money Bill? They say they are not bound to bring it. Are hon. Members able to say that every loan or every guarantee shall be given only with the assent of Parliament, and any bill which invokes it comes under article 110? I am not able to follow.

Has the hon. Member anything more to say?

Shri T. K. Chaudhuri: Yes. I have some more points to urge. If we understand the purpose of this Bill to be to obtain the sanction of Parliament for the guarantees that Government are going to give, I fail to see the purpose of this Bill at all. I want to draw your attention....

Mr. Speaker: There is no doubt; they are going to give a guarantee, and without a guarantee, the International Bank may not pay. Let us assume that. All the same, Government say that this Bill does not contain any provision for that; this guarantee is not by virtue of this Bill, but independently of it, under the right that is granted to the executive to borrow or to give a guarantee under article 292 of the Constitution. Therefore, in the absence of a specific provision, this Bill does not come within the purview of article 110. Am I right?

Shri S. K. Patil: Yes.

Mr. Speaker: Therefore, the hon. Member must satisfy the House about it.

Shri A. K. Sen: My point, as you will remember, was that if you want to regulate the President's power by a Bill in Parliament, then you have to take the assent of the President under article 110.

Mr. Speaker: He did not mean generally, but only here, with regard to regulation etc. Specifically, you do not want to have this House regulate it under this Bill. You may consider all those occasions, where without regulation, nothing is going to be done. You are not going to allow the Port Trust to borrow as it likes. Guarantees, regulations and various other things will be done. All that the hon. Members say is 'Why do you not consult this House and the Parliament? Why do you not introduce that provision here relating to regulation etc. and why do you go on guaranteeing over the head of Parliament?' But, unfortunately or fortunately, there is article 292. I am only anxious to know the interpretation of article 292.

Shri Naushir Bharucha (East Khandesh): In the first place, let us assume that Government are going to give a guarantee. Knowing full well that they are bound to give a guarantee, if they bring in a Bill without the guarantee clause, I say that that is what is known to law as fraud on

[Shri Naushir Bharucha]

the Constitution. And 'fraud on the Constitution' is a phrase which has been used by the Supreme Court itself; where you so manipulate the clauses in the Bill that you avoid the mischief of certain articles, that is called fraud on the Constitution. I, therefore, submit that if we accept this position that Government are going to give a guarantee then the Bill as it stands is a fraud on the Constitution, and on that ground, it should be ruled out.

The second point that I am making is this. They say that they can give a guarantee under article 292. My submission is that article 292 does not apply at all. Let us see the exact wording of that article. It reads thus:

"The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits..."

But here, it is borrowing not on the security of the Consolidated Fund of India but on the assets of the Port Trusts. The guarantee which this article speaks is only of money borrowed by Government upon the security of the Consolidated Fund of India

"within such limits, if any, as may from time to time, be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed."

that is, within such limits as prescribed for the borrowing on the basis of the security of the Consolidated Fund of India.

Therefore, where a borrowing is not secured by the Consolidated Fund of India but by the assets of these particular Port Trusts, Government have got no right to extend the guarantees to them. Therefore, article 292 does not come in at all in this picture. It does not come because the borrowing contemplated in this article is on the security of Consolidated Fund of India. The Law Minister said just now....

Shri A. K. Sen: We never said that this was borrowing by Government. We only said that they were guaranteeing the debt of the Port Trusts.

Shri Naushir Bharucha: But the whole article has to be read together. It reads:

"The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time, be fixed by Parliament by law, and to the giving of guarantees within such limits....".

That means 'within such limits of the borrowing upon the security of the Consolidated Fund of India'. But here, it is on the security of the assets of the Port Trusts. Therefore, this does not apply.

My second point is....

Mr. Speaker: I thought he had concluded his second point.

Shri Naushir Bharucha: My first point is that it is a fraud on the Constitution. Secondly, I say that article 292 does not apply.

The third point that I am making is this. In addition to this, there is also this question of the amendment of the law with respect to any financial obligation undertaken or to be undertaken by the Government of India. When a loan is contracted from the World Bank, it is obvious that it has got to be repaid.

Mr. Speaker: Yes, I agree.

Shri Naushir Bharucha: Now, the repayment is in foreign currency. It is not in rupees.

Shri S. K. Patil: It may not be in foreign currency.

Shri Naushir Bharucha: We have got the Foreign Exchange Regulation Act, under which Government have got the monopoly of giving you foreign exchange. Therefore, the obligation to make foreign exchange available for the purpose of repayment is in

itself a financial obligation under sub-clause (b) of clause 1 of article 110. The obligation to procure foreign exchange is in itself an obligation such as is referred to as

'any financial obligations undertaken or to be undertaken by the Government of India.'

Now, it may be argued that the Port Trusts will pay them.

Mr. Speaker: Why should we labour this point? Whether it is in foreign exchange or our own currency, it involves payment out of the Consolidated Fund of India.

Shri Naushir Bharucha: No, I am coming to that point presently. The first thing is that the financial obligation is to procure foreign exchange. Secondly, when you say that you procure foreign exchange, it goes out of the Issue Department of the Reserve Bank; and the foreign assets of the Reserve Bank are reduced to that extent, so that it cannot be said that Government are not undertaking any liability or any financial obligation whatsoever. Therefore, I submit that on these three grounds, the recommendation of the President was necessary.

Shri Achar (Mangalore): I shall be very brief. The only point that I would like to submit is that when we consider whether this Bill is a Money Bill or not, we can only look into the Bill and nothing beyond that. That is my first submission.

Mr. Speaker: So, he supports what the Law Minister said?

Shri Achar: Yes, I am supporting him.

My point is that all other things will be extraneous. In fact, legal authorities have gone to the extent of saying that even the Statement of Objects and Reasons would not be a part of the law of the land. Whatever the Minister may say as regards guarantee or anything of that kind, Parliament or anybody else may have any remedy he wants so far as that is concerned, if he thinks he is right.

That is a different aspect of the matter. But when we consider whether this is a Money Bill or not, we must only look into the provisions of the Bill as introduced before Parliament. Is there any provision anywhere in it which offends any portion of the Constitution? I submit that there is none. If we read the clauses carefully, we do not find any indication anywhere to show that it involves the question of its being a Money Bill. My hon. friend Shri V. P. Nayar referred to the word 'incidental', and referred to sub-clause (f) of clause 1 of article 110. So far as that point also is concerned, it is a well-known proposition that 'incidental' means what follows necessarily. Here, does it necessarily follow?

