

**DEMAND No. 17—OPEN LINE WORKS—  
REPLACEMENTS**

"That a sum of Rs. 5,66,95,048 be granted to the President to make good an excess on the grant in respect of 'Open Line Works—Replacements' for the year ended the 31st day of March, 1960."

13.12 hrs.

**REPRESENTATION OF THE PEOPLE  
(AMENDMENT) BILL**

**The Deputy Minister of Law (Shri Hajarnavis):** I beg to move:

"That the Bill further to amend the Representation of the People Act, 1950, be taken into consideration".

I hope that this Bill except for two items is mostly non-controversial. As for the two items about which some concern has been expressed in the House, I hope to convince the House that we have been guided by no consideration other than that of our loyalty and obedience to the Constitution which we have sworn to uphold. I will briefly go over the first few items and then deal in some detail with the provision which substitutes the words 'Zilla Parishads' for 'District Boards' in U.P. Then, as I said, I will go over step by step the process of reasoning by which we have arrived at the result which forms the basis of this amending Bill.

By clause 2 of the amending Bill, we propose to insert a new sub-section (2) to section 12 of the Representation of the People Act. I might remind hon. Members that under section 12 of the Representation of the People Act, power has been given to the President, after consulting the Election Commission, by order to alter or amend any order made under section 11. We find that section 11 refers to the constitution of various constituencies. The question which often arises is: having altered the

constituencies, what shall we do with the right of representation of members who have already been elected on the basis of the old constituencies? Such a power is always taken whenever there is an alteration of the constituencies between two elections.

So far as the Legislative Council is concerned, it is well-known that it is a body which never dissolves. One-third of the membership is renewed after a fixed period. Therefore, what we seek to do by this amendment is to take power under the proposed sub-section (2) to see that wherever an alteration is made in the constituencies themselves, then the existing members may be allocated the altered constituencies.

Then under clause 3, clause (d) of sub-section (2) of the principal Act is being deleted. Clause (d) says:

"In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

...the constitution and appointment of revising authorities to dispose of claims and objections".

It has been the experience of the Election Commission that the provision of dual authorities, one for registration and the other for revision, results in a cumbrous procedure. There are two parallel authorities, one merely concerning itself with writing down the names and the other taking upon itself to decide judicially whenever an objection is raised as regards the right to vote. This results, as the Election Commission has experienced, in delay and a multiplicity of authorities. Basing ourselves upon the precedents in U.K. and profiting by the experience we have had for such a long time, the Election Commission would like that the law should provide that the power to revise, in case a claim or

objection is raised, should be placed squarely upon the registration officer himself so that whenever an electoral roll is prepared and whenever an elector's name is entered, he is conscious of the fact that he is not merely carrying out a ministerial duty but is also exercising a judicial function. He himself having made that entry in the first instance, when an objection is raised as to why a particular name has or has not been included, he should decide. It is also in the mind of the Election Commission that though the power will be given to the electoral registration officer to revise, appeal against any decision by him will be provided for by rules.

By clause 4, section 31 is sought to be amended. Section 31 reads as follows:—

"If any person makes in or in connection with—

- (a) a claim or an application for the inclusion in an electoral roll of his name, or
- (b) an objection to the inclusion therein, or an application for the exclusion or deletion therefrom, of the name of any other person, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both".

In place of this, we want to put in as follows:

"If any person makes in connection with—

- (a) the preparation, revision or correction of an electoral roll.....".

As it at present stands, section 31 is confined to action being taken when the claim is made in respect of inclusion in the electoral roll of his own name. If he makes a false claim, a claim which is unjustified, on behalf of another person, he is not liable to be punished. You will see that action under section 31 is confined only to claims which are made in writing. If a man makes a claim for himself, which he knows to be false, he is liable to be proceeded against under the present Act.

Should he not also be liable to a similar penalty if he, in writing, makes a similar claim on behalf of another person? After all, when the names are being entered in the rolls, one man comes and makes a claim on behalf of many persons. Supposing a man knows that he has no right to vote and also knows that if he himself applied he would not be able to substantiate his claim for inclusion in the rolls. Then, if he himself makes the application and if he fails he will be liable to criminal punishment. But he can escape criminal punishment by asking his friend or relative to make a claim on his behalf and take a chance of that claim being accepted. If he makes such a fraudulent claim he will not incur any kind of penalty. That, we thought, was a lacuna in the Act; and that is sought to be removed by this.

Then, I come to clause 5 in which I have got to convince the House that the action taken by the Election Commission so far, which is the basis of this particular Bill, is strictly in accordance with the provisions of the Constitution.

Shri Braj Raj Singh (Ferozabad): It is a violation of the Constitution.

Mr. Deputy-Speaker: Why anticipate things?

Shri Hajarnavis: I am glad that my hon. friends for whom I have very great regard, both Shri Khushwaqt Rai and Shri Braj Raj Singh are here; and I will go slowly step by

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step over the process of reasoning that has led us to this conclusion.

Article 168 reads:

"For every State there shall be a Legislature which shall consist of the Governor, and

(a) in the States of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh and West Bengal, two Houses" . .

We are dealing with Andhra Pradesh and Uttar Pradesh. I am keeping the case of Andhra Pradesh, for the present on one side.

"Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly."

Article 171 deals with the constitution of the Legislative Councils.

"The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State."

Article 171(3) states:

"Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected. . . ."

I emphasise the words 'shall be elected'

"by electorates consisting of members of municipalities, district boards and such other local authorities in the States as Parliament may by law specify,"

For the present, I am confining my remarks to the crucial words—'one-third shall be elected by electorates consisting of members of district boards'.

The first statement which I would make is that we are enjoined by the Constitution to form an electorate which shall consist of members of district boards. So, if, in practice, a person is a member of a district board, we cannot deprive him of the vote. The sole question is whether he is or he is not a member of the district board. If a district board is formed and if a person is invested with the right of membership, then, the Constitution bids us that he shall be included as an elector in the constituency which will elect a member to the Legislative Council. We cannot take away that right from him; we cannot do it without infringing an obligation which has been imposed upon us by the Constitution. So, the first question which we ask ourselves is whether he is a member or whether he is not.

Then, the second issue which arises is, is it a district board? And, if we come to the conclusion that it is a district board, then, our view is that we are inexorably driven to the conclusion that no member of the district board can, under Article 171(3), be deprived of his right to vote.

The words 'municipality or district board' cause no small amount of concern because these words are not defined. Nor are these terms invariably used in describing the various institutions of local self-government. For instance, many of the cities which consist of municipalities are called municipal corporations or city corporations. Or, in U.P. the present name is *Nagarpalika*; and in what are called the KABAL towns, I am told the word used is . . . .

Shri Braj Raj Singh: *Nagar Mahapalika*.

**Shri Hajarnavis:** ....Nagar Mahapalika.

**Shri S. M. Banerjee:** (Kanpur): That is according to the Act.

**Shri Hajarnavis:** I agree, Where by usage or by custom or by something else such a name has been given, we must concentrate our attention upon the functions of the particular institutions and find out what they are.

**Shri Tyagi:** (Dehra Dun): The Prime Minister is known as *Pradhan Mantri*.

**Shri Khushwaqt Rai** (Kheri): The functions are not defined in the Constitution.

**Shri Hajarnavis:** Therefore, what we have to see is what is it that the Constitution prescribes. Having ascertained the principal functions, having ascertained the true meaning of the term specially used in the constitution, we try to find out whether such institutions as we are considering come under this category or not. That is one which has got to be determined.

Let us take a comparable question. I may refer hon. Members to article 79 of the Constitution. It says:

"There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People."

Now, in all our enactments and in daily administrative dealings the two Houses are known as the Lok Sabha and the Rajya Sabha respectively. Everyone knows what is meant. If the term 'Lok Sabha' is used, all of us know that it is the House of the People mentioned in article 79. Similarly, Rajya Sabha means the Council of States. So, the mere fact that the name has been changed or an equivalent in one of the Indian languages is being used. I submit, does not take it out of the

requirements of the Constitution. It does not become another institution altogether. In each case, it would be a question of fact to be determined, whether you have merely changed the name or whether you have created an entirely different body.

That is the groundwork of our further submissions to the House. Again, I go back to the position from which I started. If a person is a member of a district board, then, under article 171(3) he is entitled to vote.

The Antarim zilla parishads came into existence as a result of an ordinance which came into force on 1st May 1958. It will be admitted on all hands that local self-government is a subject which falls entirely within the State List and it is for the States to decide the composition and constitution of these instrumentalities. So, by that ordinance the district boards in U.P. which were functioning were dissolved and were supplemented by another body named the Antarim zilla parishads. This Act, Act No. 22 of 1958, was assented to by the Governor on 22nd August, 1958. This is not a body which has come into existence merely for the purpose of the election to the legislative council. It has been functioning for the last two years. What its impact would be on the legislative council there probably did not occur to the persons who framed the ordinance. Section 2 of this Act defines it. Section 4 says, "The State Government shall, with a view to facilitate the establishment of the zilla parishads for the co-ordinated administration of the affairs concerning economic and social planning and local self-government in the districts.....". So, it has got two functions: co-ordination of administration of economic and social planning is the first function. Secondly, it is entrusted with the local self-government in the district. It goes on to say; "..... to ensure smooth transaction, by notification published in the Official Gazette constitute Antarim Zilla Parishad in each district."

