

6891 Motion re:  
Report of  
Intermediate Ports  
Development Committee

DECEMBER 21, 1960

Appointment of 6892  
Shri A. K. Chanda  
as Chairman,  
Finance Commission

[Shri Raj Bahadur]

and other important projects. I join the hon. Members who have paid very well deserved tributes to the Committee which has really produced a very useful and profitable report. I think, so far as information about these ports is concerned, it will be a sort of compendium for all times to come.

**Shri T. B. Vittal Rao:** Mr. Deputy-Speaker, Sir, the hon. Minister has stated that the congestion that obtained in 1957 and subsequently in 1958 was due to the closure of the Suez Canal and the subsequent opening of the Suez Canal. I would like to draw the attention of the hon. Minister to the fact that we are going to import 16 million tons of wheat under the PL 480 Agreement and 1 million tons of rice from the United States of America. Let not the same congestion take place in these major ports and let us not pay heavy demurrage.

I am quite aware that the development of minor ports is in the Concurrent List.

**Shri Raj Bahadur:** Sir, this is not a point which he has made earlier. I will have no opportunity of replying to that.

**Mr. Deputy-Speaker:** The record will show that it was made afterwards. Normally, he should not take up new points now.

**Shri Harish Chandra Mathur (Pali):** He can criticise what has been said.

**Shri T. B. Vittal Rao:** I know that the development of minor ports is in the Concurrent List. But, what I would urge is that the conversion of minor ports into major ones is entirely the responsibility of the Central Government.

All these ports, Mangalore and Tuticorin lie in the south, and there is a feeling in the south, among the people there, that their interests are not looked after properly by the Government of India. I hope and trust due note of this feeling will be made by the Planning Commission when they finalise their plans in the next week.

One more point. I have, time and again, read in the papers the statement made by the Chief Minister of Mysore State in the Mysore State Legislative Assembly that Mangalore port will definitely be taken up for conversion. I do not know whether a decision has been taken because even the Minister today was not able to tell us the decision. But the National Harbour Board has recommended that Tuticorin and Mangalore ports should be developed as major ports.

**Mr. Deputy-Speaker:** The question is:

"That this House takes note of the Report of the Intermediate Ports Development Committee, laid on the Table of the House on the 9th September, 1960."

*The motion was adopted.*

17.35 hrs.

DISCUSSION RE. APPOINTMENT OF SHRI A. K. CHANDA AS CHAIRMAN, FINANCE COMMISSION

**Mr. Deputy-Speaker:** Now we will take up the next item. Shri Khadilkar. The time allowed will be ten minutes for the Mover and subsequently 5 minutes for others. There are 8 sponsors and the time allotted is one hour. The Minister has also to reply. Now, hon. Members may distribute the time and I will abide by it.

**Shri Khadilkar (Ahmednagar):** But the subject is so important. I will proceed and I will try to finish it as early as possible.

**The Minister of Finance (Shri Morarji Desai):** The importance does not require more time.

**श्री अर्जुन तांडिकर (जम्मू तथा काश्मीर):** जनाब डिप्टी स्पीकर साहब, मैं आपकी तवज्ह आज के लिस्ट आफ बिजिनस की तरफ दिलाना चाहता हूँ। एक धंटे का एक

मोशन है जो कि अब शुरू हो रहा है। इस बाद दो हाफ एन आवर डिसकेशन हैं। इसका मतलब हुआ कि आठ बजे तक हम लोग बैठेंगे। आठ बजे तक बैठने में हमें कोई ऐतराज नहीं है। लेकिन मैं अर्ज करता हूँ कि मेरा जो हाफ एन आवर डिसकेशन है, इसको अगर कल के बिजिनेस में ट्रांसफर कर दें, तो मैं आपका बड़ा मशकूर हूँगा।

उपाध्यक्ष महोदय : कल भी तो कोई आफ एन आवर डिसकेशन होगा।

श्री अ० म० तारिक : कल एक ही होगा।

उपाध्यक्ष महोदय : अच्छी बात है। कल रख लेंगे।

[**شروع** ।۔۔۔ **ام**۔ طارق ।۔۔۔ **جلاب** قبیلی ۔۔۔ ہیکر صاحب ۔۔۔ میں آپ کی توجہ آج کی است اف بیونس کی طرف دلانا چاہتا ہوں ۔۔۔ ایک گھنٹے کا ایک موشن ہے جو کہ اب شروع ہو رہا ہے ۔۔۔ اس کے بعد دو ہاف اون اور ڈسکشن ہیں ۔۔۔ اس کا مطلب ہوا کہ آئے بھی تک ہم لوگ بیٹھیں ۔۔۔ آئے بھی تک بیٹھیں میں ہمیں کوئی اعتراض نہیں ہے ۔۔۔ لیکن میں عرض کرتا ہوں کہ مہرا جو دو ہاف این اور ڈسکشن ہے اسکو اگر کل کے بیانیں میں ترانسفر کر دیں تو میں آپکا بوا مسکوو ہونگا ۔۔۔

ایاد ہو گھن مہو ۔۔۔ کل بھی تو کوئی ہاف این اور ڈسکشن ہو گا ۔۔۔ **شروع** ।۔۔۔ **ام**۔ طارق ।۔۔۔ **کل اک** **ہی ہو گا** ۔۔۔

ایاد ہو گھن مہو ۔۔۔ اچھی بات ہے ۔۔۔ کل دیکھ لیں گے ۔۔۔

(**Shri Raj Bahadur**): I am sorry, Sir, I will not be here tomorrow.

**Mr. Deputy-Speaker:** Then I can't help it.

**Shri A. M. Tariq:** The senior Minister will be here, he can reply.

**Mr. Deputy-Speaker:** The hon. Minister who is in charge of it will have to answer.

**Shri Ansar Harvani (Fatehpur):** The senior Minister can reply.

**Shri Raj Bahadur:** If you will permit me to say, Sir, I have been dealing with the brass-tacks.

**Mr. Deputy-Speaker:** If not today, then next session. Does Shri Tariq agree to that.

**Shri A. M. Tariq:** All right, Sir.

**Shri Khadilkar:** Sir, I am grateful to you for allowing me to raise this discussion, because I consider it very important. I consider, Sir, that the offices of the Chief Justice of the Supreme Court, the Auditor General and the Public Service Commission Chairman are some of the pillars of our Constitution. If some allurements are kept before the holders of these offices after retirement, as it is happening nowadays, it will have a corroding influence, and I do not know what would happen to us if all the pillars are corroded and the house topples down on our head.

So this House as well as you, Sir, as the custodian of the Constitution should take a very serious note of the appointment of Shri A. K. Chanda as the Chairman of the Finance Commission as well as Chairman of the Central Excise Reorganisation Committee. In my motion, I have not mentioned this fact, but this is obviously a Government appointment and I do think that Government will give further thought to it and take some suitable action immediately.

But the other matter is very important. When I went through the statement placed before the House by the

[Shri Khadilkar]

Finance Minister I was surprised that nowadays Ministers are dealing with grave issues in a casual manner. This statement is most casual and it does not take into consideration the gravity of the problem that is behind all this appointment. Why I say this, Sir, is, he has made one or two points only. He says that the Commission's chairmanship cannot be regarded as an office under the Government of India.

Now, this is a point which needs a little elaboration. As you know, Sir, there was a question regarding the qualification or disqualification for our election. A committee was set up to determine whether from President downwards every office was an office of profit or not. In that committee, this problem was thoroughly discussed. I have no time to give here the relevant portions of the report, but from the report of the Committee on Offices of Profit you will find that they have very clearly defined the term "office of profit". In this context, they had to define "office". "Office" is a wider term, and they have stated therein "whether it is under the Government of India or not". But the ex-Law Minister has stated—I am not going through the whole report—that even the membership of a Coal Board, a statutory and independent body, would be considered as an office under the Government.

What is an office? This is a very pertinent question in this regard. I tried to get some definition of it. There is one definition which would be acceptable to the Minister and the Law Minister in particular. I am going to quote from AIR Commentaries on the Code of Civil Procedure, Page 197 of Vol. 1. They have defined "office" as follows:—

"An office is a position which has some duties attached to it. The existence of office, therefore, involves the existence of some duties to be performed by the holder of the office and which are enforceable by law, custom or usage."

Further it says:

"It is not essential that the office need be one which brings in any profit to those claiming it or one to which any fees or emoluments are attached as of right, and this is so whether the office is a secular or a religious one."

This is the definition which has perhaps impressed Shri Chanda himself. Because in his book on *Indian Administration*—I am casually mentioning it—has realised his own position and made a positive statement regarding his future prospects of employment. I shall just read out what he says there:

"To protect his independence and to place him beyond the pale of the influence and interference of the executive government, both the ban on his employment after retirement as well as his removal by a special Parliamentary process have been retained and elaborated in the Constitution Act."

He has approvingly quoted the provisions to say that he cannot also hold any further office after his retirement. This is one important aspect.

**The Minister of Law (Shri A. K. Sen):** That is not a fact. It is "office under the Government of India".

**Shri Khadilkar:** I am coming to that. First, I am trying to pin down the definition and say what is 'office'. There are some irrelevant portions there and I am not concerned with them. I am not concerned with the constitution of the Finance Commission which is governed by the Constitution. But every office is created by law, and even if we, for the sake of modesty, of a fiction, admit that the appointment is made by the President, it is made by the Government. Everybody knows that. I am coming to that point.

When the Bill regarding the appointment of the Auditor General, was moved before the House, Shri Desh-

mukh pertinently referred to the aspect in the Statement of Objects and Reasons. I shall read just one sentence from it, which runs as follows:

"It is considered desirable to fix the tenure of this office in the same way as for other statutory authorities like the Union or State Public Service Commission....