Shri V. P. Nayar: Of course, it does.

Shri Achar: It does not necessarily follow. That is exactly what I am pointing out. There may or may not be guarantee. Who knows what is going to happen?

Now, as the Bill stands, we are not concerned with those other aspects of the question. We are only concerned with seeing what the Bill is; this House is only seized with the Bill as it stands. It may follow or it may not follow necessarily. So, it is not incidental. That is what I would like to submit.

All the rest of things are extraneous. So far as the Bill as it stands is concerned, it has no tinge of any Money Bill. So, there is no point of order.

Shri S. K. Patil: I would like to say one thing, and that is about a point that has not been brought out so far.

This is a general power which already exists in the existing Act in a limited sense, namely there is a power of borrowing in all these three Acts, of a varying kind. Now, what we are doing is not restricted only to one loan. The power that is sought to be got now is:

"and on such terms and conditions as may be approved by that Government, raise for the general purposes of this Act loans in any currency or currencies from the

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International Bank for Reconstruction and Development or from any other bank or institution in any country outside India."

These powers that we have now are varying powers. I have got them here before me, but I need not quote them. Assume, for the sake of argument, that such powers existed in the Act before.

If Government had to guarantee any loan whatsoever under article 292, they would have done it, and this question would not have arisen. But there is a doubt expressed whether those borrowing powers also cover borrowing in other countries, particularly through the World Bank. Therefore, we are enlarging the scope of the powers that have already been given to them by the Central Government. This is an additional reason. Therefore, this being a power of a general nature and there being no specific mention in that of anything that would really characterise it as a Money Bill, article 110 of the Constitution is not attracted.

Mr. Speaker: A point has been raised that inasmuch as a consequence of the passing of this Bill when a loan is raised by any of these Port Trusts from the World Bank or any other bank outside India, it may have to be guaranteed by the Central Government, this Bill comes within the definition of a Money Bill under article 110, particularly sub-clause (b) of clause 1 thereof. It is contended that whatever might be the implication or the necessary consequence at the time the borrowing actually takes place, no provision is made here in this Bill for the regulation of the borrowing of money or the giving of any guarantee by the Government of India. Article 110 (1) says:

"For the purposes of this Chapter, a Bill shall be deemed to be

a Money Bill if it contains only provisions dealing with all or any of the following matter"

The Bill does not specifically contain any provision relating to the regulation of borrowing of money, though it is contended on behalf of Government that it is not by virtue of this Bill, that they will be entitled to guarantee any loan by the Port Trusts, but under article 292 which vests the Union Government with the power to borrow upon the security of the Consolidated Fund of India. I thought at one stage that this executive power did not mean that they could go on; if this is applied to borrowing, equally they might say that executive power extends to borrowing upon the security of the Consolidated Fund. Government can raise taxes, they can also borrow; but as regards taxation there is a specific provision under article 285 which says:

"No tax shall be levied or collected except by authority of law".

A similar provision regarding loan or guarantee is not there. If the Constitution-makers wanted to incorporate such a provision, they might have said, as they have said by means of a specific provision under article 285 in the case of any tax, that no loan shall be raised or guarantee given except under the authority of law. But here, Article 292 invests the executive with the power, without a provision like article 282 so far as guaranteeing of borrowing is concerned. So it is open to Government to either borrow directly or guarantee upon the security of the Consolidated Fund of India.

Shri V. P. Nayar: Article 283 is there.

Mr. Speaker: Article 293 says:

"Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India . . . within such limit"

This is between the Centre and the States. I am talking of article 292. There are two powers. How do the Government of India spend money? How is the Consolidated Fund filled?—either by tax or by loans. So far as tax is concerned, it must be by authority of law. A Bill is necessary. So far as borrowing is concerned, under executive authority, they can borrow. That is why we have not been passing Bills from time to time in the case of borrowings as we have been regarding taxation. It has never been contended that no loan shall be raised—Rs. 5,000 crores for the purpose of financing the Second Plan or so many crores for the first—without the authority of law. Therefore, the executive power under article 292 extends to borrowing or guaranteeing of borrowings. It is that power that they want to invoke.

It is open to them to avoid any contention, as was raised by Shri Naushir Bharucha, to have introduced a clause here saying that they are going to guarantee upon the security of the Consolidated Fund and it will be easy for them to get the President's sanction. But they think that various regulations etc. may have to be decided upon with respect to each loan from time to time and, therefore, at this stage, it will be premature for them to find out what are the conditions under which these regulations of guarantee may be necessary.

Under these circumstances, in the absence of a provision definitely bringing in article 110(1) (b), I do not agree that this is a Money Bill, nor do I agree that this is a Financial Bill under Article 117. Therefore, it is a different matter. As to whether it is not desirable for Government to take the House into confidence and state what might be the amount of guarantee etc., Government can equal-

ly say that it is premature for them to say anything now. As and when a loan is applied for, it may be time for them to negotiate and, therefore, they cannot in anticipation bring it here.

Whatever might be the implication—and there is no question of implication, as the hon. Minister definitely says that unless there is a guarantee there is no likelihood of any loan being obtained—on that footing alone, and in the absence of a specific provision relating to guarantee under article 110(1) (b), I feel this is not a Money Bill under article 110, nor is it a Bill under article 117, requiring sanction or permission of the President.

Therefore, consideration of the Bill can proceed.

Shri V. P. Nayar: Your ruling is advantageous to us also in the case of private Bills.

Shri S. K. Patil: I have made my comments before the point was raised and I have nothing to add, unless hon. Members raise some point later.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Bombay Port Trust Act, 1879, the Calcutta Port Trust Act, 1890, and the Madras Port Trust, 1908, be taken into consideration".

Shri Naushir Bharucha: I do not agree with the principle involved in the Bill. I am inclined to think that a Bill of such character is likely to lead to serious trouble in future.

In the first place, may I know why it should be necessary at all for Government to amend the Port Trust Act of various places in order to enable them to raise loans from the World Bank? Cannot Government themselves do this work, namely, borrow a lump sum from the World Bank and then distribute it to the various Port Trusts?

[Shri Naushir Bharucha]
14.39 hrs.

[MR. DEPUTY-SPEAKER in the Chair.]

The necessary foreign aid may be distributed by them in the proportion they think fit. To my mind, it appears that this is one of the instances of excessive and unnecessary legislation. It is not merely unnecessary and useless, but it is worse than useless, because it is dangerous. I shall presently show how it is so.