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This came into existence on the 1st May, 1958. All district boards in U.P. including the sub-district of Bardoi ceased to function. Then, we come to section 6 of this Act.

"Upon the issue of a notification constituting the Antarim Zilla Parishad for a district and notwithstanding anything in the U.P. District Boards Act, 1922, the consequences hereinafter set forth shall as from the date of such notification issue. (1) all powers, functions and duties of the District Board, or any committee thereof in respect of all matters including funds and property, whether under the enactment aforesaid or any other law, shall be vested in the Antarim Zilla Parishad, and shall for the purposes of the administration of the U.P. District Boards Act, 1922 and any other law, be exercised, performed and discharged by or under the authority of the Antarim Zilla parishad, which shall be deemed in law to be the District Board....."

This is quite explicit. Having said that all the powers of the district board shall be exercised by the antarim zilla parishads it goes on further to say that it shall be deemed to be a district board. We all know that the phrase 'deemed to be' had been admitted by the Privy Council, the House of Lords, the Supreme Court and so on. The best exposition of this phrase which the Supreme Court has also now adopted is found in a case in the House of Lords before Lord Asquith of Bishop Stone. I am quoting from memory and I hope my quotation is somewhere nears the actual words used: "If by these words we are bidden by the Legislature to imagine a certain thing to exist we will not allow your imagination to boggle and conclude that consequences which to you do not appear justified are not intended to result from that legal fiction."

If a legal fiction is created, you cannot say that in actual fact it is something different. You are probably aware, Sir, of the earlier case in the Privy Council where a point was taken in a case under the Income-Tax Act which required a certain person should be regarded as an agent. The argument was this. If I can show that a person cannot be an agent, then the phrase 'deemed to be' is not potent enough to create a legal fiction. But the Privy Council overruled that objection and said: 'No'. If the legislature tells you, though in fact he cannot be an agent, they will regard him as an agent. Now, under section 6, the Legislature bids us to do this. It says that it shall be deemed in law to be a district board.

Having given all powers, functions and duties to these antarim zilla parishads, it further goes on to say that it shall be deemed to be a district board.

**Shri Tyagi:** Sir, the Minister has also to reply. I am afraid there will be very little time left to the Members.

**Mr. Deputy-Speaker:** Hon. Members feel that this exposition might be given for their benefit.

**Shri Tyagi:** If he makes a detailed speech now, it is all very welcome and there are many points involved. But would you please extend the time? After our discussions, he has to answer. We have to move our amendments and they have to be answered.

**Mr. Deputy-Speaker:** If there is need, certainly we will consider.

**Shri Hajarnavis:** Section 6(7) says:

"In any enactment other than the U.P. District Boards Act of 1922 in force on the day immediately preceeding the appointed day in the district any rule, order

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or notification made or issued thereunder and in force on such date in the said district unless a different intention appears references to the district board of a district constituted under the U.P. District Board Act, 1922 shall be construed as references to the antarim zilla parishads."

Therefore, we have an enactment and in that enactment we are told that the words 'district board now constituted under the U.P. District Board Act' be scored out and in their place, the words 'antarim zilla parishads' should be substituted.

No other conclusion is possible in view of this particular Act. The conclusion is inescapable that the antarim dilla parishads which had been established under this Act of 1922 of 1958 are district boards within the meaning of the term used in the Constitution.

There is one small point: Section 4(2) says that the antarim zilla parishads shall consist of all the members of the district committee, five members elected by the electoral college consisting of all the persons who are members and the president of the erstwhile district boards and in the case of Varanasi District only two members elected by an electoral college.

Then it says:

"The Collector shall be the Adhyaksh of the Antarim Zila Parishad and when present shall preside at all meetings thereof."

I understand that some of the members of the District Planning Committee are officials. Sub-clause (4) says:

"The official members of the Antarim Zila Parishad shall have no right of vote at its meetings."

Now, we considered the question, because they have not been given

the right to vote can they or can they not be called members. We think clause 4 itself shows that they are members. It is not necessary for membership that all people should have a right to vote. But then it goes on further to say:

"The official members of the Antarim Zila Parishad shall have no right of vote at its meetings—anything contained in the U.P. District Boards Act, 1922 or any other law notwithstanding: Provided that the Adyaksh and the Upadhyaksh shall have a casting vote when presiding at meetings of the Antarim Zila Parishad."

Therefore, we start with the position that these are members, these members would normally have a right of vote, but except for the *Adhyaksha* and *Upadhyaksha* other members will not exercise their right of vote. But they are members.

**Shri S. M. Banerjee:** In the Parishad meeting.

**Shri Hajarnavis:** That being our reading, we came to the conclusion that the Constitution placed a duty upon us to include all these members who have been constituted by the U.P. Legislature as members of the antarim zilla parishad. So they cannot be excluded from the electoral roll for the Council, and we included them. That is how we read, that is our interpretation and unless it is either not agreed to by this House or authoritatively displaced, that is the basis on which we have acted.

Now, I might at this stage, Sir, tell the House that we were anxious to see if we could by interpreting the Act exclude the official members from the electoral roll for, after all, officials as a class are not to be brought into elections except as citizens. Officials as a class must in their own interest, for their own protection, must not be made subjects of an election controversy. I am not saying that they

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should not be there as citizens; the right of vote as a citizen they have in common with other members, but we found that in view of the peremptory direction of article 171(3)(a), if they were members they had to be included in the electoral roll and, therefore, we included.

**Mr. Deputy-Speaker:** Where they are members of a District Board and without any law being passed by this Parliament they entitle themselves to vote or they would be included in other local authorities in the State, is it that a law shall have to be passed describing them as on this district authority and describing the authority also as one of those who will be included under 171(3)(a)?

**Shri Hajarnavis:** I am grateful to you, Sir, for having given me this opportunity to explain this point, to which I thought I would refer when I deal with Andhra Pradesh. Coming back to 171(3)(a), you will see that so far as municipalities and district boards are concerned they are independent of an Act of Parliament. So, in fact, if it is a district board the Parliament has not to pass any law.

**Mr. Deputy-Speaker:** Then no law is required to put them on the list.

**Shri Hajarnavis:** But if it is neither a municipality nor a district board but other local authority then, of course, the Parliament must pass a law.

We considered the question of zilla parishad in Andhra Pradesh also. The name of the district local authority in Uttar Pradesh is identical with the name that is being now employed in Andhra Pradesh, but having seen the function of that particular body we came to the conclusion that it is not a district board, it is a local authority. The words "local authority" have been defined by the General Clauses Act. It says:

"'local authority' shall mean a municipal committee, district board, body of port commissioners

or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

Out of these local authorities, municipal committee and district board are already included by the Constitution, but so far as other local authorities are concerned—any other local authorities—they must be specified by Parliament.

Briefly examining the Andhra Pradesh Act we find that the zilla parishad is merely an organisation or an institution through which the planning funds are channelled. Except for supervision and control they do not have any executive function. That being so, we came to the conclusion that the zilla parishads in Andhra Pradesh are not district boards and, therefore, unless this particular law is passed, those members will not be entitled to vote.

**Shri Tangamani (Madurai):** They have powers to review the working of the panchayat unions and their reports are submitted to the State Assembly also.

**Shri Hajarnavis:** I am thankful to my hon. friend, but we could not with certainty come to the conclusion that the zilla parishad in Andhra Pradesh is a district board, as we were certain and as we were required to do by the peremptory words of the Uttar Pradesh Act. I am not suggesting that such an argument cannot be made, but so far as Andhra Pradesh is concerned we do not want to leave the matter in doubt or open to argument at all.

That, Sir, is the difference between the Uttar Pradesh zilla parishad and this parishad. Then, there is under clause (b) a provision for retrospective operation of the Act. I believe certain proceedings have been taken probably from 1st February 1960, but as this particular provision is merely declaratory, namely, that the

antarim zilla parishad has been regarded as district board from this date, even if this is omitted I am quite clear in my mind that the antarim zilla parishad in Uttar Pradesh must be regarded as a district board and we will have to give the members a right to vote.

That, Sir, is the Bill and I commend it to the acceptance of the House. I am informed that certain elections in Uttar Pradesh have already taken place, but there our position is that even without this amendment what is being done is in accordance with the Constitution. But so far as Andhra Pradesh is concerned the matter must rest, according to us, upon a law made by Parliament. Therefore, I am only anxious that this Bill should be enacted before we disperse.