It is because there is also that possibility, and therefore he has specifically mentioned it here.

"and taking into account the importance of the post and the fact that its holder is constitutionally debarred from holding any office under the Union or State Governments, after vacating office, to allow an additional pension for service as Comptroller and Auditor-General."

So, when he accepted the Comptroller and Auditor-Generalship, he had given away his rights, so to say, of getting any allurement from Government—whether Government offers him or not—and he is debarred from accepting any other post, as is evident from the Statement of Objects and Reasons given by Shri Deshmukh.

There is one more point in this connection. There was a debate on this Bill and Dr. S. P. Mukherjee drew the attention of the House to a particular point and made a reference to it and he made an eloquent plea that the Comptroller and Auditor-General should be debarred from any office. But I am not going into that, though I shall just read out one small paragraph from what Shri Deshmukh said—just regarding this point—in connection with the Bill which was passed in April, 1953. It runs as follows:

"At present, the Comptroller and Auditor-General does not get any additional pension for the service rendered by him in that capacity.

Considering that the holder of this office is constitutionally debarred after vacating the post, to hold office under any State or the Centre; the high importance of the post and the very considerable increase in the responsibilities brought about by the integration of the former Indian States, the responsibility for the audit of the accounts of all of whom fall upon him as they form part of one or the other of the States of the Union; and the expansion of governmental activities which increase his responsibility for audit, Government feel that some recognition should be accorded to service in this post for regulating the pension of the holder after his retirement."

So, when this Act was passed, thought was given to the question of determining the pension. This is also a very important aspect.

Therefore, my contention is, this is an office under the Government, if we accept this definition and the intention of the Act, regarding the Comptroller and Auditor-General, which was passed is quite clear.

Regarding the Finance Commission, it is governed by the Act and we are not concerned with it. Now the Finance Minister has mentioned Shri Narahari Rao's case. This is different. That case is irrelevant here, because he was holding an office under the International Monetary Fund. That does not apply here, so far as an office under Government is concerned. So, that reference to the Attorney General and the justification he got from it is absolutely uncalled for.

I would now like to draw the attention of the Finance Minister and the Law Minister to what Shri Basu has to say. The Finance Minister made a point that he is not a full-time holder of the office, he is not drawing any salary, etc. But there are other aspects and I have read the definition of 'office'. Office means certain res-

ponsibility, a certain influence because of holding that position. A lawyer like Shri Nathwani knows all these things. When he said this statement that he is not drawing any salary, I do not think the Finance Minister took the House into confidence. He is drawing Rs. 60 per day without income-tax. If my information is wrong the hon. Minister may correct me. He has got a house rent-free; he is getting electricity free; health service free....

**Shri Morarji Desai:** He is not getting anything free.

**Shri Braj Raj Singh (Firozabad):** What about the allowance he is getting?

**Shri Morarji Desai:** That is only tour allowance.

**Shri Khadilkar:** All these things are there. Even if he is not taking a farthing, whether it is justified or not according to the letter and spirit of the Constitution is the point. I would humbly plead that the Auditor General's case is not first instance. My exprience leads me to the conclusion that the executive Government in this country is keeping allurements before the High Court Judges, before the Chairmen of Public Service Commissions and before Auditor Generals and it has acted as a corrupting and corroding influence on the social and political institutions in our country. If we care for our democracy and for our Constitution, it is the duty of this House to say just now to the Finance Minister that so far as his interpretation is concerned, he is totally wrong.

Who appoints him? It is said that the President appoints him. But his appointment is not made like the Governor's appointment. The appointment letter is given by the Finance Ministry itself. That fact also should be noted by the House. If I am wrong let him correct me. This honorary business has been too much played upon. I am not going into other commentaries, but I shall quote from Shri

Basu's commentary, which is well-known. It is very relevant to this issue. I will read that portion. He has given a very comprehensive statement on this point:

"For the word 'office' is generally as distinguished from the qualified expression of 'office of profit', so that even honorary appointments would be included within article 148(4). 'Employment' similarly is used in a general sense so as to cover employment in any capacity in the Government. In short a person who has held the office of the Comptroller and Auditor General or that of the Chairman of a Public Service Commission cannot accept any further appointment from the Government of India or from that of a State. The object in either case is to make an incumbent to these offices free from the allurement of getting any favour from the executive after the termination of the office, which might otherwise have influenced his action while in office."

This commentary of Shri Basu brings out clearly two points and really rebuts what the Finance Minister has said. Even when the holder of the office is doing his job in an honorary capacity, he is debarred from holding that office under our Constitution. That is the interpretation given when he places the Chairman of the UPSC along with the Auditor-General. As you know, the Chairman is debarred from holding office, except in some cases under the Centre or the States, whatever it is.

**Mr. Deputy-Speaker:** Is that all?

**Shri Khadilkar:** Two more minutes, Sir.

**Mr. Deputy-Speaker:** He has already taken the two minutes he wanted.

**Shri Khadilkar:** I will finish in two minutes.

So, far as this question is concerned, I do not know Shri Chanda. I

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have met him casually once. So, there is no personal knowledge of him.

**Shri Tangamani** (Madurai): Why are you apologetic?

**Shri Khadilkar:** I have taken it as an issue, which must be clearly understood. I look at it from that point of view.

**Shri Tangamani:** I would like to know whether the hon. Member is fighting for a principle or fighting for or against a person.

**Mr. Deputy-Speaker:** Order, order. The hon. Member knows what he is expressing.

**Shri Khadilkar:** I consider this appointment from the point of view of constitutionality, from the point of view of public morality and I have come to the conclusion that this is wrong in principle and is against the Constitution. I have grave doubts and fears that if some ordinary common citizen goes to the Supreme Court and files a writ he will get a decision against the Government and the work of the Finance Commission will be upset. That is one of the factors which motivated me to bring forward this motion.

One word more and I am done. I would appeal to the Finance Minister and the Law Minister on this occasion that it is their duty to safeguard the Constitution; particularly, the Law Minister has to look to a high juristic tradition created in the House by his predecessor. Therefore it is his duty to interpret the Constitution in such a way wherein there is no possibility of acting as a corrupting agency from the side of the executive on such high offices as that of Comptroller and Auditor-General or Chief Justices of the High Court or, for the matter of that, the Chairman of the UPSC. I hope he will try to maintain that high tradition.

**Mr. Deputy-Speaker:** The hon. Member must also maintain this high tradition.

**Shri Khadilkar:** I do.

**Shri Tangamani:** Mr. Deputy-Speaker, because the time at my disposal is very short, I shall mention the various provisions of the Constitution and also the relevant portions of the Act No. 33 of 1951. The hon. mover was pleased to refer to the commentary by Shri Basu. In Volume I, third edition, on pages 812 and 813 this aspect is dealt with. He deals with both the Comptroller and Auditor General and also the Chairman of the UPSC and this is how he concludes. I would like to refer the entire two pages to the consideration of the hon. Law Minister and the Finance Minister. He says:

"The object in either case is to make the incumbent to this office free from allurement of getting any favour from the executive after the termination of the office which might otherwise influence his action while in office."

On the question of offices, article 102(1) refers to disqualification of the Members of Parliament and says:

"A person shall be disqualified for being chosen as, and for being a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office, declared by Parliament by law not to disqualify its holder;"

Here it refers to an office of profit. Article 191(1) refers to a person who is to be elected to the State Assembly or Council; there also, more or less the same points are mentioned. In this particular case, article 144(4) says:

"The comptroller and Auditor-General shall not be eligible for

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further office either under the Government of India or under the Government of any State after he has ceased to hold his office."

Regarding the Chairman of the Union Public Service Commission, article 319(a) says:

"the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;"

Then, article 319(c) says:

"a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;"

The same applies to the others also. So, the position of the Comptroller and Auditor-General is even superior to that of the Supreme Court Judge. Also, there is a lot of similarity in the question of appointment, removal, remuneration and also even pension.

In the case of the Supreme Court judges the exception is given under article 124(7) which say that a Supreme Court judge cannot plead for or against in any court. But here it goes much further than that. In the case of the Chairman, UPSC, it talks of no further appointment. But here it says that there will be no office for him at all. I submit that the term 'office' is much wider than the office of profit. In the *Chambers Dictionary* the meaning of office which I find is settled duty or employment; possession of a post in the government; a function or duty: to appoint means to name to an office; to assign or to engage to meet and appointment means an office to which one is or may be nominated. These are the various dictionary meanings.

Coming to the Act itself, I submit that the appointment is by the President and is subject to the law which will be passed by this legislature. That law is Act No. XXXIII of 1951. There is a certain significant passage in that to which I want to make a reference. Section 3 of this Act says:

"The Chairman of the Commission.....".

that is, the Finance Commission.

"....shall be selected from among persons who have had experience in public affairs....."

There is no other qualification. I would like to know whether the former Comptroller and Auditor-General is a man who has had experience in public affairs.

Subsequently it says that the four other members shall be selected from among those who are or have been qualified to be appointed as judges, who have special knowledge of finances and accounts of Government, who have had wide experience in financial matters and in administration or who have special knowledge of economics. This is for the four other members. But the Chairman has got to be a person who has had experience in public affairs.

I would commend the other sections also. Because I have no time, I shall not refer to all of them but I shall refer to section 7 dealing with conditions of service and salaries and allowances of members. It says:

"The members of the Commission shall render wholetime or part-time service to the Commission as the President may in each case specify and there shall be paid to the members of the Commission such fees or salaries and such allowances as the Central Government may, by rules made in this behalf, determine."