If today we are going to give such a power to certain corporations like the Port Trusts of Bombay, Calcutta and Madras, the question would naturally arise: are we going to give similar power to other statutory bodies? It is not only the Port Trusts which will require for their expenditure assistance in the form of foreign currency. If we accept this principle in the case of Port Trusts only, there are equally important and, from the point of view of financial commitments, much more important statutory bodies. Are you going to extend them this privilege? If not, I ask Government, why not?

The first point that I am raising is why should not the Government borrow and then distribute. There is no need for amending the Acts.

The second point I am making is, is this opportunity going to be extended only to the three Port Trusts, or are you going to extend it in the case of other statutory bodies much, more important in their financial commitments than the Port Trusts?

The third point that I am making is that if the borrowing is going to be decentralised and if every authority created under any particular Act is going to have the power to borrow from the World Bank, then, the tendency will be to formulate programmes and then come to Government saying that they have already formulated the programme and therefore they require money for its execution. That programme may or may not fit in with your development programme. And, it is conceivable that the loans procured from the World Bank, which are difficult to procure because there

are several rival countries also trying to procure loans from the World Bank, may be frittered away in projects which may not be strictly necessary for the purpose of putting the Five Year Plan into execution.

It is also conceivable that more important projects which require assistance from the World Bank and which have fitted into the Five Year Plan and which have been given priority may suffer by reason of the fact that you have got competing claims in the shape of Port Trusts which demand a share of the World Bank loan. And, I ask if this decentralisation of power to borrow from the World Bank, about which we are taking the first step, were to be extended, what will be the position of the Second Five Year Plan? Therefore, I say that, in principle, it is also dangerous.

Then, take another case. If everybody is to be given this power, later on, others will come up also. Bombay has not even asked for that power and still it is being thrust upon it. If everybody is being given this power, what happens to the borrowing programme of the Government itself? I want to ask this House—and I want to raise this point very seriously—has the Government placed before this House any borrowing programme, let us say, for the next 3 years of the Five Year Plan? Can they say that the borrowing programme is so much and that it is going to be planned in this way? The House has not been taken into confidence.

What is more, the House will never have an opportunity to analyse or criticise the projects that are to be put before the Government by the Port Trusts. This is what will happen by this novel principle being introduced of statutory bodies being enabled directly to negotiate with the World Bank for loans. While we are, on the one hand, clamouring that it is difficult to get foreign exchange, and we have passed a law permanently placing foreign exchange under control, on the other hand, we give these statutory bodies power to appropriate for their own use foreign

exchange. And the use may be such over which this House will have no voice whatsoever.

The reply to that by the hon. Minister may be that the Government will consider the projects and if they think fit, then only, will they guarantee. That means that the House is deprived of the opportunity of criticising. The House does not know for what purpose the foreign exchange which is acquired with so much difficulty from foreign countries is being used. The House will have no voice and I object to that in principle.

I say that if various bodies are allowed to compete—apart from the fact that each one will want to compete on more onerous terms offering a higher rate of interest. Apart from all those considerations, the fact remains that such a type of decentralised borrowing queers the pitch for Government and makes it extremely difficult for Government to place before this House a coherent and comprehensive plan either of borrowing or of utilising the moneys borrowed. Therefore, I submit that it is very unhealthy in principle to give this power to various bodies.

The fourth point that I am making is, what about the repayment of these financial obligations, particularly the foreign exchange obligations? They will start 'bunching' up in 1961. This House is being told that facilities have been given to the private sector to arrange for deferred payments. Those deferred payments also will mature or start maturing for repayment from 1961 onwards. This House proceeds on certain assumptions that it will have certain financial commitments in the form of foreign exchange in 1961. By 1961, how many different projects are brought up by different bodies and what they do, we shall not know. The House will not be in a position even to judge of their commitments at the time.

The fifth and the more important point is, what are the terms and con-

ditions on which Government is going to sanction negotiation of loans by Port Trusts with the World Bank? I am told—and I speak subject to correction—that the terms and conditions are that the loan shall be a first charge on the assets of those ports. The Port Trusts might have issued debentures; they might have borrowed money and there might be other Port Trust loans for development projects already raised in this country. Do the terms and conditions on which the Government is going to sanction negotiations include any such term that the World Bank will have first charge? In that case it means very unfair treatment of those people who have already advanced loans to these Port Trusts. Therefore, I would like the hon. Minister to make clear whether such a clause is going to be included; and, if it is not included it comes to this.

Supposing the assets of the Bombay Port Trust come to about Rs. 50 crores. Let us assume that the debt already contracted is Rs. 40 crores. Therefore the margin to provide cover for security for payment of a new loan is only Rs. 10 crores. The Bombay Port Trust—let us assume—contracts a loan from the World Bank of Rs. 50 crores. The World Bank will not permit Rs. 50 crores to be given on the poor margin of Rs. 10 crores. The result will be that if Government guarantees, it will have to make good and that means out of Government funds, I want to know what exactly the position is.

Therefore, I oppose this Bill on these various grounds.

Shri T. K. Chaudhuri: Mr. Deputy-Speaker, Sir, so far as this Bill is concerned, I wish the Minister had taken the House into confidence about the loan programmes that have been negotiated and are only awaiting the enactment of this measure to be finalised. There is hardly any doubt about the fact that this Bill is intended, first of all, to enable the several

[Shri T. K. Chaudhuri]

Port Trusts to obtain loans from the International Bank.

I took care to look into the original Acts which are being sought to be amended and I find that excepting the waiver of restrictions upon loans, all the powers that are sought for the Port Trusts are already there. It has been said—and strangely enough by the Law Minister—that the Port Trusts were not empowered until now to raise loans from foreign countries.

I would invite your attention to the Bombay Port Trust Act of 1879. There, the borrowing powers are covered by section 39. Section 41(e) which governs loans to be raised in India and in Indian currency. This specific provision more or less similar or even in almost identical language, is there in every other Act. The provision is this:

"Unless the Central Government by notification in the Official Gazette otherwise directs, all loans contracted by the Board or the Trust or the Port Commission, as the case may be, shall be raised in India and in Indian currency."

That implies that the Government has the power by notification to authorise these Port Trusts to raise money in foreign countries as well as foreign currencies. I would like the hon. Minister to enlighten the House as to the nature of the doubts that were raised. Doubts were raised by whom? And to what extent? Were those doubts justified?