Sir, I commend the motion to the House.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill further to amend the Representation of the People Act, 1950, be taken into consideration."

**Shri Tyagi:** Sir, I am sorry I have to restrain my feelings in this regard. But I am very sore about this Bill. I feel that while all the dynamism of the Government has remained directed towards the progress and prosperity of the country and its development, I am afraid that the Government are tending to forget that they too have to keep pace with the development that is being effected in the country at large. My comment on this Bill is too significant to say, namely, that the Government are fast tending to lose their initiative. Their initiative is drifting into inertia and their dynamism into despotism. That is all that I can say about the manner in which this Bill has been conceived.

I am opposed to some clauses of the Bill. I have heard the hon. Minister with rapt attention, and I am very

grateful to him for he has made my task easier by quoting the Constitution as well as some relevant clauses of the Bill which I was finding difficult to trace. As he has rightly said, article 171 of the Constitution definitely lays down, in sub-clause (3) (a), as follows:

"(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;"

So, it is not a question which the Chief Election Commissioner or the Law Ministry or the State Government may interpret. It is a question of legal specification made by means of law by Parliament. It is not the executive authority that would give interpretation as to whether such and such a name is only a change of name or that such and such a name shall be deemed to be a district board. Even if the name were changed, I am afraid according to the procedure of law, that name should have been recognised by Parliament by means of an Act. No local body can be included in the electorate of any constitutional organisation without the specific sanction of Parliament I therefore submit that this is not good enough to say that the "Antarim Zilla Parishads" is only a mere change of name. It is not the correct translation of the word, district board, just as the Prime Minister is known as Pradhan Mantri. We have to proceed according to law. My fears are, if the Law Ministry has approved of this change of functions as a mere change of name, we are drifting, and drifting and driving very dangerously into an abyss.

The respect for law is not expected to be maintained only by the citizens at large. But it must first be maintained here in Parliament. Once



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a law is made, all the Governments, the Election Commissioner, Auditor-General and all other authorities, must be subordinated to that law, and that law cannot be twisted to give convenience either to the State Government or the Central Government. If law is allowed to be stretched to cover the lapse of any authority, then, law loses all its respect inherited by it from this House and then nobody would respect it. Already enough disrespect has been created against law today. I wish the Government should learn this discipline of respecting Law.

Now, there was a law. Without effecting any change in the law, a by-election was held in Uttar Pradesh. The Antarim Zilla Parishad was allowed to vote because the Election Commission, in its wisdom, felt that, after consulting the Law Ministry, the Parishad is just the same as the District Board, that there was no material change as such in that name and that therefore it may be deemed to be a district board, and without getting any legal specification or authority from Parliament, the Election Commission exercised its authority, in my opinion, wrongly, to permit the by-election to be conducted and the voters voting without being legally authorised to do so.

My hon. friend has rightly said that he would not mind if retrospective effect was not given. I pray and submit, "do not give retrospective effect". Even for the by-elections the other day in which I had to vote, I am ashamed to confess that I knew that election was wrong in law. But I had to give my vote, though I never know what the Election Commissioner might decide, because I feel that we are in a place where law is not stationary. Diabolical ways of interpretation are coming in. I had to vote yesterday, in the elections to the Legislative Council of Uttar Pradesh which were held yesterday. I, as a member of the Antarim Zilla Parishad—I am not a member of the dis-

trict board—went there and exercised my vote. I know the whole thing was illegal.

On the 17th March, some other election was held in the Varanasi constituency. There also, the members of the Antarim Zilla Parishad have voted. It is to cover that lapse of the State Government, it is to cover that mistake committed by the Election Commissioner, it is to cover the mistake of Law Ministry, that Parliament today is required to give retrospective effect to the Bill. Therefore, to cover that lapse, so that the illegal election that was held may be covered with retrospective effect, this law is sought to be made. And there is nobody to question them.

Now, I am not very much concerned with what has happened. But I am more concerned with maintenance of the respect that law must command in the land today. It is for this reason that we, as guardians of law and as guardians of the rights of this House, must be very careful. I feel that this is not a matter of any party policy. This Bill more or less issues from the Constitution itself. Therefore, I deem this Bill to be semi-constitutional, and therefore, all parties must feel concerned about it. It is not a party question as such, in my opinion. I request the Law Minister to see to it that it is not decided by this Parliament on the basis of party power or party vote. I see there is no Whip here today. This question must be dispassionately taken into consideration on its principles and one should—and each Member should—exercise his own conscience and right to see whether it is legitimate for him to vote in favour of this Bill.

**Shri Braj Raj Singh:** So, the hon. Member is not going to vote according to the wishes of his party!

**Shri Tyagi:** I am not going to be guided like that. The Whip cannot compel me to vote against my conscience. I am wedded to the

party so long as the party policy is concerned. But this is a matter of Constitution; this is not a matter of party policy.

Then I come to the Representation of the People Act. The Constitution says that only members of such bodies as are mentioned in the Constitution would be entitled to vote, that is, members of such local bodies that are specified by Parliament by means of an Act. So, it is quite true that we made a provision in the Representation of the People Act. Section 27(2) of the Representation of the People Act says:

"(2) For the purpose of elections to the Legislative Council of a State in any local authorities' constituency, the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the fourth Schedule".

In the fourth schedule, we specify, in the case of Uttar Pradesh. The municipalities, District Boards, Cantonment boards, small town Committees, Notified Area Committees and so on. So, these are the only bodies which are entitled to vote legally, because these are the only organisations which we have specified in law. We have specified no other body under the law. Therefore, whatever be the names, mere interpretations cannot be deemed to be specifications or specified by law. The interpretations of the Law Ministry in this case are not a specification by means of law. What they have interpreted is not specified in law made by Parliament. And none of these authorities can carry the authority of Parliament in this regard.

Then comes the question of the Constitution. My hon. friend referred to the definition of a local government. Local government is partially defined, so to say, in item 5 of List II of the Seventh Schedule to the

Constitution. Local self-government has been defined there.

It says:

"5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

14 hrs.

In the light of this little definition, we have to see whether this organisation the Zilla Parishad comes under this list or not. Even if it comes, it has to get recognised as such by this Parliament. So long as that is not recognised, this body is not authorised to vote.

I come to the Constitution of the district board. I am talking of U.P. because I am acquainted with it. Section 4(2) of the District Board Act of 1922 says that the board shall consist of elected members and such persons as may be co-opted by the elected members and the President of the Board. This was the organisation to which the authority was given by the Parliament. When we gave this authority, district board was a part of local self-government.

I come to the Antaram Zila Parishad. I am sorry most of the Members are out for lunch and at the time of voting many others might come. . . .

**Shri Braj Raj Singh:** Those who are interested are here.

**Shri Tyagi:** The list of the members of the Antaram Zila Parishad is as follows: District Magistrate, District Officer, District Supply Officer, District Live-stock Officer, District Health Officer, District Inspector of Schools, Sub-divisional Officer, Doon Canals, Assistant Engineer, Swayatta Shashan, Executive Engineer, P.W.D., Provincial Division, District Employment Officer, Civil Surgeon, Divisional

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Forest Officer, Chakrata, Divisional Forest Officer, Dehra Dun, Sub-divisional Officer, Dehra Dun, Sub-divisional Officer, Mussoorie, Sub-divisional Officer, Chakrata, District Industries Officer, Information Officer, Agriculture Officer, District Co-operative Officer, Superintendent of Police, Assistant Panchayat Raj Officer, District Harijan Welfare Officer, Assistant Social Welfare Officer, District Organiser, Prantiya Rakshak Dal, District Organiser, Women Social Welfare Officer, Assistant Engineer, Tube-wells, Dehra Dun, Retired Chief Engineer (by name), Assistant Engineer, Tube-wells, Saharanpur, and Executive Engineer, Yamuna Construction Division. These are the 30 officials who are members of the Anterim Zila Parishad, out of 70 members in the list. In the list of 70, there are 40 non-official names of Shri Mahavir Tyagi and the rest. This is the constitution of the Anterim Zila Parishad.

श्री मूलबंद दुबे (फर्रुखाबाद) : नान-ऑफिशियल भी बतला दीजिए। वह थोड़े ही लिये गए हैं।

Shri Tyagi Non-officials are Members of Lok Sabha, Members of Rajya Sabha, Members of the Legislative Assembly and there are some non-nominated members. Five or six of them are elected by the erstwhile district boards. The district board had been dissolved and we wanted five more members as their elected representatives. So, ex-members of the district boards were entitled to send representatives to this Anterim Zila Parishad.

The village panchayats also elected a few representatives. Non-officials are about 40 and the rest 30 are officials. The constitution has also been changed, but my friend says it is only a change of name. According to the interpretation given by the Law Ministry, it is only a change of name . . .

Shri Hajarnavis: Yes.

Shri Tyagi: He still says yes. He is a very eminent lawyer and you are one, Sir. Unfortunately, I am surrounded all round by lawyers; I am only a village barrister. But I have been in the company of eminent lawyers .