So it is not as if the members of this Commission are asked to function

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gratis. Here is an Act which says that their remuneration is going to be fixed. One may or may not accept that remuneration.

This Commission has got special powers. The same powers have been conferred in the Civil Procedure Code. So this function which is now going to be discharged by the Finance Commission and also by the Chairman is under article 280(1) which says that the President shall, by an order, appoint the Finance Commission which shall consist of a Chairman and four other members to be appointed. Article 280(2) says;

"Parliament may by law determine the qualifications which shall be requisite for appointment as members...." etc.

Those qualifications I have mentioned just now.

Now, the President appoints them subject to a certain law which is going to be passed by the Parliament. The President does not act on his own. He acts on the advice of his ministers. In this particular case it may be the Finance Ministry or any other ministry that advises him. Under the general clauses a person who has got the power to appoint has got the power to dismiss also. Here it is clearly stated that after a particular stage he may resign, he may be dismissed or he may be removed. All those powers are now given.....

Shri Nathwani (Sorath): Who can dismiss?

Shri Braj Raj Singh: The Executive.

Shri Nathwani: There is no power.

Shri Tangamani: He can remove him if certain conditions are not satisfied.

18 hrs.

Shri A. K. Sen: Not in this.

Shri Tangamani: Kindly go through the various sections of Act XXXIII of 1951. There, it is clearly stated that under certain circumstances, this man will be removed.

Shri Nathwani: He cannot be removed.

Shri Tangamani: It is not as if he cannot be removed as the Comptroller and Auditor General cannot be removed.

Shri Nathwani: Where is the power of removal?

Shri Tangamani: Please allow me to finish. I know that is a point which will hurt you. The law has clearly provided that the five Members of the Commission will be entitled to a certain remuneration. The law has provided clearly that under certain circumstances, he or all the five Members can be removed by the President in the same way as he has appointed. There are certain disqualifications also. The moment we know that he has got certain interests in the financial set up which is going to be put out by the Finance Commission, immediately, the President..

Shri Morarji Desai: May I ask the hon. Member where the power of removal is? I want only information. Don't get rattled about it. Tell me.

Shri Tangamani: Given time, I can develop it like a lawyer. Sections 5 and 6 read together.....

Shri Morarji Desai: Of what?

Shri Tangamani: Of Act XXXIII of 1951. That is my understanding. Sections 5 and 6 read together give power to the President to remove a Member of the Finance Commission or the Chairman in certain circumstances.

Shri Nathwani: Which part of the section is the hon. Member referring to?

**Mr. Deputy-Speaker:** The hon. Member will have a chance to reply.

Shri Tangamani: Having said that, I would like to say that soon after the hon. Finance Minister made this announcement on the floor of the House on the 12th of this month, there have been editorials in certain newspapers about this. Particularly, on the 15th of December, there was an editorial which appeared in the *Hindustan Times*. Several letters have also appeared. There is the letter by Amal Kumar—that is a letter in one of the Calcutta papers—where he develops the whole point how this appointment is contrary to the provisions.

One more point and I will conclude. When the hon. Finance Minister, in reply to the Call Attention Notice of Shri T. B. Vittal Rao and others, stated that this House might recall that in 1956, the Government of India appointed Mr. Narahari Rao, a former Comptroller and Auditor General as Executive director of an international bank after obtaining the advice of the Attorney General of India, Shri Khadilkar pointed out that this is not an appointment in India. Assuming we have committed a mistake in the past—I am putting it at the worst; assuming that—it does not mean that we should go on committing the mistake.

Shri Morarji Desai: Agreed.

Shri Tangamani: A special Chapter is given for the Comptroller and Auditor-General as a person who is not even subordinate to this House, who is not even subordinate to this Ministry. As soon as he retires, the position is inherent. I am not thinking of any remuneration at all. I am not concerned whether he is going to get any office of profit. More than an office of profit, there are certain offices which are much wider and

give him power. There are some people who are even prepared to pay to take up a particular position. That question also cannot arise.

The whole thing is this. As Shri Basu has ably put it, the object is that the incumbent of these offices must be free from allurement of getting any favour from the executive after the termination which might otherwise have influenced his action while he was in office. You can say that the Finance Commission is something which is going to be appointed under article 281 of the Constitution. After all, there is a magistrate who is appointed. He is only appointed under certain provisions of the Criminal Procedure Code. We do not say that he has been appointed under certain provisions of this Act and therefore, the appointing authority is not the Government. In that way, you cannot escape. The overall control is there. Here also, I would say that article 145 (1) says:

“Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules . . .”

In the same way, here the President may, with the approval of Parliament by way of a law which has been passed, viz., Act 33 of 1951, subject to the many conditions which Parliament in its wisdom laid down, after consulting the Minister in charge, shall appoint. So, it is subject to all this. The appointment is a clear direct appointment by the Government of India.

18.05 hrs.

[MR. SPEAKER in the Chair]

Taking the over-all position, I would like to say that such a high post as that of the Comptroller and Auditor-General who is called upon to do the audit and help the finance of the entire country, should not be lowered so easily. I should have welcomed if, even before the call attention notice was given by my hon.

friend Shri Vittal Rao and others, the Finance Minister had come before the House and told us that they were going to appoint so-and-so as the Chairman of the Finance Commission. That would have at least given an opportunity to the House immediately to raise objections and give suggestions to the Government. Now, there has to be a question first. In that question, Shri Nath Pai asks why another man who was chosen before as Chairman has been given up, and then only the House knows that the former Comptroller and Auditor-General was adopted in place of another gentleman equally qualified, probably much more qualified, and suited under this Act itself, because all that the Act says is that he must have had experience in public affairs. Such a person was available. If the Minister had come to the House, I am sure the House would have advised him properly and he would have desisted from this appointment.

**Mr. Speaker:** Shri Braj Raj Singh. I will call Shri Mathur also.

**Shri Nathwani:** I also want to participate.

**Mr. Speaker:** Only one hour was allowed.

**Shri Morarji Desai:** I hope I will have some time. Otherwise, I will again be charged with casualness.

**Shri Khadilkar:** Yes, it is a casual statement. It has not taken a serious view of the matter.

**Mr. Speaker:** A statement can only be casual.

**Shri Khadilkar:** He has not taken such a serious view of the matter. In that sense I say.

**Mr. Speaker:** The hon. Minister is here. He will answer.

**Shri Brajraj Singh:** अध्यक्ष महोदय, कौलिंग अटेंशन नेटिस के सम्बन्ध में जो उत्तर वित्त मंत्री महोदय ने दिया उस से ऐसा लगता है कि वह इस नियुक्ति को सिफं एक आधार पर उचित ठहराते हैं और वह आधार यह है कि यह आफिस गवर्नरमेंट आफ इंडिया के अन्तर्गत नहीं है। मैं सिफं इसी प्वाइंट को लेना चाहता हूँ क्योंकि और दूसरे प्रश्न अन्य माननीय सदस्यों ने इस सदन में रख दिये हैं और इसलिये मैं इसी प्वाइंट को लेना चाहता हूँ कि यह आफिस गवर्नरमेंट आफ इंडिया के अन्तर्गत है या नहीं।

अभी कानून मंत्री महोदय ने और वित्त मंत्री महोदय ने भी श्री तंगामणि के बीच में बोलते हुये कहा कि इस फाइंस कमिशन के चेमरमैन का हटाया जाना (रिमूवल फाम आफिस) कहीं पर यह नहीं लिखा है कि किस तरह से होगा और शायद वह इस प्रकार की दलील देना चाहते हैं। मैं इस सम्बन्ध में निवेदन करूँगा कि इस फाइंस कमिशन मिसलेनियस प्राविज़िस एक्ट १९५१ की धारा ४ को पढ़ें तो उस से पता लगेगा (पर्सनल इंटरेस्ट टु डिसक्वालीफाई मैम्बरर्स), उस में यद्गर किसी प्रकार का या उस के साथ साथ चेमरमैन का कोई पर्सनल इंटरेस्ट होगा या उसके साथ

"Before appointing a person to be a member of the Commission, the President shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission; and the President shall also satisfy himself from time to time with respect to every member of the Commission that he has no such interest and any person who is, or whom the President proposes to appoint to

[श्री बबराज सिंह]

be, a member of the Commission shall, whenever required by the President so to do, furnish to him such information as the President considers necessary for the performance by him of his duties under this section."