I think the real purpose of the Bill is indicated in a sentence in the Statement of Objects and Reasons here where it is stated that even if the power to borrow from such an institution in some foreign country, such as the World Bank or other banks, can be inferred, the borrowings would, under the existing provisions, be subject to certain restrictions which are not suitable for the purpose of the loans granted by the International Bank for Reconstruc-

tion and Development. That lets the cat out of the back? I hope the hon. Minister would excuse me for this expression.

Of course we on this side of the House have different views about the good intentions of the World Bank but in order to make those intentions absolutely clear and putting them beyond any manner of doubt, I would again refer to this publication—The World Bank—where it has been specifically stated that one of the specific purposes of the loan or the primary purpose of the loan is the promotion of local private enterprise. That is what this official publication of the I.B.R.D. says:

"In its efforts to stimulate development, the Bank places special stress upon the growth and expansion of the private sector of the economy. A great many of the Bank's loans are designed, either directly or indirectly to stimulate private investment, and the importance of private enterprise, particularly in directly productive pursuits, has consistently been emphasized by Bank general survey missions."

While this makes the operations of this Bank a little bit suspect, I find here in the bank publication different rates of interests are being charged for various loans advanced to the private sector and the public sector projects in this country. In the Explanatory Memorandum in the General Budget I find that this Bank advanced a loan last September amounting to 90 million dollars. The rate of interest was 5 and 5/8 per cent. per annum—or very nearly 6 per cent per annum. This loan is with regard to our railway projects, pre-eminently Government or national projects. But I find in this publication—it would be corroborated by our Government also—that the rate of interest of the loan granted to the Tata Iron and Steel Company for steel expansion programmes is only 4·75 per cent. or about five per cent. On another loan to a

Tata group of company the rate is 4% per cent. The Indian Credit and Investment Corporation (India) Ltd., gets a loan at the rate of 5 per cent. interest. But when it comes to our premier national enterprise—railways—the interest charged is 5 and 5/8 per cent. I would, therefore, like to know from the hon. Minister: what are the terms and conditions, the rates of interest, the number of instalments in which these loans have to be repaid. The whole thing becomes very suspect in our eyes.

I do concede that our ports need development and that we must obtain foreign exchange. But there is the record of the International Bank in different countries; and there is also its composition. Although it is called International Bank or World Bank, everyone knows that for all practical purposes, it is an American bank. The major portion, an overwhelming portion of the capital is from the U.S.A. It is also on record that the Secretary of the American Treasury, the President of the World Bank and the President of the Federal Reserve Bank in U.S.A. form some sort of an informal committee which scrutinises all these loans and we have known how in Suez operations, these banks are guided by political considerations. I hope the Government would take us into confidence and place the whole loan programme before the House so that it can judge the merits of the Bill. Otherwise this enabling measure will be very much suspect in our eyes.

Shri V. P. Nayar: Sir, I also do not agree with the provisions of the Bill as they are. But I want to make it clear that I am not against the ports getting financial aid from other countries at suitable terms and conditions. If you go through the Bill, you will find that the Government has made an effort to conceal from the House certain terms and conditions upon which the IBRD seemed to be rather keen. We know these port trusts have raised money by a variety of ways. Actually we do not know. If the hon. Minister had chosen to

take us into confidence he should have told us how much is today due by the Madras Port Trust, how much by the Bombay and how much by the Calcutta Port Trusts. This is not supplied.

Apart from that we find that although the Government says that there are powers of borrowing inherent as stated in the Statement of Objects and Reasons, they now want to seek a clarification by an interpretation of the existing Acts to enable the Government to do certain things. I would not have been worried if the provision is confined merely to the borrowing from the IBRD. But we find that in all these provisions, along with the IBRD, 'any other foreign institutions' are also included. It is very dangerous if it is allowed to be passed by the House in the manner in which it is before us today. By the interpretation which is sought to be given to a particular provision of the existing enactment, Government wants to take away the effect of all other law on the subject. The three sections are curious enough. This is the first Bill of the kind that I have seen. There are three operative provisions and all the three are:.... "Notwithstanding anything contained in any other law for the time being in force...." It can very rightly therefore, be called a 'Notwithstanding Anything Bill'. It reads:

"Notwithstanding anything contained in this Act or in any other law for the time being in force, the Board may with the previous sanction of the Central Government and on such terms and conditions as may be approved by the Central Government. . . ."

What is the law?

15 hrs.

We know that when the Port Trusts raise debentures they are subject to the Indian law. We know if they raise loans by mortgage of property they are subject to the Indian law. Why is it that the World Bank is not satisfied on advancing money with terms and conditions which are appli-

[Shri V. P. Nayar]

cable to any other Indian institution? What is the case of the Government? Is it their case that the International Bank of Reconstruction and Development are not satisfied with the provisions that enable them to recover the loan, that they want special provisions whereby they abrogate all existing laws on the subject? I fail to understand why such a blanket power should be given to the Government, the more so when they do not come out with the terms and conditions of the loan.

We know that if we pass this law the relevant provisions of the Transfer of Property Act will have to be given a go-by in transactions with the World Bank. Is it the hon. Minister's case that a charge which is a first charge created by an act of performance within the scope of the existing Transfer of Properties Act will continue to be in force even after the passing of this law? Then, Sir, as you will see, there was no necessity at all for the Government to come out with this particular clause "Notwithstanding anything contained in this Act or in any other law for the time being in force". Therefore, my submission is that Government do not want merely to interpret a particular provision of the relevant Port Trusts Acts but they also want to take away the effect of all other laws which govern the matter of loans in this country. Thereby they want to put the World Bank in a position of advantage over those institutions which have already advanced money to these Port Trusts in the matter of raising additional funds for development.

Is this correct? Are we, here, in this House, justified in giving such a power when we do not know what are the terms and conditions? I can find no excuse. I can certainly share the anxiety of the hon. Minister in seeing through a programme of the development of ports, but I do not understand for a moment why this House should not be taken into confidence. My friend Shri Chaudhuri

pointed out details of interest which the World Bank charges. It appears that if it is an institution which is run primarily by the Government the World Bank insists on higher rate of interest, and if it is run by a private institution then the World Bank will be pleased to charge a lower rate of interest. That being so, having regard to our experience that other institutions which have advanced money for institutions in this country, it is a very dangerous provision.

We must, Sir, at the same time, look into the operation of certain other agreements. I do not want to refer in particular to the World Bank because the provisions which are before us today would justify special conditions and terms being granted in the matter of loans advanced by institutions outside India, to the very serious detriment of institutions in India which have already advanced money. There, Sir, we must draw a distinction.