Mr. Deputy-Speaker: If he feels that he should be relieved of this unhappy environment, I can help him.

Shri Tyagi: I beg your pardon. I know they will help me. On these matters, the judgment of High Courts must be taken as undisputed, if the Law Ministry permits it, because very soon perhaps the law courts and High Courts might also lose their position. That is what I am seeing with my eyes. This is a judgment given by the Allahabad High Court yesterday. I am reading it:

"In his judgment, his Lordship granted that it was clear from the A.Z.P. Act that the two bodies were quite distinct. District boards ceased to exist under section 3 of the Act, while by virtue of section 4, a new body consisting of members of the planning committee was formed."

So, according to the judgment of the High Court, given as late as yesterday, they say it is a distinct body.

Shri Hajarnavis: May I seek a clarification from my hon. friend? Was the other side noticed in the judgment or was it merely an observation of the High Court while dismissing the application *in limine*?

Shri Tyagi: My only contention is that perhaps the judge of the High Court has passed his B.A., LL.B. and he knows something of law.

Mr. Deputy-Speaker: That was not the question. The hon. Member is reading from the report of the

judgement and the hon. Minister wants to know whether it was a judgement given after hearing both the sides or only an application by one side and an *ex parte* opinion expressed or whatever it might be.

**Shri Tyagi:** I do not know. I am reading it from the Press report. Even if it is one-sided, when a judge writes, he writes with a sense of responsibility. He is not any official of the Law Ministry or any such thing; he is a judge and therefore, his interpretation must be given some value. I do not know what my friend thinks about it, but I attribute quite a high value to the verdict of the High Court.

**Mr. Deputy-Speaker:** The hon. Deputy Minister also attaches as much value to the judgment. He only wanted to know this as a matter of fact, because it is for the Government to see whether they have to do anything about this.

**Shri Hajarnavis:** If there is a judgment binding on us, nothing will give us greater pleasure than to give effect to that judgment.

**Shri Tyagi:** I am very happy to know that. But when he says, "binding on him", does he mean to say that a summons should be served on him? Anything given by some high authority must morally bind us.

**Mr. Deputy-Speaker:** The hon. Member might proceed with his speech.

**Shri Tyagi:** I was reading from the judgment. It says further:

"His Lordship, however, observed that he could not intervene in the present situation, for under the provisions of article 329 of the Constitution, no court could interfere with a matter relating to allotment of seats to such constituencies made under article 327 or 328. Besides, it was laid down in the Constitution that no election

to either House of the Parliament or to any State Legislature could be called in question except by an election petition, presented to such authority and in such manner as provided for by or under a law made by the appropriate legislature."

This goes to support my argument that even judges were in doubt in regard to the oneness of the two organisations, Antarim Zila Parishads and the district boards.

The district board, as I have already said, consists of non-official members. When we inserted district boards in the Schedule we were quite conscious of the fact that these are non-official bodies whom we are giving the authority to elect to the Legislative Councils. Now the body is changed.

I do not know whether the hon. Minister wanted to bring me to his line of argument but I drew inspiration from him. He has quoted one section, sub-section 4 of section 4, that the official members of the Antarim Zila Parishad have no right.....

**Shri Hajarnavis:** I may clarify the position that I am not here arguing as if for a party. I wanted to convince the House that every aspect of the question, both pros and cons, were considered by us and then we came to the conclusion. Now, we do not claim that we are infallible. It is quite possible that some authoritative decision may prove that our interpretation is erroneous. It is only when we are convinced that our interpretation is wrong, we will change it. Till then we stick to it.

**Shri Tyagi:** I want to request him not to get annoyed, because I do not know the etiquettes of the courts of law. I did not mean anything. It is a simple criticism. The Act says that the official members of the Antarim Zila Parishad shall have no right of vote at its meetings "on

[Shri Tyagi]

anything contained in the Uttar Pradesh District Boards Act". They are members, no doubt, but they have no right to vote on any function of the district board, which means to say that they are members only to guide the non-officials, to discuss with them and to tell them what the position is.

I must confess that I am also responsible to having brought the official element with the picture, because my original scheme in U.P. was that in each district we may have a sort of Parliament. I felt, perhaps, this membership will not be a permanent thing with us, and so I would spend my breath in the local Parliament. I wanted every district to have a Parliament where all the officers representing various departments may be available, where non-officials can put questions to the officials, so that there may be responsible administration in the districts. That was my original scheme. That way, the non-officials would remain fully posted up with the policies carried out by the officials and the officials also get from day to day benefit of their reactions of their activities and their policies. But they were given no right of vote.

In Uttar Pradesh they will have no right to vote "notwithstanding anything contained in the Uttar Pradesh District Boards Act or any other law". So even if you pass any law today, they will not be authorised, according to this Act to vote. That is my interpretation, though it may be far-fetched. They have prevented the official members from exercising their vote, either according to the district board law or according to any other law, which means to say that even if you allow them to vote by an Act of Parliament, this Act will not allow them to do so.

**Mr. Deputy-Speaker:** That cannot be the interpretation.

**Shri Tyagi:** I am driving too first, perhaps. But the words used are "notwithstanding any other law", whether State or parliamentary. So,

they were not authorised to vote even for the purpose of Councils' elections despite their district board membership.

I have all along been talking in the tone of a lawyer. Now let me talk as a politician. My feeling is that this is a utterly wrong concept and I will say that it is a very big blunder that these Ministers are committing today. What has happened to them? I thought they would be bright enough to know how things happen. I have read out to you a whole list. Luckily, the officials of my constituency are good enough. But supposing the Communists had some influence over the officials and half of them would go with the Communists, and half with the Jan Sangh. Anybody could influence them. So, if they vote like this, then the officials will be divided between themselves and they will not be one bloc or unit. They will be either communist supporters or Congress supporters. At present nobody can be even a Congress supporter, because officials are above politics. I do not know from which blessed brain this idea has come into the Treasury Benches. If we just put them on the forum of politicians, dragging one officer to one side and the other officer to the other side—because it will be free voting and in a house of 30, 40 or 50 members it is easy to find out who votes for what—the officers will lose their position and status in the district, because they will be criticised by one party or the other, and their activities, their administrative actions will smell of party bias and the administration will go to dogs. I think it is my patriotic duty to oppose the right of vote to official members to the Anterim Zila Parishad.

What are we trying to achieve by that. I cannot understand. It is trying to be very cheap. Because the State Government once committed a blunder, because the Election Commission has said it is regular, and elections have been held, therefore,

we are coming forward now, as in the Mugal days every Nawab had to be accommodated, this Parliament must be made to accommodate the lapses and condone the delays everywhere. What is this? I am very sorry to say this.

**Mr. Deputy-Speaker:** He has the right to hold his own opinion and have his own interpretations, but he must allow others also to have their opinions, even if they differ from him.

**Shri Tyagi:** I know that other hon. Members are also anxious to speak. To cover the lapses of others is not for this Parliament to do. Anybody who has committed a lapse must face the nation, must surrender, must resign and go as inefficient, whomsoever he is it does not matter. This Parliament is not to cover your blunders, your mistakes or your lapses. They have committed a lapse of constitutional propriety. They allowed the elections to be held on the 17th of March last and now they want Parliament to legalise the illegal elections or cover them by giving the Bill the retrospective effect. That is to say, this Anterim Zila Parishad shall be deemed to have been signified by Parliament not today but on the 1st of February so that all the lapses committed in respect thereof in my State may be covered by Parliament and Parliament must come to their rescue. I must say immediately that it is something in bad taste. If they have done something wrong, they must suffer. We are not doing this because the Election Commission wanted it or because the High Court says that it is a different body but because we want to cover up a serious lapse on the part of the Government. So, I oppose this strongly. Parliament should not be brought down to such a low level as to legalise an illegal Act, specially when it pertains to the constitutional structure. They must respect the law of Parliament. They must never have the courage to come before Parliament and ask to give retrospective effect or recognition for their illegal election. An

illegal election cannot be deemed to be legal because we authorise it.

If in the opinion of my friend this Anterim Zila Parishad is a legally recognized body, why then give retrospective effect to its recognition? I could understand it if they had said that Anterim Zila Parishad should be deemed to have come into existence from the very beginning of its coming into force. Why have it only from the 1st of February and say to the people "look here, they cover this". From the very inception, from the very date on which these Anterim Zila Parishads came into existence, from that very date they could be recognised to be in the position of a district board. But no; they want to have it only from the 1st February so that two or three elections held in the mean time may be covered. This is childish. Therefore I vehemently oppose this. There are quite a few other points also. I will speak about them when I move my amendments.