मेरा तात्पर्य यह है कि अगर किसी प्रकार का या चेयरमैन का कोई इंटरेस्ट कायम हो जाता है जिन उद्देश्यों की पूर्ति के लिये जिन कर्तव्यों के पालन करने के लिये वह एपायेंट किये गये हैं तो फिर न सिर्फ इतना ही अधिकार प्रेसीडेंट को और प्रेसीडेंट के माने भारत सरकार को है कि वह ऐसे व्यक्ति का एपायेंटमेंट न करें, नियुक्ति न करें बल्कि यह अधिकार भी हासिल है कि अगर इस तरीके का कोई इंटरेस्ट कायम हो जाता है तो ऐसे व्यक्ति को उस पद से हटा दे। हमारे संविधान में तीन ऐसी व्यवस्थायें हैं, जिन में तीन हाई अफिसर्स को हटाने के लिये खास प्राविजन्ज रखे गये हैं और वे आफिसर्स हैं सुप्रीम कोर्ट के चीफ जस्टिस या जज, कंट्रोलर एंड आडिटर जेनरल और चीफ इलेक्शन कमिश्नर। उन में यह कहा गया है कि अगर उन को प्रूड मिसिविहैवियर या इनकैसेस्टी के लिये भी हटाया जाये, तो वह तभी किया जा सकेगा अगर पार्लियामेंट में मोजद सदस्यों के दो तिहाई बहुमत से यह मोशन पास कर दिया जाये कि उनको प्रूड मिसिविहैवियर या इनकैसेस्टी के लिये हटा दिया जाये। तात्पर्य यह है कि इन अधिकारियों को हटाने के लिये बिल्कुल वही व्यवस्थाये लागू होंगी, जो कि संविधान में परवित्तन या संतोषन के लिये लागू हैं। इन के अलावा इस सम्बन्ध में और कोई व्यवस्था नहीं है। यदि संविधान में किसी आफिसर के विषय में यह दर्ज नहीं है कि उसको कैसे हटाया जा सकता है, तो इसके साफ माननी ये हैं कि गवर्नमेंट उस को किसी दूसरे तरीके से हटा सकती है। संविधान के निर्माताओं ने जिन व्यक्तियों के बारे में यह महसूल किया कि उन को हटाने के लिये

किसी विशेष व्यवस्था की जरूरत है, उन के लिये अर्थात् सुप्रीम कोर्ट के जज या चीफ जस्टिस, कंट्रोलर एंड आडिटर जेनरल और चीफ इलेक्शन कमिश्नर के लिये उन्होंने विशेष प्राविजन कर दिया है। इन तीन अधिकारियों के प्रलापा किसी और के लिये संविधान में कोई व्यवस्था नहीं है।

जहां तक फिनांस कमीशन का ताल्लुक है, आर्टिकल 260 में यह साफ कहा गया है :-

"The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President."

उसके बाद पार्लियामेंट को यह अधिकार दे दिया गया है कि वह इस बारे में ला बना सकती है और पार्लियामेंट ने ला बना दिया है कि उनकी ड्यूटीज इत्यादि क्या होंगी। उस एकट में भी —फिनांस कमीशन (मिस्लेनियस प्राविजन्ज) एकट, १९५१ में भी —फिनांस कमीशन के चेयरमैन या भेन्डर्ज को हटाने की कोई व्यवस्था नहीं है। इसके साथ ही उनको हटाने के लिए गवर्नमेंट को पार्लियामेंट में नहीं आना पड़ेगा, जैसे कि उसकी सुप्रीम कोर्ट के जजिज या चीफ जस्टिस, कंट्रोलर एंड आडिटर जेनरल और चीफ इलेक्शन कमिश्नर को प्रूड मिसिविहैवियर या इनकैसेस्टी के लिए हटाने के लिए संविधान की व्यवस्थाओं के अनुसार इस पार्लियामेंट में आना पड़ता है। इसका अर्थ यह है कि इन अधिकारियों को वही अधारिटी हटा सकती है, जो कि उनको नियुक्ति करती है। वह कौनसी अथारिटी है, जो फिनांस कमीशन को नियुक्ति करती है? वह अथारिटी है प्रेसिडेंट, जिसके मानी हैं हिन्दुस्तान की सरकार।

उसका कौनसा मंत्रालय हो, इस से इस समय कोई मतलब नहीं है। यह स्पष्ट है कि जहाँ भी "प्रेसिडेंट" शब्द का इस्तेमाल किया गया है, उस का मतलब है हिन्दुस्तान की सरकार। हिन्दुस्तान की सरकार जिस व्यक्ति को एपायंट करती है, उसको प्रूड मिसविहेवियर या इनकैपेसिटी या १६५१ के एकट में दिये गये इन्द्रेस्ट होने आदि के दूसरे आधारों पर रिरमूव करने का अधिकार भी हमेशा उसको रहेगा। अगर वित्त मंत्री महोदय यह कहता चाहे कि सरकार को नियुक्त करने का अधिकार तो है, लेकिन इस में कोई व्यवस्था नहीं है कि वह उसको हटा सकें तो मैं उनसे यह पूछना चाहता हूँ कि क्या इसके मानी ये होंगे कि अगर फ़िनांस कमीशन के चेयरमैन और दूसरे सदास्यगण नियुक्त होने के बाद प्रूड मिसविसेवियर या इनकैपेसिटी के दोषी हों, तो सरकार कुछ न कर सकेगी—उस समय सरकार क्या करेगी?

**Shri Morarji Desai:** He cannot be removed.

**श्री बाबराज सिंह:** अगर उसको रीमूव नहीं किया जा सकता, तो a very sorry state of affairs will be created. मैं यह निवेदन करना चाहता हूँ कि वित्त मंत्री महोदय का यह कहना कि उसको रीमूव नहीं किया जा सकता, गलत है। जिन विशेष व्यवस्थाओं की आवश्यकता थी, उनके लिए, संविधान में प्राविज्ञन कर दिया गया है और वे विशेष व्यवस्थायें केवल सुप्रीम कोर्ट के जजिया या चीफ जस्टिस, कंट्रोलर एंड आडिटर जेनरल आफ़ इंडिया और चीफ इलेक्शन कमिशनर के विषय में गई हैं। इन तीन के अलावा और जितने गवर्नरमेंट सर्वोन्ट्स हैं, उनको हटाने के लिये गवर्नरमेंट आफ़ इंडिया को हमेशा अधिकार हासिल है। फ़िनांस मिनिस्टर का यह कहना

कि यह आफ़िस गवर्नरमेंट आफ़ इंडिया के अन्तर्गत नहीं है, बिल्कुल गलत है। इन आफ़िसिज का शीएशन गवर्नरमेंट आफ़ इंडिया नहीं है, उन पर व्यक्तियों को एपायंट करती है और जिन को वह एपायंट करती है, उनको प्रूड मिसविहेवियर या इनकैपेसिटी आदि कारणों से, जो कि दूसरे आफ़िसिज के विषय में भी लागू हैं, हटा भी सकती है। काल अटेंशन नोटिस के बारे में वित्त मंत्री ने यह कहा कि यह आफ़िस गवर्नरमेंट आफ़ इंडिया के अन्तर्गत नहीं है और संविधान में कंट्रोलर एंड आडिटर जेनरल के लिए यह व्यवस्था है कि वह गवर्नरमेंट आफ़ इंडिया या किसी स्टेट के अन्तर्गत कोई आफ़िस होल्ड नहीं कर सकेंगे, इसलिए उनके लिए यह डिसक्रालिफ़िकेशन नहीं है—वह यह आफ़िस होल्ड कर सकते हैं। मेरा यह निवेदन है कि फ़िनांस मिनिस्टर का यह सोचना बिल्कुल गलत है। यह आफ़िस गवर्नरमेंट आफ़ इंडिया के अन्तर्गत है, इस लिए कि गवर्नरमेंट आफ़ इंडिया उसे एपायंट करती है, उसके फ़ॉबूज से उसको प्रेमेंट होता है और उसको यह इन्डरेन्ट पावर हासिल है कि जब चाहे तब वह उसको कुछ आधारों के होते हुए हटा सकती है। अगर संविधान के निर्माताओं का यह उद्देश्य रहा होता कि फ़िनांस कमीशन के चेयरमैन के बारे में भी वही व्यवस्था रखी जाये, जो कि सुप्रीम कोर्ट के जजिया और चीफ जस्टिस, कंट्रोलर एंड आडिटर जेनरल आफ़ इंडिया और चीफ इलेक्शन कमिशनर को हटाने के विषय में रखी गई है, तो संविधान में यह व्यवस्था जरूर रखी होती। चूँकि उसमें यह व्यवस्था नहीं है, इसलिए इसके साफ़ मानी ये हैं कि संविधान के निर्माताओं का लक्ष्य यह था, मन्त्रा यह था कि फ़िनांस कमीशन के चेयरमैन को गवर्नरमेंट आफ़ इंडिया उसी तरह एपायंट और रीमूव कर सकती है, जैसे कि और गवर्नरमेंट आफ़ इंडिया सर्वोन्ट्स को। मेरा निवेदन यह है कि फ़िनांस मिनिस्टर की इस दलील का कोई आधार नहीं है।

[ श्री ब्रजराज सिंह ]

इन तीन आफिसिज के अलावा और किसी के बारे में संविधान में व्यवस्था नहीं है। अगर संविधान के निर्माताओं का इस बारे में कोई इरादा होता, इन्टेन्शन होती, तो संविधान में जरूर उसकी व्यवस्था होनी चाहिए थी। चूंकि उस में कोई व्यवस्था नहीं है, इस लिए फिनांस कमीशन के चेयरमैन या दूसरे सदस्यों की अलग से कोई हैसियत नहीं है—उनकी वही हैसियत है, जो कि दूसरे गवर्नर्मेंट सर्वेन्ट्स की है।

फिनांस मिनिस्टर ने काल अटेन्शन नोटिस के जवाब में यह भी कहा कि चूंकि हम फिनांस कमीशन के कर्तव्यों में इन्टरफ़ीयर नहीं कर सकते, कोई दखल नहीं दे सकते, इस लिए हमें कोई ऐसा अधिकार नहीं है। मैं यह निवेदन करना चाहता हूँ कि सरकार उसमें इन्टरफ़ीयर कर सकती है या नहीं, यह सबाल नहीं है। सरकार इन्टरफ़ीयर तो इलेक्शन कमीशन, कंट्रोलर एंड अडिटर जेनरल आफ़ इंडिया और सुप्रीम कोर्ट के कर्तव्यों में भी नहीं कर सकती है, लेकिन उन पदाधिकारियों को प्रूब्ल मिसिबिहेवियर या इनकैपेसिटी के कारण हटाने के लिए संविधानिक व्यवस्था की गई है। इस लिए उनकी यह दलील कोई बजन नहीं रखती है।