If that were so, what was our experience? We know how we bungled. We know how Government, which claim to exercise executive power by virtue of certain articles of the Constitution, in the matter of negotiations for loans for projects in the public sector have put the entire country's interest in utter jeopardy. Almost always when this country was negotiating loans with foreign institutions the dice was very heavily loaded against the public interest of our country. What happened in the case of setting up of the machine tools factory where we negotiated for financial assistance with a foreign institution? What happened in the case of the Hindustan Shipyard about which we had a discussion only yesterday. With this experience, Sir, we should be very very careful in giving another power, which is an even more blanket power than what has been already there. We should consider whether it is at all necessary that, even if such loans can be raised through the International Bank, such special benefits which are intended to

be given to the World Bank should also be given to a wide range of institutions which come within the mischief of the general definition in this particular provision, because it is said that loans in any currency can be raised from any foreign institution. This is a matter which is of fundamental importance to our economy, and it is certainly a matter in which Government ought to exercise the utmost restraint and caution, having regard to the experience we have had in the matter of raising loans from institutions outside our country.

The second point which I would like to take up is, we all agree that the ports do require development, do require development at the fastest pace—there is no doubt about it. We are all sorry that in the historical development of these ports and the management of Port Trusts what we normally call 'a State within a State' has been created. There are many reasons for that; I do not want to go into those reasons. But today it remains that the ports have not developed in a manner which is desirable, which is necessary to handle the foreign trade of our country. Take, for example, the port of Calcutta which, I am told, handles about 50 per cent of our exports. What is the position there? Take any other port for that matter. When we are trying to raise loans from foreign institutions on terms and conditions which are not revealed to us, is it not necessary that we look back and find out what are the mistakes in the past in the matter of administration of these ports? The Government will be committed to repayment of instalments to the World Bank or at least stand guarantee to it.

Sir, I have made all possible efforts to find out the relevant provisions from the Constitution of the International Bank of Development and Reconstruction in order to find out whether there is any particular provision in the Constitution of that Bank—which is also very relevant—restricting the operation of the loan or imposing

certain necessary conditions on the execution after the loan. I have not been able to find out the Constitution, because we do not have it in the library, and although I made all efforts to get a copy of that Constitution from the Finance Ministry the efforts of our library staff have so far not borne any fruit. It appears that even the Finance Ministry does not keep a copy of the Constitution of the World Bank. It is absolutely necessary, because we want to know what are the conditions which are normally enforceable by the Bank in terms of loans which are guaranteed by the Government.

Let alone that. If we guarantee a loan under a special provision of a very special "notwithstanding anything enactment", we should also consider how we are going to repay the loan, what are the measures which we can take. Apart from the effect that this may create, the future loans which we may negotiate may create a first charge—as against all concepts of charge given in the Transfer of Property Act—giving the first right to the new loan over the rights which already accrued by virtue of advancing money on past loans, how is it that we are going to repay the loans? What are the terms and conditions of repayment? What are the terms and conditions of the actual issue of the loan? We know that in some cases when the World Bank advance a loan they insist that a particular percentage of the loan can be spent in a particular country only. I want to know from the hon. Minister whether when we negotiated the loan we have impressed upon the World Bank the necessity to allow us to import our requirements of machinery or other items from any country which we choose to. Are we entitled under the conditions of the loan to invite global tenders for the supply of our requirements?

An Hon. Member: No.

Shri V. P. Nayar: Are we, or are we not? That is a question which we want to be answered in a categorical fashion. Are we precluded or pre-

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vented from inviting global tenders for the use of the money advanced by the World Bank in the matter of purchase of our essentials? If that is so, let us not have a loan from the World Bank, or from whichever other blessed institution it may be, because it has political fetters. The trouble about this loan is not merely legal, it is also political, because in the usual terms and conditions given by the World Bank those provisions, terms and conditions do smack of some colonialism which we do not want in this country. Although Government may say that it is not possible, we know the history of ports like Shanghai. We know what has happened in Suez. We do not want this to be repeated and if the World Bank is magnanimous and charitable enough to give us a loan, it should not be on conditions which are very restrictive in so far as the exercise of our right to make purchases for our demand from whichever country we choose to, is concerned.

This is a very serious matter, and unless a categorical answer is given to it, I am afraid that the House cannot support this Bill. I was referring to the development of ports. I was also dealing with the manner of the terms and conditions under which we will be called upon to make repayments. We know that when we take a loan guaranteed by the Government of India for the purpose of development of one of these ports managed by bodies which are created by Acts of Parliament—Port Trusts—it is also necessary to see that the income from the port is not reduced to that extent whereby it will be impossible for us to fulfil our commitments in the matter of paying interests. What is the way in which the Port Trusts get money? It is only by handling cargo and jobs incidental thereto. Therefore, when we negotiate for a loan, the conditions about which we have no idea, and when we are called upon to give our vote for that, we should know what is the firm policy in respect of the labour in these

ports. Unless we have a labour force which is contented, we cannot expect by any stretch of imagination to be able to pay the interest which is due.

What has been the policy of Government in the recent past? Strikes without number occur in all these major ports. The attitude of the Government has been particularly unsympathetic towards dock labour. We know that time and again it has been shown in this House that even the Choudhuri Commission's report received by the Government as early as in October or November last year could not be implemented. After all, they are not such revolutionary recommendations. They are very moderate recommendations. Therefore, when we take loans, we should have in mind that the repayment of the loan will not be possible unless we have a contented labour force from which alone the port will derive the income and from which they can make the repayments. Otherwise, what we will find is—it may be to our dismay later on—that the World Bank will use all its power conferred by a specific enactment in getting back its money. Therefore, in this context, when we are thinking of raising loans from foreign institutions on conditions which are very peculiar, on conditions which we do not have in the normal law of our land, it is well and good that the Government state their policy in regard to the handling of labour. If I had any influence with the Minister, I would earnestly urge upon him to consider whether it is not time, in view of the loan which we propose to take, to have a long term agreement with labour in the ports on which alone we can hope to repay the loans which we raise.