**श्री रामम् (नरनापुर) :** उपाध्यक्ष महोदय, अभी माननीय सदस्य ने रिप्रेजेंटेशन आफ दि पीपल्स (अमेन्डमेंट) एक्ट के चौथे शेड्यूल के सम्बन्ध में जो भाषण दिया वह सभी मेम्बरो के सामने है। दूसरे अमेन्डमेंट्स तो टेक्निकल डिफिकल्टीज को दूर करने के लिये रखे गये हैं। इसमें फाल्स स्टेटमेंट देने के बारे में जो सजा रखी गई है उस पर किसी को मतभेद नहीं होगा और हम भी उस को सपोर्ट करते हैं। लेकिन इस अमेन्डमेंट को लाने से और पूरी अन्तरिम जिला परिषद् के उसमें आने से क्या नतीजा होगा इस को बिना पूरी तरह से खयाल में रखे हुए, जल्दबाजी से यह अमेन्डमेंट लाया गया है, ऐसा मालूम पड़ता है क्योंकि जिला परिषद् को आप डिबस्ट्रक्ट बोर्ड्स की जगह पर जैसे के तैसे रसद देना चाहते हैं। जैसा अभी माननीय स्य ने बतलाया, उसके फंक्शन में और उस के निर्माण में बहुत फर्क होता है। सिर्फ इस शब्द को ही बदल देने में काम नहीं चलेगा। इस

[श्री रामम्]

सम्बन्ध में मैं एक बात सदन के सामने रखना चाहता हूँ।

अभी श्री त्यागी ने अफसरों के बारे में बातलाया। इतना ही नहीं, जो एम० एल० एज० अन्तरिम जिला परिषद् के मेम्बर बनते हैं वे एम० एन० एज० की कंसिटिटुएन्सी से कौंसिल के मेम्बर को चुनते हैं। अलग कांस्टिटुएन्सी है जहाँ से वे लेजिस्लेटिव कौंसिल के लिये मेम्बर चुनते हैं। फिर एम० एन० ए० होने के नाते वे जिला परिषद् में मेम्बर बनते हैं। एम० एन० ए० के अख्यार से वे परिषद् के मेम्बर बनते हैं, फिर यहां पर एक कौंसिल मेम्बर को चुनने के लिये एम० एन० एस० भी वोट देते हैं। इसका भी खयाल आप को रखना चाहिये। एक एम० एन० ए० कांस्टिटुएन्सी से एक कौंसिल मेम्बर को मत देता है। फिर जिला परिषद् का मेम्बर बना कर उसे एक कौंसिल मेम्बर को चुनने के लिये वोटर्स लिस्ट में लाते हैं।

**श्री० रणवीर सिंह (रोहतक) :** टीचर हो तो एक और वोट दे सकता है।

**श्री रामम् :** टीचर की बात यहां नहीं है। टीचर हो, प्रेजुएट हो, यह दूसरी बात है। लेकिन एक ही एम० एन० ए० की हैसियत से दो जगह पर चुनने का अख्यार देना मेरे खयाल में बहुत गलत है। अवश्य ही इससे आगे चल कर बड़ा नुकसान होगा। एक्स आफिशाल मेम्बर को, कलेक्टर हो, इंजोनियर हो, ऐसे लोगों को मत का हक देने से एडमिनिस्ट्रेशन बहुत खराब हो जायेगा। इतना ही नहीं, ऐसी हालत में इतने लोगों को वोट देने के कारण मजबूर होकर प्रॉविंशल असेम्बली को अमेंडमेंट करना पड़ेगा। इस तरह की बात का भी खतरा है। इस लिये मेरा खयाल है कि अनऑफिशाल मेम्बर्स को एलेक्टोरल रोल्स से हटाना चाहिये। सिर्फ एलेक्टड मेम्बर्स को जो परिषदों में पंचायतों से चुने गये हैं उनको ही वोट का हक देना

चाहिये। इस अमेंडमेंट को इतनी जल्दबाजी में लाने से पार्लियामेंट की प्रेस्टिज का हो सवाल नहीं है, दिक्कत भी आ रही है। एक एम० एन० ए० को दशावतार, एक अवतार एक को चुने, दूसरा दूसरे को चुने ऐसे नहीं होना चाहिये। दशावतार जैसा हक हम एम० एन० एज० को दे रहे हैं। कुछ लोग तो लेजिस्लेटिव कौंसिल को जरूरत हो नहीं समझते हैं। फुजून कुछ लोगों का जो कि अनएम्प्लायड है, एम्प्लायमेंट देने के लिये इस चीज को रक्खा जा रहा है। इस समय हमें पैसे की बहुत कमी है। इस तरह से कौंसिलों में एम० एन० ए० चारों ओर से लोगों को चुन कर वहां भेजें, यह बहुत गलत बात है। मेरी बिजती है कि ला मिनिस्टर साहब इस पर जरूर सोचें। वह इस बिल को विदड़ा कर लें और दूसरा अमेंडिंग बिल ले आयें।

**श्री खुशबख्त राय :** माननीय उपाध्यक्ष महोदय पिछले शुक्रवार को जब इस विधेयक पर विचार करने के लिये मैंने समय बढाने की प्रार्थना की थी, उस समय मुझ को यह ध्यान नहीं था कि हमारे कांग्रेस के कुछ साथी भी ऐसे हैं जो कि इस विधेयक के विरुद्ध हैं। आज अपने मित्र श्री त्यागी का भाषण सुन कर मुझे बड़ा ही सन्तोष हुआ, और सन्तोष इस लिये हुआ कि कम से कम कुछ लोग कांग्रेस में अब भी ऐसे हैं जो अन्याय को बर्दाश्त नहीं कर सकते।

**उपाध्यक्ष महोदय :** क्या आप का कहना यह है कि बाकी लोग अन्याय को बर्दाश्त कर सकते हैं ?

**श्री खुशबख्त राय :** मेरा यह कहना नहीं है, मैं तो सिर्फ यही कह रहा था कि कुछ लोग ऐसे हैं जो अन्याय को बर्दाश्त नहीं कर सकते हैं।

**श्री० रणवीर सिंह :** इम्फरेंस क्या है ?

श्री खुशवक्त राय : मैं और कुछ नहीं कहना चाहता, और आपके लिये तो कुछ भी नहीं कह रहा हूँ ।

**Shri Hajarnavis:** There are such persons in the Opposition also, like Shri Khushwaqt Rai.

श्री खुशवक्त राय : जहाँ तक इस विधेयक का सम्बन्ध है, माननीय मन्त्री जी ने संविधान की धारा १७१ के द्वारा यह बतलाने का प्रयत्न किया है कि उत्तर प्रदेश में जो अन्तरिम जिला परिषदें बनी हैं, वे इसी प्रकार की हैं ।

They are to be deemed in law as district boards.

मैं बहुत ही नम्रता से अपने मन्त्री जी से यह कहना चाहता हूँ कि मन्त्री जी ने जो बहस इस सदन में की है वह सारी बहस इस बात के वास्ते है कि अमेंडमेंट क्यों आया । अगर उनका कहना ठीक है कि

Interim Zila Parishads are to be deemed in law to be district boards.

तो फिर इस अमेंडमेंट की क्या आवश्यकता है, यह मेरी समझ में नहीं आता । मुझे इस बात का बड़ा दुःख है कि जिम भावना को लेकर कांस्टिट्यूट असेम्बली ने इस धारा १७१ को पास किया था, जिस भावना को लेकर यह धारा बनाई गई थी, उस भावना को हमारे मन्त्री जी ने और उनके मन्त्रालय ने बहुत ही अनादर किया है । आप देखिये कि जब संविधान सभा बैठी हुई थी तब यह जो धारा १७१ है, जो कि ड्राफ्ट कांस्टिट्यूशन की धारा १५० थी, उस पर वहाँ पर तीन दिन विचार हुआ, अलग अलग दिन । पहली दफा जब बहस के लिये आई तो कहा गया कि आज इस पर बहस नहीं होनी चाहिये, फिर उसके बाद दूसरे दिन उस पर बहस हुई तो फिर कहा गया कि यह भी ठीक नहीं है । तीसरे दिन बहस हुई, तब कहीं यह पास हुई । इसके

पीछे भावना क्या थी ? भावना सिर्फ यह थी कि लेजिस्लेटिव कौंसिलों के जो चुनाव हों, उन चुनावों में वोट देने वाले वही सज्जन होने चाहियें जो खुद चुन कर आय हों ।

हम जानते हैं कि इन्डाइरेक्ट एलेक्शन से हमारी कौंसिल बनती है, लेकिन जब हम ने कांस्टिट्यूशन बनाया तो इस बात का खयाल रक्खा कि जो हमारा इन्डाइरेक्ट एलेक्शन हो वह भी उन लोगों के ही जरिय हो जो खुद एलेक्ट होकर आते हैं । मैं बड़ी नम्रता के साथ कहना चाहता हूँ कि उत्तर प्रदेश सरकार को जब मालूम हुआ कि जो लोकल, बाडीज हैं, डिस्ट्रिक्ट और म्यूनिसिपल बोर्ड्स नोटिफाइड एरियाज, टाउन एरियाज वगैरह हैं, उनमें उसका बहुमत नहीं है तो उसने सोचा कि अन्तरिम जिला परिषद् में जो सारे मेम्बर हों उनमें सरकारी अफसर आ जायें तो उसकी जीत जरूर हो जायगी । जब इस बारे में उत्तर प्रदेश की सरकार ने लिखा तो नहीं मालूम एलेक्शन कमीशन ने कैसे इस बात को मान लिया । मुझे एलेक्शन कमीशन की निष्पक्षता में अविश्वास नहीं है, लेकिन मैं जानता हूँ कि इस बात में उन्होंने धोखा खाया । उत्तर प्रदेश की सरकार को प्रसन्न करने के लिये उन्होंने यह बात मान ली कि अन्तरिम जिला परिषद् के सारे मेम्बर कौंसिलों के लिये वोटर हो जायें । आप देखिय कि इस विधेयक के स्टेटमेंट आफ आब्जैक्ट्स एण्ड रीजन्स में लिखा है :

"The amendment in relation to Uttar Pradesh is proposed to be given retrospective effect from the 1st February, 1960 as the members of the Antarim Zilla Parishads have already been included in the electoral rolls for local authorities constituencies, as they had to be based on the view that the Antarim Zilla Parishads are district boards to all intents and purposes."