मैं यह निवेदन करूँगा कि हम इस तरह की परम्परायें डालें कि जिससे इस देश के संविधान की प्रतिष्ठा को घक्का लगने की आशंका न हो। सरकार की ओर से जो कुछ किया गया है, उससे संविधान की प्रतिष्ठा को घक्का लगने की आशंका है। कल इस तरह की ओर बातें हो सकती हैं। सोशलिस्टिक पैटर्न आफ़ सोसायटी की स्थापना के उद्देश्य से सरकार कई कार्पोरेशन्ज कायम करने जा रही है, जो कि उचित है। कल एल० आर्ह० सी० या किसी और कापरिशन के आफिस का प्रश्न आता है, तो सरकार क्या कहेगी। क्या तब भी वह

कहेगी कि वे आफस गवर्नर्मेंट आफ़ इंडिया के अन्तर्गत नहीं हैं—They are not offices under the Government of India? इस तरह की दलील देना बिल्कुल गलत है। आवश्यकता इस बात की है कि अगर कोई गलत स्टप उठाया गया है, कोई गलत कदम उठाया गया है, तो सरकार को स्वयं उसको रीट्रैट करना चाहिए। जसा कि श्री साडिलकर ने कहा है, सरकार इस बात की इलजार न करे कि कोई व्यक्ति इस बारे में सुप्रीम कोर्ट तक पहुँचे और उसके माननीय जजों से यह रूल इस्यू कराए कि यह संविधान की व्यवस्थाओं के खिलाफ़ है, इस लिए इन को हटाया जाये।

**Shri Harish Chandra Mathur (Pali):** This discussion arose out of the appointment of Shri A. K. Chanda, ex-Comptroller and Auditor General as Chairman of the Finance Commission. Objection is taken to this appointment on the basis of the provisions of article 148(4) of the Constitution which says:

"The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office."

It should be obvious to anyone that this provision has been made to give absolute independence to the holder of that office so that he may discharge his very onerous and difficult duties in criticising Ministers and Ministries of the Government in such a manner. There should be no allurement for him and he should have nothing to look forward to in the future after his retirement. That is the basis and the objective.

I have not the least hesitation in saying that Shri Chanda while holding his office had enjoyed almost an enviable reputation for independence. I am fully prepared to say that he has not accepted this office as any allurement. I am fully prepared even to subscribe to the view that he never

looked for such office and he may have accepted it only to help the country in discharging certain responsibilities. I am also prepared to accept that the Finance Minister in recommending to the President the name of Shri Chanda for this appointment had no other objective; he has had no ulterior motive and he must have done it with the best of intentions to find the most suitable person who can discharge the responsibilities of the Chairman of the Finance Commission. While I fully accept these in respect both of the Chairman of the Finance Commission as well as the Finance Minister, I have not the slightest hesitation also to say that I do not feel at all happy about this appointment.

I have two reasons why I say so. My first reason is this. It may be argued that this office is not an office under the Government of India which appears to be a line which the Government want to take. But, why do they say so? Is it that they want to stand on absolutely technical grounds? Does that technical ground justify or fulfil the objective which was in the minds of the constitution-makers? The crux of the point is this. Whether by simply satisfying a legal quibble or being technically correct, you are fulfilling the objective which led the constitution-makers to put this provision here?

It is said that he is not a full-time office-holder. I do not know how we can reconcile ourselves to that position. I know that even some of those members who have been appointed on this Commission are full-time and they are paid full-time salaries. If you find it absolutely necessary for the members to be full-time workers, what is the justification to say that the Chairman will not have to do full-time work? It may be an eyewash. We can explain it away like that. That is another matter to say that he will not be drawing any salary. Mr. Speaker, you will readily agree that it is not the salary that

matters. There are thousands and thousands of people who do not hanker after salaries. There are many people here who could have got higher salaries which they have sacrificed by coming to this House. (*Interruptions*). Salary is not a very important consideration while we think of making these appointments.

Therefore, it is my feeling that even if the Government may be technically correct, even if the view may be upheld by the Supreme Court that this is not an office under the Government of India, I think, the hon. Finance Minister has not been well advised or has not been correctly advised in recommending this appointment.

**Mr. Speaker:** In case the office falls vacant who appoints another?

**Shri Morarji Desai:** The President.

**Mr. Speaker:** The President, on the advice of the Government. Therefore, the Government appoints this person. Under the General Clauses Act has not the person who appoints the right to remove the person?

**Shri A. K. Sen:** The statute provides for this.

**Mr. Speaker:** Where is it? There is nothing, no specific provision, for removal at all under the Act.

**Shri A. K. Sen:** The appointment itself is for a period of years. The President cannot appoint without specifying the period.

**Mr. Speaker:** If he becomes disqualified or otherwise?

**Shri Morarji Desai:** That is also provided.

**Shri A. K. Sen:** The statutory disqualifications are provided by Parliament.

**Mr. Speaker:** Is the opinion of the Law Minister that once a person is appointed for a period he cannot be removed even for misconduct?

**Shri Morarji Desai:** Sir, it is provided. (Interruptions).

**Mr. Speaker:** If a person is appointed to a particular post, does it mean he will continue irrespective of misconduct?

**Shri A. K. Sen:** If the period is specified.... (Interruptions). Let there be some patience. The question has been put and not answered.

**Mr. Speaker:** Has the hon. Minister got the General Clauses Act?

**Shri A. K. Sen:** The power of appointment carries with it the power of removal. If you look at article 280 of the Constitution, you will find—

"Parliament may be law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected."

**Mr. Speaker:** It does not say about dismissal.

**Shri A. K. Sen:** The manner of selection carries with it the manner of removal under the General Clauses Act. If the manner of selection is vested in Parliament....

**Mr. Speaker:** Therefore, by an Act of Parliament can this gentleman become a Supreme Court Judge? It is only a Supreme Court Judge who has to be removed by Parliament under the Constitution.

**Shri A. K. Sen:** If the Parliament so choose they could have provided in the Act itself the manner of removal.

**Mr. Speaker:** Not even selection.

**Shri A. K. Sen:** If the selection is vested in Parliament the removal must also be under the General Clauses Act.

**Shri Braj Raj Singh:** It is implied.

**Mr. Speaker:** The authority to select is not here, the authority of removal is not given here. Under the Constitution the authority to appoint is vested in the President. The authority to appoint is not given by the Parliament but by the Constitution. Is it open to the Parliament to say that the President shall not appoint or a Commission shall be appointed?

**Shri A. K. Sen:** No, Sir.

**Mr. Speaker:** Let me see one after the other. Now, if the authority to appoint vests in the President—that means, the Government of India—then only the manner or the method of selection and the qualifications are given here. Is it open to the Parliament to take away the ordinary power of the President or whoever appoints him to remove him and say: "No, you shall not remove him"?

**Shri A. K. Sen:** It is the manner of selection.

**Mr. Speaker:** But does the manner of selection take away the power of appointment or the power of dismissal. The power of dismissal goes with the appointment. It is open to the Parliament to say that he shall not dismiss him notwithstanding the fact that he does not do any work?

**Shri A. K. Sen:** It is open to the Parliament to provide the manner of selection and that the President cannot exercise the power of appointment without following the procedure laid down.

**Mr. Speaker:** That he has done.

**Shri A. K. Sen:** Therefore, if the Act itself does not give the President power to remove the incumbent during the period prescribed in the appointment the President cannot do it.

**Mr. Speaker:** Apart from the qualifications proposed in the Act of Parliament, is it open to the Parliament to say that notwithstanding this a Supreme Court Judge can be appointed?

**Shri A. K. Sen:** The qualifications are to be prescribed under article 280.

**Mr. Speaker:** We will assume that these questions are admitted. It is admitted that it is a government appointment. It may be an office of profit or not, but all the same it is an office.

**Shri A. K. Sen:** Of course, it is an office.

**Mr. Speaker:** These things are conceded. It is an office and the power of appointment vests in the President—that means the Government of India. The Parliament is asked to prescribe the qualifications necessary and the disqualifications on which he ought not to be appointed. The selection, all the same, vests with the President. The mode of selection....

**Shri Morarji Desai:** Sir, may I say that you may be pleased to hear me when I have to reply?

**Mr. Speaker:** Very well. Because they are raising questions here.....

**Shri Morarji Desai:** I have understood the questions, and you might permit me to reply to them.

**Mr. Speaker:** Why should he have any doubts about it?

**Shri Morarji Desai:** Because they seem to be settled by cross-examination.

**Mr. Speaker:** No, no.

Some hon. Members rose—

**Mr. Speaker:** Order, order. I am very sorry the hon. Minister also should have committed the same mistake as some hon. Members do. So far as the House is concerned I am also a Member of the House. Apart from that, the House must understand what exactly the situation is. Is it not necessary that the Auditor-General to whom references are made from time to time and whom we

expect to advise us and make a report on the appropriation accounts should be a person who can be absolutely depended upon for those purpose without fear or favour? Therefore, I am interested in this and the House is interested. I am interested in seeing that this House understands what exactly the position is.

**Shri Morarji Desai:** I may submit, Sir, that I have not disputed your authority or your function in any sense. I am only saying that the issues in this are very well put. Now it is a matter of my trying to clear them.

**Mr. Speaker:** I agree.

**Shri Morarji Desai:** If that is not allowed to be done, then how am I going to do it? That is all that I was going to say.

**Mr. Speaker:** Why should he come to the conclusion that he is not going to be allowed?

**Shri Morarji Desai:** Because the examination goes on.

**Mr. Speaker:** I shall sit till midnight today. The hon. Minister may take as much time as he likes to explain the matter according to his intentions. But, in the meanwhile, if he should be impatient if I put some questions which have been raised, I do not know what to say about this matter.