I do not want to go into the details of the Bill, because we are giving a guarantee. I do not go into the legal aspect of it, namely, whether a particular article of the Constitution would make it necessary for the President's sanction to be obtained or not. But I may submit to you the

real effects which such a legislation will have on the Consolidated Fund of India and on the country as a whole, because we are committed in the matter of repayment either as guarantors or by direct payment. Where is the escape if we do not pay the money? I understand that 50,000 dock workers have given notice of strike in the Calcutta port for very small or little reasons which Government do not satisfy, and the Government have a very adamant attitude towards them and they do not seem to be inclined to hear their case. Therefore, if we allow matters to continue like that, it is impossible for us to repay the loan, because the Port Trusts do not have shops in Connaught Place from which they could get rent and then pay the money. Their only source will depend upon the earnings through labour. Therefore, this is a matter which should be very seriously considered by the hon. Minister.

I would also urge upon the hon. Minister another aspect which is relevant, but which may not be strictly relevant to the provisions of the Bill, but which, in the overall picture, is very relevant.

Mr. Deputy-Speaker: Has he said all other things that were strictly relevant?

Shri V. P. Nayar: That is for you to decide. Otherwise, if we did not have difficulty in the matter of the Bill—.

Mr. Deputy-Speaker: The hon. Member will try to conclude.

Shri V. P. Nayar: Yes, Sir. If we did not have difficulties in the matter of this Bill, we need have spoken only one sentence as the hon. Minister did. He introduced the Bill by saying that after all this is a very simple measure; it is not controversial at all, and that therefore he did not have anything to say. But we found that immediately after that, on a point of order, we went round and round for two hours.

Mr. Deputy-Speaker: But he did not anticipate that when he introduced the

Bill. Now, the hon. Member will conclude.

Shri V. P. Nayar: Yes, Sir. My only submission is this. The fact that we do not have any amendments and also the fact that we need not therefore spend any time in the second reading, that is, the clause-by-clause stage,—with all these advantages—are there, but we should consider not merely the aspects which come strictly within the provisions notwithstanding any other legislation but also the general effect which the negotiation of such loans will create in working the ports in this country. Therefore, I submit that although it may not be very strictly relevant, Government should have a firm policy in regard to the diversion of some of the cargo which is handled by the Calcutta port now by having another port some 20 or 30 miles down below Calcutta at a suitable place. When there is so much work in the Calcutta port, it will create a problem which in its wake will create difficulties for the repayment of the loan that will be provided under special conditions.

I would again urge upon the hon. Minister to please take the House into confidence and let us have an indication of the terms and conditions. There may have been discussions on that. I am sure that this provision would not have been included if there were no discussions. In the Statement of Objects and Reasons it would not have been specifically mentioned if there were no negotiations for loans already. It cannot be said, by any stretch of imagination, that if we disclose the loan because it is an international bank it will be against public interest. Also, we want to know whether they are insisting upon conditions which are humiliating to our country. We also want to know whether such conditions will oust the operations of other loans in force.

Shri S. K. Patil: Mr. Deputy-Speaker, you were right when you said that I never imagined when I introduced this Bill what I was in for.

[Shri S. K. Patil]

Apart from the legal or constitutional objections, I had the advantage of listening to a full-dress debate as to what the policy of the Port Trusts should be, how labour should be treated, and all that. I do not find fault with the hon. Members. What I say is, the scope of the Bill really did not give me an idea that all those things were going to be discussed and that they were within the purview of this Bill. Anyhow, it has happened.

I shall try to supply the facts of the case as much as I can, and about the confidence to be shared, I would share to the fullest degree—100 per cent. There is nothing to hide about it. They will find that there is nothing hanky-panky about it. There is nothing that is humiliating, and my friend could give us this much credit. If there was anything humiliating to the self-respect of India, neither my Government nor I would be here even for a minute. Therefore, even the imagination that something humiliating would be accepted because the ports have got to be developed, etc., does not really do much credit to any hon. Member, whether he is on this side or that side of the House.

Having said that, I shall now give the facts of the case. We wanted Rs. 85 crores for the development of our ports, not only these three major ports but the five or six major ports and several of the minor ones. But I am now referring only to the major ports. There are no two opinions in this House that the ports have got to be developed. Our capacity for receiving cargo and for exporting cargo has got to be developed and developed very fast. As to how we are suffering, a little inkling of it has been given by the hon. Members. Therefore, on that point we are all unanimous. How can the ports be developed? That is a plan that has to be made. We have got to find out Rs. 85 crores for the completion of the

plan, out of which Rs. 40 crores, as big as 40 per cent or a little less than that, is the foreign exchange component, because things have got to be taken from outside. Now, it is very easy to say that we should not have borrowed money from here, should not have borrowed money from there and so on. If it is not the International Bank for Reconstruction and Development, possibly we have to go to some other country, even USSR for that matter. Therefore, the question where we should have gone is an immaterial question. The borrowing has got to be done, because the foreign exchange component had got to be secured. Merely with Rs. 40 crores our work cannot be completed. We want another Rs. 55 crores through our internal loans, apart from paying another Rs. 20 crores for foreign exchange, because we have got today only 29 million dollars for the development of the Calcutta port and 14 million dollars for the development of the Madras port, making a total of 43 million dollars. In Indian money it would come to somewhere about Rs. 20 crores. But there are other ports to be considered. Take, for instance, Bombay. A question was asked by Mr. Bharucha about the Bombay port trust and he enquired whether they have no development programme. If they have got a development programme, some kind of loan, so far as the foreign exchange component is concerned, has got to be initiated. Therefore, if it is necessary, surely we have got to do it, as we have done in many other cases.

Here I will come to why such a law or enactment has become necessary. This is not the first time that we have gone to the International Bank for Reconstruction and Development. They have helped many of our projects. When I was the Minister for Irrigation and Power, I had to deal with them, not in regard to one but perhaps umpteen of our projects. But we had not come to this House because there was no law governing

those particular institutions which had to be managed. Therefore, we took the loan in the normal way, according to the conditions which were mutually beneficial; we did it. In this particular case, we have got to come to this House in order to amend the enactments, because there are enactments. If, for instance, in the case of the Koyna project, there was an enactment, we would have come to the House for its amendment when we went in for a loan. In the same way, we have taken money for the various projects from the International Bank for Reconstruction and Development.

Now, as regards ports, there are port trusts and laws governing them only in regard to three States, namely, Bombay, Calcutta and Madras. If it was only a loan for Visakhapatnam or Kandla or Cochin, then possibly we would not have come to this House. The loan could have been initiated, money could have been obtained and all this discussion would have been superfluous. Here in this case we had to come here because, for good or bad reason, years back we had created these autonomous institutions, namely, the Bombay Port Trust, the Madras Port Trust and the Calcutta Port Trust. Having created them, we invested them with certain autonomous powers. Those powers included also the powers of borrowing. When these Port Trust Acts were enacted years back, it was not contemplated that these people would have to go somewhere outside the country for getting loans.