मेरा यह निवेदन है कि उत्तर प्रदेश में अन्तरिम जिला परिषद् को डिस्ट्रिक्ट बोर्ड मान कर जो



## [श्री खुशवक्त राय]

उनके मेम्बरों को वोट देने का अधिकार दिया गया है वह संविधान के खिलाफ है। धारा १७१ को हमारे मन्त्री जी ने पढ़ा है, उसमें दिया हुआ है :

"as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;"

उसके बाद ही यह रिप्रेजेंटेशन आफ पीपल्स एक्ट बना। उसमें जो नाम आये हैं वह हैं म्युनिसिपैलिटी, डिस्ट्रिक्ट बोर्ड, नोटिफाइड एरिया, कैंटोनमेंट बोर्ड। पर उसमें अन्तरिम जिला परिषद् नहीं दिया गया है। मेरा कहना है कि यह अन्तरिम जिला परिषद् डिस्ट्रिक्ट बोर्ड नहीं हैं। त्यागी जी ने बहुत अच्छी तरहसे बतला दिया है कि जो अन्तरिम जिला परिषद् है वह डिस्ट्रिक्ट बोर्ड नहीं है और उसके कई कारण हैं। मैं ज्यादा विस्तार में नहीं जाऊंगा, केवल इसके बारे में मैं दो तीन बातें कह देना चाहता हूं। पहली बात तो यह है कि इस अन्तरिम जिला परिषद् का कम्पोजीशन डिस्ट्रिक्ट बोर्ड से भिन्न है, दूसरे उसके अधिकार भिन्न हैं और तीसरे उसके जो मेम्बरान हैं वे चुन कर नहीं आते हैं। इसको डिस्ट्रिक्ट बोर्ड के अधिकार हैं और जो पहले प्लानिंग कमेटी हुआ करती थी उसके भी इसको अधिकार हैं। उत्तर प्रदेश में पहले प्लानिंग कमेटी होती थी। उसके अधिकार भी अब इस अन्तरिम जिला परिषद् को हैं। यह अधिकार डिस्ट्रिक्ट बोर्ड को नहीं थे। तो इस प्रकार तीन बातों में ये अन्तरिम जिला परिषदें जिला बोर्ड से भिन्न हैं। और जब अन्तरिम जिला परिषद् डिस्ट्रिक्ट बोर्ड नहीं हैं तो इलेक्शन कमीशन को इन के मेम्बरों को वोट देने का अधिकार नहीं देना चाहिये था। उसको ऐसा करने का अधिकार नहीं था। मुझे मालूम है कि इस बारे में उत्तर प्रदेश विधान सभा

के विरोधी दल के नेता ने इलेक्शन कमीशन को रिप्रेजेंटेशन भी दिया है और उस रिप्रेजेंटेशन में उन्होंने लिखा है कि इलेक्शन कमीशन ने यह गलत कार्रवाई की है। लेकिन जब आदमी एक गलती कर लेता है तो उसको जस्टीफाई करने की कोशिश करता है और वही आज हो रहा है। इस संशोधन विधेयक को लाकर इलेक्शन कमीशन की गलती को जस्टीफाई किया जा रहा है। मैं तो कहता हूं कि यह डिस्ट्रिक्ट बोर्ड की परिभाषा में आता नहीं और न किसी दूसरे लोकल बोर्ड की परिभाषा में आता है। यह भी कहा गया है :

"such other local authorities in the State as Parliament may by law specify."

तो पहले तो इस तरह का कोई ला नहीं था। आज हमारे सामने यह विधेयक आया है। इसके बाद बन जाने के बाद तो इस प्रकार का अधिकार हो जाएगा। लेकिन ऐसा कानून बनने के पहले इलेक्शन कमीशन ने ऐसा कैसे कर दिया कि जिन लोगों को वोट का अधिकार नहीं था उनको वोट का अधिकार दे दिया। उत्तर प्रदेश की हाईकोर्ट के सामने यह मामला है जिसमें, जैसा कि त्यागी जी ने बतलाया, वह प्रार्थना की गयी थी कि इलेक्शन रोक दिया जाए। लेकिन हम सभी जानते हैं कि संविधान की धारा ३२६ के अनुसार इलेक्शन के मामले में हाईकोर्ट को पड़ने का अधिकार नहीं है। यह मामला इलेक्शन ट्रिब्यूनल के सामने जायगा। लेकिन मैं तो यह कहना चाहता हूं कि, जैसा त्यागी जी ने कहा, यह एक भद्दी गलती हो गयी और इसको जस्टीफाई करने के लिये यह विधेयक लाया गया है। मैं तो यह कहता हूं कि जहां तक कांस्टीट्यूशन का सवाल है उसके मुताबिक तो इलेक्शन कमीशन को यह अधिकार था ही नहीं कि वह अन्तरिम जिला परिषद् के उन मेम्बरों को वोट का अधिकार देता क्योंकि उनको डिस्ट्रिक्ट बोर्ड के मेम्बरों के अधिकार नहीं हैं।

मुझे तो ऐसा मालूम होता है कि जिस समय इलेक्शन कमीशन ने अन्तरिम जिला परिषद् के मेम्बरों को यह अधिकार दिया उस समय इलेक्शन कमीशन के सामने जिला परिषद् एकट नहीं था। मुझे लगता है कि उस समय उनके सामने आर्टीनेस था क्योंकि वह यह आर्टीनेस पहली मई को जारी हुआ था और अन्तरिम जिला परिषद् एकट पहली अगस्त १९५८ को बना था। पहले आर्टीनेस बना था। एक में यह दिया हुआ है :

"Official Members of the Anta-rim Zilla Parishad shall have no right of vote."

इसी को त्यागी जी ने और मंत्री जी ने पढ़ा था। यह धारा आर्टीनेस में नहीं थी। जिस समय उत्तर प्रदेश असेम्बली में बहस हुई तो वहां के लोकल सेल्फ गवर्नमेंट के मंत्री, 'श्री विचित्र नारायण शर्मा', ने कहा था :

"लेकिन हमारा ऐसा विचार है कि उनका वोट देना तो अधिक जनहित में न होगा।"

आगे चल कर उन्होंने यह भी कहा :

"अब जैसे ही हमें इस सदन में आने का मौका मिला हमने प्राविजन कर दिया कि वह अब वोट न दे सकेंगे।"

इससे यह बिल्कुल स्पष्ट है कि स्वायत्त शासन के मंत्री जी ने पूरी बहस के बाद यह कहा कि जो आफिशियल मेम्बरान होंगे उनको किसी प्रकार का वोट का अधिकार नहीं देना चाहिये। आज जो जिले में शासन के उच्च अधिकारीगण हैं वह इसमें शामिल होंगे। इसके अलावा प्लानिंग कमेटी के मेम्बर भी शामिल होंगे, जिनकी लिस्ट इस प्रकार है :

"All Sub-Divisional Officers, District Supply Officer, District Animal Husbandary Officer, District Employment Officer, District Level Officers of Public

Health and Education Departments, Superior Officers of Irrigation, Public Works and Hydel Divisions and Sub-Divisions, as may be existing in the district, Civil Surgeon, Executive Engineer, Local Self-Government (Engineering) Department,.... the Assistant Engineer connected with Plans, Principal of the Agricultural College, in districts where there is Forest Department. District Level Officers of the Forest Department, District Level Officers, if any, of the Industries Department, in the District, Superintendent of Police, District Agriculture Officer, District Co-operative Officer, District Organiser, P.R.D. District Information Officer and Assistant District Panchayat Officer."