**Shri Morarji Desai:** I shall certainly reply to the questions which you have raised.

**Mr. Speaker:** Very well. Shri Harish Chandra Mathur.

**Shri Harish Chandra Mathur:** Mr. Speaker, this provision that Parliament may determine the qualifications, the conditions of service, etc., is there. Also, the provisions in respect of the Comptroller and Auditor-General—his service conditions and various other things are also there. So far as the question of appointment

[Shri Harish Chandra Mathur]

is concerned, the appointment both of the Chairman as well as other members of the Finance Commission has also been provided for in the Constitution through its various provisions. Until and unless the Constitution is amended that provision stands. There are provisions relating to the appointment and consequent removal also, so far as the Comptroller and Auditor-General is concerned. There is also a provision to the effect that he shall not hold any office after retirement, and it is also clear that Parliament can make any rules and prescribe terms and conditions in relation to this office. The Constitution has provided that Parliament may make certain rules and determine, by the rules, certain conditions and terms regarding the appointment. So, the Constitution has not left anything uncovered, even for Parliament, namely, that there shall be no appointment for the Comptroller and Auditor-General, after retirement, to any office.

Therefore, so long as the Constitution provisions stand as they are, I feel that this appointment is not well-advised. Even if I say that it may be technically correct to have made this appointment, what happens is, this is a matter on which there can be two opinions. The hon. Finance Minister may give a very sound exposition and he may give an opinion and he may be supported in that opinion by the Attorney General, but, all the same, it is just one opinion, and there is a strong opinion on the other side. Therefore, when I mention the propriety and the advisability of this appointment, I think I am on very sound lines that in certain matters, even if they are technically correct, and even if there is a very strong opinion which is supported by something else, it is not at all advisable to make an appointment.

Secondly, does the hon. Finance Minister believe that everyone in the country, most of the people who are interested in such matters, will be able to appreciate all these things?

We must create a sense of confidence in the minds of the people that this Government does not do anything which is doubted, which is not only not correct but which is not above suspicion and doubt. Particularly in such matters, where the Constitution has made several provisions, I think it is advisable and it is correct—and propriety admits it—that we should do nothing over which there is any doubt or any suspicion.

Having said this much, I wish to say why I oppose this on another ground also. Almost all these appointments of retired people arise out of a particularly very wrong mentality on the part of the Government. There seems to be a mentality and attitude developing in our Government that there are only certain people who are indispensable for anything and everything in this country and that this country is bankrupt of all talent, and that there are no people in this country except a few who are before the Government's eyes and who can be given all these responsible appointments.

What has happened in the U.S.A. recently? In the recent appointments made to the Cabinet there, almost everybody is below the age of 50. There is hardly anyone who is above this age-limit—perhaps there are just one or two. I think we are doing something very prejudicial to the interests of the country and to the development of talent in this country. When we feel that only 60, 65 or 70 is the qualifying age for anything and everything, are we not giving an impression to the country that we have had to make this appointment, that we were forced to make this appointment because there is no talent in the country, that there are no better people available in the country who can be appointed as Chairman or members of the Commission? This sort of impression and attitude on the part of the Government on the one hand and this sort of attitude and impression which is created in the country are very pre-

judicial to the development of talent in the country. We do not permit talent to blossom and develop in the country. I am sure there are many people in the country who will be able to discharge these duties and if a few are not appointed, the heavens would not fall. The attitude that if a few are not appointed, the duties and responsibilities will not be discharged and we will not be able to carry on is wrong. I wish that the Government revise their attitude in these matters and they think of a larger circle in this country than confine their eyes to a certain people, who have given really good performance, no doubt. As I said, I do not know the circumstances, but I am fully prepared to believe that Shri Chanda has not been allured into this office and that he has taken up this office only to help the country and the Government. That may be so; but still on the ground of propriety, on the ground of availability of people, I stoutly oppose it. We do not want any impression to be created in the country that we are forced to make any such appointments.

**Shri Nathwani:** Mr. Speaker, Sir, till I heard the last speaker, I thought that the issue before the House was a simple one, viz., whether the appointment of Shri Chanda is in violation of the principles and tenets laid down in our Constitution, whether his appointment, in other words, is against the provisions of article 148. The hon. Mover and those who followed him referred to the commentary of Shri Basu on this article. But before we go to the commentary of any text-book writer, it is desirable that we concentrate on the text itself.

If we look to the text, the material words are these: Sub-clause (4) says as follows:

"The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office."

Therefore, there are two questions before the House. The first is whether his present appointment is an appointment for further office. You will be pleased to underline the words 'further office', because I am going to explain hereafter that there are different words used in different articles and the word 'further' is advisedly used in this article. The second question is whether such an office is under the Government of India. I submit that neither of these two conditions is satisfied in this case.

It is not a "further office." Here I invite the attention of the House to the words 'office of profit' which occur in several articles. In articles 58, 66, 102, 191 and 158, the expression which is used is 'office of profit'. In this case we find the expression 'further office'. Those who drafted the Constitution were fully alive to the divergence or the different expression that was being used in sub-clause (4). In other words, it means in this context, the person will not be eligible for an office which is similar to the office which he held till he vacated that office. In other words, you have to see whether he is being appointed to an office which is similar to the one which he occupied prior to his retirement—similar in the sense of carrying remuneration. That is the import or the significance of the word "further office".

**Shri Braj Raj Singh:** Similar.

**Shri Nathwani:** Yes, it means "Similar office". It means that he must be appointed to an office similar to the one which he was occupying. Therefore, you have to see the profit which he derives in this context. It is not suggested that....

**Mr. Speaker:** What is the other office equal to the office of the Auditor-General?

**Shri Nathwani:** The test is to see whether which he is likely to get remuneration. That is one of the most important tests.

**Mr. Speaker:** Is it not open to us to say that with respect to this officer, who is held supreme, even an office without salary ought not to be accepted? Of course, the question of the office of profit is there. If there is no office of profit, it is open to others to accept that office. But here, even though there is no profit, could we not say that the Auditor-General, for the sake of prestige, should not accept that office? Can we not make it more stringent in the case of the Auditor-General who has held a high office? Could we not make it wider and say that he shall not accept an office of profit or an office even without profit?

**Shri Harish Chandra Mathur:** Then, according to his argument, the Auditor-General can be appointed an Ambassador or a Governor.

**Shri Nathwani:** I am not saying that.

**Shri Harish Chandra Mathur:** Because, that is not a 'further office' or 'similar office'.

**Shri Nathwani:** You have to see the remuneration; you have to see the words which are used in other articles. There the words are "office of profit". Here the words used are "further office". Therefore, you have to bear in mind the remuneration aspect as well as the duties that are to be discharged by that officer. Here we have to take into account not merely the pay but also the position, the rank etc. We must give some weight to the word "further", and that is the interpretation that I am asking this House to adopt.

Otherwise, it would have been very simple to say that he will not be eligible for any office and the whole meaning would have been clear; they could have mentioned "office", irrespective of whether it is an office of profit or not. But here the word "further", and that is the interpretation in this context that his post for which he is ineligible should carry remuneration. That is the first submission.

Secondly, even if it is an office of profit, is it an office under the Government of India? The hon. Member who raised this question and other who followed him made it clear that in the Act there is a power of removal. Because, unless there is power of removal also vested in the Government it will not amount to an office under the Government of India. Because, though not conclusive, though not final, still one of the tests is whether the Government of India has the power to appoint and remove that particular officer; and that is why this controversy about their being a power in the Government, or in the President, to remove him has arisen. I venture to suggest that there is no power, either in the President or in anybody else, to dismiss him, to remove him, even though there might be misconduct during that particular period. Here it is to be noticed that in these articles, articles 280 and 281 onwards, there is no power of removal given either to the President or to any other body, whereas in other articles similar power has been given in the case of Judges to the Supreme Court and other persons, and for a very good reason. The difference will be very clear. Because, we have to bear in mind that this office is of a temporary period, it is not a continuing post, just as in the case of a Supreme Court judge, Election Commissioner and so on. Here, the work is to be finished within a year or two, and that is why it was not considered necessary to think of the possibility of removing that incumbent on the ground of misconduct or other reasons. He will disqualify himself as being a member if certain contingencies occur, but he would be appointed for a specific period and during that period, it must be borne in mind, he is not an employee in the sense of being a servant of the Government of India. Therefore the analogy of the master dismissing a servant who might have been appointed by him for a fixed number of years does not hold good in this case.

**Shri Braj Raj Singh:** Does he mean to say, even if for the sake of argu-

ment we assume that a person holding that office goes mad, that he shall not be removed?

**Shri Nathwani:** It is so provided by Parliament.

**Shri Morarji Desai:** He becomes disqualified immediately.

**Shri Nathwani:** Our trouble is that those who have spoken here have not tried to take care....

**Mr. Speaker:** In some countries there are political appointments. Can the Comptroller and Auditor-General be appointed as a High Court judge? We will assume that he can be appointed a High Court judge. Will he then be under the Government of India or not?

**Shri Morarji Desai:** Simply because he is removable under certain circumstances?

**Shri Nathwani:** Under the relevant provisions of our Constitution, in the hypothetical case you are suggesting, it will be possible to remove him by resorting to the machinery provided for in the Constitution.

**Shri Naldurgkar (Osmanabad):** Suppose he is convicted of an offence. Will he still continue in office?

**Shri Nathwani:** Parliament has already provided for that. Those who ask questions like this have not studied the Finance Act itself where there are four contingencies provided in which he would cease to hold the office. He might become a lunatic; he might commit an act of moral turpitude or he might acquire some interest. Therefore all possible contingencies during the short period of a year or two when the Commission might be functioning have been taken into account and due provision has been made.