Even as the law stands at present, nothing prevents them from going out for borrowing. It is only because we are doubtful in our own mind that we wanted to amend the enactments. Because, these laws also differ. If you look into the provisions of these Port Trust Acts, you will find how these particular sections are not identical. Therefore, by a stretch of imagination it can be contended that possibly we do have such a power. But why keep it in doubt? Why not keep it beyond the range of doubt? Therefore, I have

made it clear in the note that I have appended to this particular amending Act that because there was a doubt, in order to remove the doubt this Bill is being brought in. Government even now thinks that it is perfectly within the legal competence of these three authorities to borrow money. All the same, to keep the matter beyond doubt, this Bill has been brought in. Supposing such a power already existed, then surely all these discussions would have been superfluous, because the port trusts themselves would have dealt with the World Bank and would have got the money and the Government of India, under section 292, would have guaranteed those loans. We came here because we wanted to extend those powers of the autonomous bodies, not only with reference to the International Bank for Reconstruction and Development, but with reference to their borrowings from some other country.

Supposing on account of the foreign exchange position, we have to get it from the USSR or some other friendly country, then surely it has got to be done. That competence has got to be given to these port trusts to borrow money from any country in any currency on terms and conditions which are mutually acceptable, both to the port trust as well as the country or institution that gives the money. That is why this amendment has been brought in.

I now come to some of the points that have been raised. Shri Bharucha asked: why not Government borrow and give it? I cannot understand the special reason why such a point was raised. It does not make a difference; it does also in a sense. Because, these bodies are autonomous. They have got the borrowing power and we want to encourage the autonomous character of those bodies. They take the loans and we guarantee them, because it is necessary just to see that they are under our Act, under our guidance; because no loan could be contracted unless the Government of India is consulted. To that extent alone, we come. Therefore, it is for

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us to see that if they take these loans, they are in a position to pay these loans also. We have also to see that they take into consideration their requirements and necessities and behave in such a manner, or arrange their economic affairs in such a manner, that they can pay the loans out of their own earnings. That is exactly what they do. In case of any eventuality, of which there is perhaps a chance one in a million, where they are not able to pay, we will honour it. Suppose there is a strike there—as pointed out by my hon. friend, suppose 50,000 dock workers go on strike—what will happen? If any such emergency actually comes into being and the port trusts are in a difficulty, we will make payment out of the Consolidated Fund of India, because their money is our money and they are institutions created by this House. But these are contingencies which we have not taken into account just now. They are there only for the sake of argument.

We wanted that these autonomous bodies should always stand on their own legs and look after their affairs. Even after receiving these loans, they have to pay them back out of their earnings. Therefore, it would not be proper for the Government of India to get these loans and then give them to the port trusts. And it would not make any difference so far as the economic condition of India is concerned. But that would not be proper.

There have been loans which have been secured by these projects; the loan is given to the project, although it is guaranteed by the Government of India, because the project is in India. It is under the administrative influence or competence of the Government of India. Therefore, the Government of India must guarantee. That is why, the Government of India comes in.

What we are seeking to do here is that those powers that were inherent or that were given—not inherent—by

the State to them, we are extending their scope, not in relation only to the World Bank but in relation to other countries also. Unfortunately, the World Bank has been mentioned here, because it occupies a different position; it is not a country. We cannot say "any country" because the World Bank is made of several such countries, of which India is one. Therefore, it is in the position of the UNO or something of that kind. Because it is not a country, it has got to be specially mentioned. Otherwise, we could have stated "from any country or any institution" and that would have been sufficient. I am mentioning all this because there is nothing to hide from anybody. We only want that the autonomy of the three port trusts should be retained and that we should not in any way really hurt their autonomy in any particular manner. We are not going to do it. While extending the powers, the borrowing powers, we are providing that if a similar contingency arises in future and if they want to get a loan, either from the World Bank or any bank or any country, they should be free to do so. That is exactly what this amending Act seeks to do.

Having said that, I will now come to one or two other points that were mentioned. I was asked: why did we go only to the International Bank for Reconstruction and Development and not elsewhere? My hon. friend, Shri T. K. Chaudhuri went to the extent of saying it is because the Bank is "American dominated". If we consider our problems from the point of view that if we take a loan from Russia, we are Russian-dominated, if we take it from America, we are America-dominated and if it is from somebody else, we are somebody else-dominated, there will be no end to it. India is a friend of all countries. We have every right to give and receive. Surely, such arguments as this that because America has given more, so we are American-dominated, I cannot understand. This is a world organisation, an institution in which

India is also a member. We have paid money for the making of it. We have accepted the constitution and we go by it.

The Deputy Minister of Finance (Shri B. R. Bhagat): India is one of the five permanent members.

Shri S. K. Patil: Why should there be such a shame or anything in getting money . . .

Shri T. K. Chaudhuri: What is the proportion of our voting?

Shri S. K. Patil: If my hon. friend would give another 100 million dollars or Rs. 100 crores, surely the proportion would be still better.

Shri B. R. Bhagat: That is not decided by contribution.

Shri S. K. Patil: Therefore, all these arguments are really not relevant at all, so far as this particular question is concerned. Therefore, we have gone in for these loans. What are the conditions of the loan? I do not go into everyone of them. But I may say that there is nothing secret about it. They have negotiated these loans—I do not know how many in all—perhaps for 10, 20, 30 or 40 projects. We have taken that loan—we have not yet taken it but we are seeking to take it, we are simply negotiating—of 43 million dollars—29 million dollars for Calcutta and 14 million dollars for Madras. The rate of interest is 5½% and the money is to be paid in 20 equal instalments beginning with the first instalment in April 1963. That means five or six years hence.

Shri Sinhasan Singh (Gorakhpur): What is the interest?

Shri S. K. Patil: So far as the rate of interest is concerned, the World Bank does not make distinction between country and country. Sometimes it makes a distinction between projects. A project of utilitarian character, for instance, which was something that looked after the health of children or which was a project like a dairy project, railway project or some such kind of things,

which are really essential and which have got a larger element of the welfare of men and women, in such cases sometimes on their own initiative they perhaps charge a little less. But so far as the normal rate of the World Bank is concerned, it is always 5½% and that is not only for India but that is for everybody. It is not within their competence to reduce that rate. Therefore about the question that we have been duped or that because we are needy persons and therefore we have gone there and we have become a subject of exploitation from the World Bank—nothing of that kind has really been done—there should be no misgiving so far as that point is concerned.