यह लिस्ट में प्लानिंग कमेटी के मुताल्लिक नोटीफिकेशन में से पढ़ रहा हूं। तो मेरा कहना यह है कि जिस अन्तरिम जिला परिषद् में इस तरह के अधिकारी गण शामिल हों उसको राइट आफ वोट दे दिया जाएगा तो उससे तो हानि ही होगी। जिले का शासन उनके हाथ में है। और यह तो सभी को मालूम है कि आज के दिन हर जिले में लोग भिन्न पार्टियों में बंटे हुए हैं। सभी जगह कांग्रेस पार्टी है, हमारी पार्टी है, सोशलिस्ट पार्टी है और भी पार्टियां हैं।

**श्री त्यागी :** यह कांग्रेस पार्टी ही है जो कि आफिसर्स की फ्रीडम में दखल नहीं देती। जब आपकी पार्टी पावर में आएगी तो उनसे जबरदस्ती वोट डलवाएगी।

**श्री खुशबक्त राय :** हम तो पावर में नहीं हैं। लेकिन मुझे चुनाव का हाल मालूम है। मैं भी उस चुनाव में हिस्सा लेने गया था क्योंकि मैं बहसियत संसद् के मेम्बर के जिले अन्तरिम परिषद् का सदस्य हूं। मैं भी वोट देने गया था। और मैंने देखा कि जो अफसरान आए उन्होंने कांग्रेस को ही वोट दिया।

श्री त्यागी : उन्होंने इंडीवीजुअल मैरिट पर वोट दिया होगा पार्टी के दबाव से नहीं।

उपाध्यक्ष महोदय : आप यह तो नहीं कहते कि उनको कांग्रेस पार्टी ने मजबूर किया था कि किसी खास कैंडिडेट को वोट दें।

श्री खुशवक्त राय : जो भी कुछ हो, लेकिन मैं यह जानता हूँ कि जितने आफिसर्स आये थे उन्होंने कांग्रेस को ही वोट दिया था।

श्री रघुनाथ सिंह (वाराणसी) : बोटिंग तो सीक्रेट होता है, आपको यह पता कैसे चल गया ? मालूम होता है कि आपका सीक्रेट आरगेनाइजेशन बहुत अच्छा है।

श्री खुशवक्त राय : यह तो क्या है, हम तो आपका भी वोट जान लेते हैं।

उपाध्यक्ष महोदय : माननीय सदस्य अपनी स्पीच जारी रखें।

श्री खुशवक्त राय : तो मेरा कहना यह है कि इससे बहुत नुकसान पहुँचेगा। आज के दिन हम लोग डिस्ट्रिक्ट मजिस्ट्रेट के पास जाते हैं तो वह हमारी बात सुनता है। इसी तरह से दूसरी पार्टियों के लोग भी उसके पास जाते हैं। लेकिन जब हम को मालूम हो जाएगा कि उसका सम्बन्ध किसी एक पार्टी, जैसे कांग्रेस पार्टी, के साथ जुड़ गया है तो हमको उसके पास जाने में हिचक मालूम होगी। इसलिये मैं समझता हूँ, जैसा कि हमारे साथी श्री त्यागी जी ने कहा है, कि इस विधेयक को वापस लिया जाना चाहिये।

इस बात को देखते हुए कि इलेक्शन कमीशन ने गलत बात की है, तो उस गलत बात के जस्टिफिकेशन में एक कानून बनाया जाय और इस पार्लिमेंट से कहा जाय कि तुम भी एक गलत बात करो—चूँकि हमारे मन्त्रालय ने या हमारे इलेक्शन कमीशन ने यह गलत बात की है, इसलिये हम सब लोग अपनी नाक कटा डालें यह बहुत गलत बात है। इस स्थिति में माननीय

मन्त्री जी के लिये मुनासिब यही है कि वह इस विधेयक को वापस ले लें।

**Shri Ranga (Tenali):** This question need not be discussed on the plane of party-politics or on the consideration whether local governments are interested this way or that way in influencing the vote or whether the Election Commission is partial or impartial. It has got to be considered from the viewpoint, and I would like to do so, of the interests of the local boards.

When we are making a provision in the Representation of the People Act, the idea was that we expected the members of the local boards to be elected, so that they could be given an opportunity of electing a particular number of members to the Upper Houses. But it never occurred to us that these local boards would come to be loaded with such a large percentage of persons who would become members because of their *ex-officio* capacity, as Members of this House or as Members of the local legislatures. But, unfortunately, it has come to be this that Members of Parliament and Members of local legislatures also have come to be treated as *ex-officio* members of the zilla parishads, so much so in many districts more than one-third of the strength is comprised of these people. By any stretch of imagination, these people, these *ex-officio* members, cannot be considered to be the direct genuine representatives of the local panchayats, and their samities at a higher stage and eventually of the zilla parishads. Therefore, it is necessary, I think, that Government should give serious consideration to this point whether it would be in the interests of the local boards as such and also in the interests of providing genuine and direct representation to the village panchayats and samities if these *ex-officio* members should also be treated on a par with the direct representatives of the samities and be given this authority to vote and to exercise that

vote in the election to the Upper Houses in the States.

Speaking for myself, I am very much opposed to this. I think there is very much in favour of the criticism made by my hon. friend Shri Ramam in regard to this matter. It is not fair to expect Members of Parliament and of State Legislatures to begin to step into the shoes, as it were, of these local boards and members of the local boards, and begin to appropriate for themselves the share or in fact more than their share of the franchise that ought to be restricted specifically and specially for the direct and genuine representatives of the village panchayats and samities.

Secondly, I am in favour of the point urged by my hon. friend Shri Tyagi that these officers should not be given this right to vote in these elections. Then, who would be left with the right to vote? Only those people who are elected by the panchayats at the panchayat samities and these panchayat samities would then elect their representatives to the zilla parishads and these members alone should be given the right to vote in the elections to the Upper Houses. That alone can be treated to be a genuine representation of the local boards. I would like Government, either on this occasion or on some early future occasion, to take the opportunity to remedy this defect and see that these extraneous elements which were not intended to form part and parcel of the zilla parishads are eliminated from the list of voters for the Upper Houses, so far as the local boards are concerned.

It may be said by some that because, after all, these Members of Parliament and State Assemblies are elected by the general franchise of the people, they should be given this particular additional right also. After all, the Members of the local legislatures have been given their own right to elect a particular percentage of the members of the Upper Houses. Therefore, they are enjoying that particular right.

**Shri Hajarnavis:** May I intervene for a minute? I have high respect for the hon. Member, but I might explain our own difficulty in the matter. So far as the constitution of the district boards or local boards or local authorities is concerned, that is a matter entirely within the authority of the State Legislature. Once the State Legislature has constituted these district boards or local authorities or municipal committees, then, by the terms of the Constitution, they automatically become voters. Therefore, the question, if at all, must be considered when the local authorities are constituted by the State Legislatures. Our difficulty was this. Faced as we were with a State legislation saying that these persons shall be members of the district board, how could we exclude any of them? I yield to none, and I think Government are at one with every Member who criticises and says that the official members ought not to be as a class members of these elected bodies.

**Shri Ranga:** Also the MLA's and MP's.

**Shri Hajarnavis:** The first point is that it is for the State Legislature to lay down the constitution of these boards; if the State Legislature says that they are the members, then we are helpless. The Constitution has given the right to vote.

**Pandit Thakur Das Bhargava (Hissar):** That means that the right which the Constitution confers, the right which was given by the Constituent Assembly when it met and decided that particular persons should be given the right to vote has now been given to the State Legislatures to find out who should be the electors. That could be done either by changing the Constitution or having a provision afresh. Only this Parliament or a Constituent Assembly could do it. But as it is, you are giving those rights to the local legislatures. It is not valid outright.

**Shri Tyagi:** In this connection, may I have your ruling?

**Shri Hajarnavis:** That is exactly what has happened.

**Shri Tyagi:** I would like to put one question to you, Sir, in this connection. Would it be constitutional if an amendment were to be moved and we were to say that such members of the Antarim Zilla Parishads as are entitled to vote, namely the non-official members only, will vote? Would that be constitutional?

**Mr. Deputy-Speaker:** I would not be able to answer a question put like that.

**Shri Hajarnavis:** No. We have examined this also, and we find that under the Constitution, it cannot be done.

**Mr. Deputy-Speaker:** Now that the speech of the hon. Member has been interrupted, I want to make one observation on quite a different subject. Hon. Members would excuse me for saying this. That point has no relevance to the debate that is now going on here.

I just saw only a couple of minutes ago one Member entering this House with his coat just hanging on his arm. I had seen this with a different Member some time ago on this side of the House also. I want to point out that this would not be a good habit; it would be lowering the dignity of the House.

We have no restrictions, so far as our dress is concerned, and an hon. Member might come dressed in whatever form he likes, but at least, whatever he has to wear must be worn outside the House, and when he enters, he should not be seen carrying his clothes just on his arm. I just want to point out that this should not be done in future at least, because, in my opinion, it lowers the dignity of the House.