**Mr. Speaker:** It is open to the Government to appoint particular persons

on a contract basis for five or six years. They serve on a contract not in a permanent job but for four or five years as experts. They come and go. Are they Government servants or not?

**Shri A. K. Sen:** Of course, they are because they are under the control and direction of the Government.

**Mr. Speaker:** Here also the President can ask from time to time whatever information he wants.

**Shri Nathwani:** He may ask for information, but so far as his duties are concerned they are provided for under the Constitution itself. The procedure that has to be followed is to be provided for by the Commission itself.

**Mr. Speaker:** A district magistrate is appointed by the Government but he acts under the Procedure Codes. Government has no right to interfere in any act of his so far as usual matters are concerned. Is he a Government servant or not?

**Shri Nathwani:** No.

**Shri A. K. Sen:** May I answer that? If it is a purely judicial function and if he is not controlled in the discharge of his duties by the Government, the Supreme Court has held in the case of the Registrar of a High Court that he is not a Government servant.

**Shri Morarji Desai:** He is not a Government servant.

**Shri A. K. Sen:** The Supreme Court has said so. The question put by the Supreme Court was: In the discharge of his duties is he under the control and supervision of the Government? In answering the question whether the Registrar was a Government servant or not, the Supreme Court has held that he is not.

**Mr. Speaker:** Therefore a Member of Parliament can be a magistrate drawing a salary because he is not a Government servant? Because a district magistrate is not a Govern-

[Mr. Speaker]

ment servant, a Member of Parliament can both be a district magistrate and a Member of Parliament?

**Shri Morarji Desai:** A Member of Parliament is disqualified under another Act of Parliament. He cannot be a salaried servant of Government.

**Mr. Speaker:** A Member of Parliament is disqualified only if he accepts an office of profit under the Government. But if it is not an office under the Government, a Member of Parliament can be a first-class magistrate, a district magistrate and also a Member of Parliament.

**Shri A. K. Sen:** As I said, if a district magistrate's functions are purely judiciary in the discharge of which he is not under the control of Government....

**Mr. Speaker:** We will assume it to be a district judge.

**Shri A. K. Sen:** Even the district judge discharges many functions in the discharge of which he is under the administrative jurisdiction of the Government, for instance, in company matters and in various other matters.

**Mr. Speaker:** What about a munsif?

**Shri A. K. Sen:** I cannot answer it off-hand. But, as I said in determining whether the Registrar of a High Court.....

**Mr. Speaker:** He is not a Government servant in the sense that the Government as the appointing authority has no right to interfere with his judgments. Otherwise, he is a Government servant for the purpose of appointment, transfer etc.—everything.

**Shri Morarji Desai:** He is by law a Government servant.

**Mr. Speaker:** Very well, there can be a difference of opinion.

**Shri Nathwani:** Here also, the Government cannot interfere with the work of the Finance Commission.

**Mr. Speaker:** That is all.

**Shri Nathwani:** Therefore, even taking the test which you, Sir, are suggesting, the Commission has not been acting under the Government. Therefore, it cannot be held to be an office under the Government of India. Neither of the two tests which are laid down under sub-clause 4 of article 148 are satisfied in this case. I do not see any constitutional objection or legal objection to the appointment of Shri A. K. Chanda.

**Mr. Speaker:** The hon. Finance Minister or Law Minister.

**Shri Morarji Desai:** I shall try to answer, Sir. I am sorry that my first statement which I made on the Call Attention Notice was considered casual by the hon. Member who opened his discussion. I could not imagine that hon. Members in this House were so suspicious of those who carry on the Government that the Government is not applying its mind to anything or that they are not interested equally with hon. Members to see that the Constitution is carried out in every aspect.

**Shri Khadilkar:** They are not infallible.

**Shri Morarji Desai:** I cannot be infallible, but I would not be casual. That is what the hon. Member mentioned that I mentioned casually. He is entitled to be casual at all times. I am not expected to be casual at any time.

**An Hon. Member:** Can't afford.

**Shri Morarji Desai:** If my hon. friend thinks that I was casual, certainly I would say that I was not acute enough to realise the suspicion of my hon. friend. I know that he has a very suspicious mind. But, I did not know that his suspicions would go to this extent. Therefore, I shall be more careful in future. That is all that I can promise.

You, Sir, have raised several points. I shall try to deal with them to the

best of my capacity. The question is very pertinent and I am very thankful to hon. Members for raising this question in this House in this discussion. We cannot at any time be too careful in these matters, I grant readily. It is incumbent on all of us to see that we do not do anything which is contrary to the spirit of the Constitution, not only to the letter of the Constitution. I agree entirely with my hon. friends in this matter. I was, therefore, pained a bit when the attack came from my own side from a colleague, who said that this Government now seems to be thinking in terms only of retired people and does not find any talent in this country. We'll, Sir, the hon. Member also is entitled to his opinion. That is all that I can say. But, if he thought that this Government is erring on wrong lines, his duty is clear. That is all that I can say.

In this particular matter, I would only say this. I agree that Caesar's wife must be above suspicion. But, how far should that suspicion be carried? Life will become absolutely impossible if any suspicion that is raised anywhere is to be taken into account and even a right thing has not to be done. In this case, an ex-Comptroller and Auditor General has been appointed as Chairman of the Finance Commission. The question is whether we are going against the letter and the spirit of the article of the Constitution which debars the Comptroller and Auditor-General from further office under the Government of India or a State Government. We did consider this question before his appointment. It was not that this was very casually done. This was there. We do consider all these problems at all times. There was another person who was going to be appointed, but he got ill, and therefore we had to change the appointment. At that time we consider all these questions, and going into it very thoroughly and carefully Government came to the conclusion that there was no bar to his appointment

as Chairman of the Finance Commission.

**Shri Tangamani:** May I know whether the Attorney-General was consulted when the Government came to the conclusion?

**Mr. Speaker:** I would request hon. Members to note down any particular points which require clarification. I am sure the hon. Minister will certainly, even without questions being put, clarify the points raised. If at the end they find any important point unanswered, they can raise it.

**Shri T. B. Vittal Rao (Khammam):** In this context.

**Mr. Speaker:** The context will never disappear.

**Shri Morarji Desai:** You have said you are prepared to sit here till midnight. Who am I? I will certainly sit here till midnight and reply to all questions.

**Mr. Speaker:** I am only asking him not to interrupt.

**Shri Morarji Desai:** We, therefore, consulted my colleague, the Law Minister, and also found that there were opinions of the Attorney-General on record on the interpretation of these sections which covered this case also. The opinions of the Attorney-General and the Law Minister coincided. There was no difference of opinion in this matter. If there had been a difference of opinion on this, I should have certainly not taken a doubtful decision. That is the care that we take in these matters.

It is not merely painful to me that such a contingency should arise, it is not merely that Government is wrong. If it is wrong to do so, it would be wrong for the ex-Comptroller and Auditor-General to accept this position. I would not want to put him in that position, because I would be at fault in putting him to that position. I am not interested in it. It is very necessary to see that nobody

is corrupted, but is there any attempt at corruption now or in the future in these matters? That is what has got to be seen.

In the first place, I would say that this is an office which has a limited tenure. It is not long at all, it is for a year. It is not a continuous office. Nor, as I said before, is there any salary for this. There is only a tour allowance given, and nothing more than that. Everything else is debarred. A free house, free electricity, everything is debarred. It is only a tour allowance for the days on which he works as Chairman. Therefore, there is no question of any extra allowance beyond what he has to spend at that time on the tour—not in his every day expenditure where he lives.

19 hrs.

The question is very relevant whether this is an office of profit or not. On these standards it is not an office of profit, but it is not mentioned in the article that it should be an office of profit. That is what can be easily argued. But it is mentioned in the article that he is not eligible for any further employment, for any further office. 'Further' does not mean an office which is similar or of the same type. There cannot be the same type of office of the Comptroller and Auditor-General. There is only one. Then, why did they mention 'further'? These words were not mentioned without any meaning or without any consideration. These words are not mentioned everywhere. These words are mentioned only in two cases. In the case of the Chairman of the UPSC, the words mentioned are 'further employment'. Here, the words mentioned are 'further office'? Why is it mentioned in this manner?

**Mr. Speaker:** Reappointment to that office.

**Shri Morarji Desai:** No, Sir. That is not merely the meaning. I do not take that meaning that in that case he

can be appointed to any other office, that he can be appointed Secretary in the Finance Ministry. That is not the idea.

**Mr. Speaker:** The hon. Minister referred to the case of the Chairman of the UPSC. I am reading from the article relating to him. It reads thus:

"...be ineligible for re-appointment to that office."

**Shri Morarji Desai:** Or further employment. I hope you will have the patience to read further.

**Mr. Speaker:** I am reading from article 316(3).

**Shri A. K. Sen:** We are referring to article 319.

**Shri Morarji Desai:** I hope you will read that article also, namely article 319. It reads thus:

"On ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State."

I am afraid you missed this.

**Mr. Speaker:** I am afraid the hon. Minister has not listened to me. I am referring to article 316.

**Shri Morarji Desai:** But that was not the only article which is relevant. This article is very relevant, and I am referring to that.

**Mr. Speaker:** I agree. The hon. Minister may also refer to article 316 (3).

**Shri Morarji Desai:** That is there.

**Mr. Speaker:** That article reads thus:

"...be ineligible for re-appointment to that office."

**Shri Morarji Desai:** That is all right. That is one. Then, there is further ineligibility. That is under article 319. When I said 'further office' and I compared it with 'further employment' it was with reference to article 319 and not to article 318. Therefore, that is the article which is relevant in this. And I do say that on that a reference had been made to the Attorney-General also before, as to whether the Chairman of the Public Service Commission can be appointed to a committee appointed by Government; and on that, all these issues were raised by the Attorney-General, and he compared these words. If you want me to read that, I am prepared to read that paragraph.