Then regarding the question of currency, there have been many doubts. Once you are beset with doubts, then howsoever straight it might be, it appears to be crooked and therefore the doubt is that the World Bank means the United States of America, United States of America means politics and therefore everything that is in politics must have been introduced in the negotiations between this country and the Bank. It is rather a far-fetched idea. I cannot really understand it. There is nothing of that kind. There is no currency. The money has got to be returned in the currency in which we buy those things. There is no stipulation that every dollar of that must be spent in the United States of America. It cannot be because it is the International Bank of Reconstruction and Development. It is not the United States bank. Therefore they cannot make a stipulation that we must buy in a particular country. On the contrary, the World Bank has insisted on their own initiative that our tenders must be global tenders. Therefore it is open for competition. If America really offers a rate which is acceptable to us, then we can go to them. That is a different matter. But generally it has happened in all the cases we have taken a loan—not in all the cases but in most cases that we have gone to the other country because in global tenders we had the

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facilities which were acceptable to us from the other country and not from the United States of America. Therefore even that point does not arise.

So far as the rate of interest and the 20 years instalments are concerned, it is a general thing. Then they have added this much facility that we pay the first instalment in April, 1963. Really speaking, this rate of 5½% is for the immediate payment year after year. But they know our difficulties. They know that we have not got the foreign exchange and possibly for a period of five years we may not be able to pay them money in that currency. Therefore we start the first payment from April 1963. That money does not go to the United States of America. Suppose we do the purchases in West Germany, the money goes to Germany. Suppose we buy something in Russia, the money goes to Russia. If we buy from Poland it goes to Poland. It may be any country. Therefore they do not restrict it. It is a global tender and on that global tender we have got to pay money. Therefore, the payment is in the currency of the country from whom we buy those particular things that we require for the development of this port. Therefore, that question also does not arise.

Shri V. P. Nayar: We know that.

Shri S. K. Patil: So far as taking the House into confidence is concerned, my hon. friend, Shri V. P. Nayar, said that we have concealed certain conditions and we have not taken the House into confidence. If it was so then it was a different matter altogether. Even after my speech, would he kindly do me a favour and tell me as to what is it that I have concealed from him or from anybody in this House?

Yesterday, when a straight question was asked—this question would not have arisen—as to whether the Government has given any guarantee, I myself stood up and said we shall have to give some kind of under-

taking. I did not use the word "may". There is no concealment at all. How could you conceal these things from this House, because all these documents and other things that we sign are a public possession? We cannot conceal anything either from the House or from the people of India. Therefore, I have said quite enough on this point and I think all doubts have been set at rest. There is nothing really which is out of the way. We have got to go in for larger borrowings. There is Bombay. It comes within that Act. But outside that Act also there are other ports. My hon. friends very often come to me and say that even the minor ports have got to be developed into major ports and so on and so forth. I am most anxious that it should be done. They also talk about having a second shipyard. I am also anxious. That has got to be done but that will need foreign exchange and millions of dollars, whether you take it from the World Bank or from anybody. It has got to be done. If it has got to be done but on terms and conditions that are acceptable to us, what is there wrong? I do not understand it. Therefore, I maintain that this Bill became necessary for the reasons that I have stated.

So far as borrowing is concerned, it is in the higher interests of India. We have done nothing wrong. So far as threats of strikes etc. are concerned, I can assure my hon. friends to the extent that I can keep the labour satisfied. It shall be my first duty to do so. How can he expect or how can anybody for that matter expect that our ports or any industry or any part of our industry will thrive unless the labour that is working there is kept satisfied? But there are obligations and there are responsibilities on either side. Just as the labour has the right and the privileges, labour also have got the obligations. If our hon. friends, who are leaders of labour, be they on this side or on that side, also tell labour sometimes, for a change, that there are some obligations and

responsibilities also on the part of labour so far as the reconstruction of our economy is concerned, I think there will be a day, which will be a red letter day for all of us, when there will be no disputes so far as labour is concerned and we shall have a more peaceful and a more prosperous India.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Bombay Port Trust Act, 1879, the Calcutta Port Act, 1890, and the Madras Port Trust Act, 1905, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: There are no amendments. Therefore, I will put all the clauses together.

The question is:

"That clauses 1 to 4, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 1 to 4, the Enacting Formula and the Title were added to the Bill.

Shri S. K. Patil: Sir, I beg to move.

"That the Bill be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

HYDERABAD SECURITIES CONTRACTS REGULATION (REPEAL) BILL

The Deputy Minister of Finance (Shri B. R. Bhagat): Mr. Deputy-Speaker, Sir, I beg to move:

That the Bill to provide for the repeal of the Hyderabad Securities Contracts Regulation Act, 1353 Fasli (VII of 1953 Fasli), be taken into consideration.

As the House is aware, the Securities Contracts Regulation Act was passed sometimes in 1956 with a view to prevent undesirable transactions in securities by regulating the business of dealing therein, by prohibiting auctions and by providing for certain other matters connected therewith. The Act was enforced with effect from the 20th February 1957 and recognition has since been accorded under section 4 of the Act to the principal stock exchanges in the country, viz., Bombay, Ahmedabad, Calcutta, Madras and Delhi. Two applications, one from Indore and the other from Hyderabad, are pending for consideration. The Hyderabad Stock Exchange Ltd., Hyderabad was recognised by the then Hyderabad Government under the Hyderabad Securities Contracts Regulation Act, 1353 Fasli year being a law enacted by the former Indian State of Hyderabad in the year 1943. The said Act still continues in force by virtue of article 372 of the Constitution, and is not yet repealed. The existence of the State law side by side with the Central Act namely the Securities Contracts (Regulation) Act, 1956, is likely to lead to confusion. The simple object of this Bill is to repeal this Act. The Bill is non-controversial and is hardly of an exceptional character. It is proposed to repeal the State Act by this Bill. With these words, I move.

Mr. Deputy-Speaker Motion moved:

"That the Bill to provide for the repeal of the Hyderabad Securities Contracts Regulation Act, 1353 Fasli (VII of 1953 Fasli), be taken into consideration."

Mr. Deputy-Speaker: The question is:

"That the Bill to provide for the repeal of the Hyderabad Securities Contracts Regulation Act, 1353 Fasli (VII of 1353 Fasli), be taken into consideration."

The motion was adopted.