**Pandit Thakur Das Bhargava:** It is against the decorum of the House to come in that way with the coat hanging on the arm.

**Mr. Deputy-Speaker:** It is not inkeeping with the decorum, and, therefore, I am pointing it out that it should be borne in mind by hon. Members for the future.

**Shri Ranga:** I have only one or two more observations to make. I appreciate the difficulty explained by the hon. Minister, but I would like him to consider another possibility.

From what has been read out, it is clear that Government have brought forward a Bill which says that the present Antarim Zilla Parishad should be deemed to be the same as, or the equivalent of, the earlier district board which was specifically mentioned in the original Act. When Government have got that right to say so that the present antarim Zilla Parishads in U.P. and in several other States should be deemed to be the same as the District Boards, as was mentioned in the Act, when they have been able to say so, would it not be open to them also to say that only those members of these antim...

**Shri S. M. Banerjee:** It is not antim. It is Antarim.

**Mr. Deputy-Speaker:** Antim would mean quite a different thing.

**Shri Ranga:** Would it not be open to them also to say that only those members of the Antarim Zilla Parishads who have been elected by the panchayat samitis and who are not *ex-officio* or official members would be deemed to be members of these Boards so far as the purposes of this particular Bill are concerned? I do not know whether it would be within the law as it is. But I would like this also to be examined, because I know that these things are not going to be given effect to here and now. At some stage or other, Government should be able to give some thought to these points and then try their best to help the House to get over these difficulties that have more or less unintentionally come to be created by the State legislatures, just because they were not mindful of these difficulties but were mindful of several other needs of their own.

## Bill

when they were passing this legislation.

I have very little more to say except this, that in the working of these Parishads certain anomalies also have crept in. Ministers are asked to take oaths under the chairmanship of a District Collector. Even Speakers and others are also induced to play their role as members of these Parishads. All these things are happening and it would certainly be in the interest of democratic decorum and decency if Government give some thought to the manner in which this kind of legislation is being passed in the States. I am sure when these Bills come up for consideration, they are generally sent to the Law Ministry who try to examine them not merely from that specific point on which they are being sent up but in the general context of our legislation, the Constitution as well as the electoral arrangements we have on the statute book.

**Shri Venkatasubbaiah** (Adoni): I am confining myself only to clause 5 regarding the substitution of the words 'Zilla Parishads' for the words 'District Boards'.

The Andhra Pradesh legislature, in conformity with the principle of democratic decentralisation, has passed the Zilla Parishad and Panchayat Samitis Act. This Act is now in force there. Formerly, so far as the Andhra part of the Andhra Pradesh was concerned, District Boards were functioning when it was in the composite Madras State. Sometime after the separation of Andhra State, Government thought of bringing about certain modifications in the local boards and constitute such local bodies at the district level so that they may be more useful to the people. So till such a decision was taken all these District Boards were kept under the care of the District Collector who used to be called Special Officer.

It is to the credit of the Andhra Pradesh Government that they have adopted the recommendations of the

Balwantrai Mehta Committee. The result is that elections have been held on a democratic basis on the basis of adult suffrage and the panchayat samitis have come into being.

To co-ordinate the work of the different panchayat samitis and also to take charge of some of the important functions which the District Boards have been performing, the Zilla Parishads have been formed. Shri Ranga, in his speech, said that members of the legislatures, Members of Parliament and several other people were there in their capacity as *ex-officio* members and they formed one-third of the strength of the Zilla Parishads. This is true to some extent, but we should not also forget the fact that the local Assembly members are the representatives of the people. They have to be associated with the activities of the district from where they have come as they have to perform their duties towards their constituencies and the electorate. So if they happen to be there as members of the Zilla Parishad, that does not mean that it is being unnecessarily overloaded by the representatives or the people. Already they have got their say in electing some of the members of the Council. After all, they form a very little portion of the Zilla Parishads. As a matter of fact, the entire district is being carved out into so many blocks and for each block a panchayat samiti President is being elected. He will be the voter or the member in the Zilla Parishad. To that extent, I can say it is a very good arrangement. A new democratic set-up has come into being by the act of the Andhra Pradesh Government.

The hon. Minister has pertinently pointed out that it is not within the purview of this Government as such to say whether the composition of that particular body is in conformity with the electoral law or with the equity of voting of the members. The Act has been passed by the respective State Assemblies. So far as Andhra Pradesh was concerned, it has been discussed not only in the Assembly but also in the Council threadbare, and it has been the unanimous opinion

[Shri Venkatasubbiah]

of both the Houses that such bodies should be constituted and the Members of Parliament, Assembly and the Council should also be members of these bodies. This body is taking the place of the District Board. There is no point in saying here that in the Zilla Parishads there is a greater element of *ex-officio* and official members.

I thank the Government for having brought forward this amendment which will give the right of membership to elected representatives by virtue of their being in the Zilla Parishads. I hope this House will unanimously pass this amendment.

**Mr. Deputy-Speaker:** Shri Braj Raj Singh.

**Pandit Thakur Das Bhargava rose—**

**Mr. Deputy-Speaker:** Does Pandit Thakur Das Bhargava want to speak now? We shall take up another item at 3 P.M. This will be held over till tomorrow.

**Shri S. M. Banerjee:** It may be extended by half an hour.

15 hrs.

**श्री ब्रजराज सिंह :** उपाध्यक्ष महोदय, कानून मन्त्री महोदय ने जो दलीलें इस बिल को पेश करते हुए दी हैं, मुझे उनमें कोई आधार दिखाई नहीं देता और मुझे ऐसा लगता है कि कानून मन्त्री कानून को ताक में रख रहे हैं। कानून की प्रतिष्ठा का जहां प्रश्न उठता है, वहां आशा की जाती है नागरिकों से कि वे कानून की इज्जत करेंगे और उसका पालन करेंगे, लेकिन चाहे वह केन्द्र की सरकार हो और चाहे प्रादेशिक सरकार हो, दोनों ही कानून की बिल्कुल कोई प्रतिष्ठा नहीं कर रही हैं और उसको बिल्कुल ही हवा में उड़ा देना चाहती हैं। जो दलीलें माननीय मन्त्री ने दी हैं, उन में से एक दलील यह थी कि उत्तर प्रदेश में पहले जो जिला नियोजन समिति—डिस्ट्रिक्ट प्लानिंग कमेटी थी, उसके जितने सदस्य थे, वे सब इस जिला परिषद् में होते

हैं और पुराने डिस्ट्रिक्ट बोर्ड के चुने हुए पांच सदस्य इस में होते हैं, इस तरह से उसकी भी वही हैसियत हो जाती है, जो कि डिस्ट्रिक्ट बोर्ड की होती थी। लेकिन मैं उत्तर प्रदेश सरकार के अन्तरिम जिला परिषद् एक्ट, १९५८ की धारा ४(२) (ए) की तरफ उनका ध्यान दिलाना चाहता हूं, जिनमें कहा गया है :

“All the members of the District Planning Committee of the district.”

अगर इस पर जरा ध्यानपूर्वक विचार किया जाये, तो पता लगेगा कि जिस वक्त प्लानिंग कमेटी खत्म हुई और जिला परिषद् का गठन हुआ, उस वक्त प्लानिंग कमेटी के जो मेम्बर थे, वे इस के मेम्बर हो सकते थे। लेकिन जो मेम्बर नहीं रहते हैं, जैसा कि किसी जिले का डिस्ट्रिक्ट मैजिस्ट्रेट है, वहां से उसका तबादला हो जाता है, तो उसके स्थान पर जो दूसरा डिस्ट्रिक्ट मैजिस्ट्रेट आयेगा, वह कैसे मेम्बर हो जायेगा, यह हमारी समझ में नहीं आता है। किसी वक्त कोई एम० पी० या एम० एल० ए० किसी डिस्ट्रिक्ट प्लानिंग कमेटी का मेम्बर था, लेकिन बाद में वह नहीं रहा, तो उसके स्थान पर जो दूसरा चुन कर आ जायेगा, वह कैसे जिला परिषद् का मेम्बर हो सकता है, यह कतई समझ में आने वाली बात नहीं है। लेकिन कानून मन्त्री महोदय कहते हैं कि क्योंकि उत्तर प्रदेश सरकार ने यह कानून बनाया है, इसलिये वह उसमें कोई दखल नहीं दे सकते। उत्तर प्रदेश सरकार ने जो कानून बनाया हुआ है, उसके मुताबिक उन के जो सदस्य हैं, संविधान की धारा १७१ के मुताबिक उन्हें वोट देने का अधिकार मिलेगा।

**उपाध्यक्ष महोदय :** अभी माननीय सदस्य अपना भाषण जारी रखना चाहेंगे ?

**श्री ब्रजराज सिंह :** जी हां।

**उपाध्यक्ष महोदय :** तो फिर वह कल अपना भाषण जारी रखें।