**Shri T. B. Vittal Rao:** Please do.

**Shri Morarji Desai:** He said as follows:

"Though the word 'office' or 'employment' may not in itself be restricted in its meaning to office which is remunerated or to employment which is paid, I think that in the context of these articles, what the erstwhile holders of office are made ineligible for are offices or employments of the kind held by them before they ceased to hold them, namely offices carrying remuneration or employment which is paid. I would gather this restrictions meaning from the expressions 'further', 'any other' and 'further' used in these articles. Having ceased to hold office or be employed, they are debarred from further employment, that is, such further employment. The language used would seem to indicate that the mind of the draftsman was directed to the kind of employment which the officer would cease to hold, and to make him ineligible for further employment of that kind in the Government."

This was what he said, and then he gave his opinion. Surely, the

Attorney-General is a very independent person. That will be granted by anybody. Therefore, there was no question of influencing him in giving these comments. These arguments were not brushed aside; all these questions were referred to him, whether this would mean this or whether this would mean that, and on that, he clarified this.

Therefore, Government is not wrong in considering that the office, that is, the further office that must be held must be an office with remuneration and not without remuneration. That is how Government views this matter. Otherwise, it would be said 'office'. Why 'further office'? Why is the word 'further' put in? That is how it is considered. That is one case.

There is another case. You referred to the General Clauses Act. I referred to the Act just now and I find that section 16 thereof reads as follows:

"Whether by any Central Act or regulation a power to make any appointment is conferred, then unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed, whether by itself or any other authority in exercise of that power".

The words here are 'unless a different intention appears'. That is what is said here. Is there any different intention in this appointment which is made? That is what has got to be seen. We cannot interpret the law out of all context. We have got to interpret it very carefully from the words which are there. I am not a lawyer, that is, I am not trained as a lawyer. But I used to hold a judicial office and, therefore, I used to consider both sides. Therefore, I have some little capacity of interpretation in this matter, where perhaps I am more fortunate than my hon. friend opposite who did neither.

**Shri T. B. Vittal Rao:** He has got a judicial mind.

**Shri Morarji Desai:** The hon. Member who knows nothing about a judicial mind can never appreciate a judicial mind. I know that very well. Therefore, I do not mind it. His very interjection is a compliment to me.

**Mr. Speaker:** I asked him not to interject.

**Shri Morarji Desai:** They cannot give up their nature. How can they do so?

**Shri Tangamani:** The hon. Minister likes it.

**Shri Morarji Desai:** I enjoy that, because it shows you in your proper light. It enables me to do so.

**Shri Tangamani:** And Vice versa.

**Shri Morarji Desai:** Yes, certainly.

**Mr. Speaker:** Order, order. Let this not be carried on.

**Shri T. B. Vittal Rao:** Only he cannot stand cross-examination.

**Shri Morarji Desai:** Where it is not needed. Where it is needed, I stand for hours and days.

The appointment is made by the President, of course on the advice of the Government and the Minister concerned. That goes without saying. But if there was any question of an authority remaining for removing him, then when it was mentioned here about the term of office, why should they have provided for his resigning and not for his removal? That is very significant. They have provided for disqualification. They have provided for his resigning. They have not provided for his removal. That has also been deliberately done because Government must not change the Finance Commission once Government appoints it, because the Finance Commission must be as independent as the Comptroller and Auditor-General or any other office, because if it is not, then Government

will not receive the advice which it wants. The Central Government is appointing a Finance Commission which take into account the States and the Centre. Therefore, it is necessary that the Finance Commission must not be disturbed.

It is because of that also that it has been provided in the Act itself that they will regulate their own procedure and they will regulate their own business. And the Constitution has provided for that. It is not even this Act; it is the Constitution which has provided that. They cannot be directed by me or by Government or by the President.

The disqualification under clause (4) also which was referred to here is a thing which is before the appointment; it is not after the appointment.

**Shri Tangamani:** There is clause (6).

**Shri Morarji Desai:** I am coming to that. As regards clause (4), the President has to verify beforehand, and he has verified. Therefore, that does not arise.

Then in clause (5), disqualifications are there. If he is of unsound mind, certainly he cannot be appointed.

If, in the course of doing his work he is declared to be of unsound mind, not simply because somebody says he is of unsound mind, then, he is debarred. Then he becomes ineligible and goes out. But there is no question of his being removed or dismissed.

**Shri Braj Raj Singh:** You said that there is no provision like that.

**Shri Morarji Desai:** There is a specific provision under certain circumstances. There is a law of Parliament. It is not by the free will of Government, or discretion of the President that that can be done. That is all that I am driving at.

Then, it is said, 'if he is an undischarged insolvent'. That again would have to be High Court's orders; it cannot be otherwise.

**Mr. Speaker:** Does non-removal within a particular period take away the relationship of employer and employee?

**Shri Morarji Desai:** There is no power of removal.

**Mr. Speaker:** Where is it said that the power of removal is necessary to create an appointment?

**Shri Morarji Desai:** That is how the dictionary says.

**Mr. Speaker:** The General Clauses Act says that the power of employment means the power of removal also. But nowhere is it said that the power to give employment is equal to power to dismiss.....

**Shri Morarji Desai:** Even the Constitution does not provide for removal. It has provided for punishment etc. and beyond those powers we can do nothing. The Government cannot punish anybody beyond that. But these powers are deliberately provided. If the General Clauses Act was only sufficient, then, it was not necessary to burden the Constitution with all these things.

**Mr. Speaker:** I am afraid I have not made myself clear. As in the General Clauses Act the power of removal follows the power of appointment unless it is otherwise expressly expressed or the circumstances so permit.....

**Shri Morarji Desai:** May I correct you, Sir? It is not said, 'expressly expressed'. It is, 'unless it is otherwise intended'. These words must be noted.

**Mr. Speaker:** All right, it is 'unless otherwise intended'. The power of appointment carries with it the power of dismissal. But it is nowhere said that the power of dismissal carries with it the power of appointment. The converse is not there. There can be a power of appointment and a person can become an employee notwithstanding the fact that under certain conditions there is no power of dismissal. For instance an em-

ployee is appointed for 5 years. Normally, under the contract, he will continue to be an employee. That does not militate against his position as an employee, merely because he cannot be removed. All the hon. Minister is urging is that there is no power of removal; and, therefore, he cannot be an employee.

**Shri Morarji Desai:** It is not only that. There must also be a power to give directions to the Commission. Are there powers to give directions to the Commission? Absolutely none. The Government cannot give directions to the Commission. I would certainly be happy if it is pointed out to me where there are powers of direction to be given to the Finance Commission. The Finance Commission is entirely independent in this matter. It has been deliberately done.

We have several independent offices and this is one of the independent offices. That is why this has been provided because it is necessary that this Commission should be independent. The Finance Commission must not work under the instructions of the Finance Minister or the Government. Because, otherwise, they will not be giving that opinion. which will have value. Therefore, it is provided so. Therefore, it is very clear to my mind. I do not know why doubts are raised. I won't say that these doubts cannot be raised. I can understand these doubts being raised, on a casual reference to these things. But I do not know if, on a deep consideration, these doubts can be raised. That is what I fail to understand. Therefore, I would rather request that there should be a deep consideration of this and not a casual consideration. (*Interruptions*). It is all that I am pleading for. Otherwise, one can be led away into having all sorts of different interpretations. There can be many interpretations wherever we go. But, in this particular matter, I do not think there can be any other interpretation.

[Shri Morarji Desai].

It is very clear that the Finance Commission is not within the control of the Government of India. This is certainly an office to which appointment is made by the Government of India. I won't say that it is not, because it is the President who appoints the Chairman; and if the President appoints it is the Government of India who appoints. On that score there is no doubt. But it is not within the control of the Government of India because that is what is provided in the Act itself, even in the Constitution. It is stated in article 280. These are all compulsory directions. There is no option left anywhere. It is stated here that the President shall appoint every five years. Therefore, even the President has got the appoint him whatever may be the case. There is no question of any option there. The only option left is to the Parliament to determine by law the qualifications which shall be requisite for appointment. That is the only option left. The Parliament may in its wisdom not make any law. Then the Government will decide that. But the Government came before Parliament and got this law enacted. The Parliament in its wisdom enacted this law and made the necessary provisions. The Government cannot say anything in that matter. The Government cannot vary these qualifications. It has been further said in this article:

"It shall be the duty of the Commission to make recommendations to the President as to . . ."

It is their duty. They cannot avoid that. Then it is said:

"The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them".

Not as the President may direct or as the Government may direct. It is absolutely clear. Then in article 281 it is said:

"The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament."

Therefore, it is the authority of the Parliament, under the Constitution, which is responsible for this. It is not, therefore, a further office under the Government of India. There cannot be any doubt about it in my mind. If there had been any little doubt we should not have made this appointment.

I do not say there are no persons available. But I would say he is one of the fittest persons, and fittest persons for this office are few in this country or in any other country. It is not a question of this country alone. The country may be powerful. Every person may think he is fit for everything. That does not mean that everybody is fit to do every thing. We must have a sense of proportion. Everybody is fit to come to the legislature, but everybody is not fit to do every kind of work. That is also a distinction made by our Constitution. Therefore, it is not proper to say there are other people available and anybody can be appointed to this office. Other people would be available; it is not that they would not be available.

**Shri Tangamani:** Sir, I want to seek your protection. The hon. Minister made a certain reference to the Members of Parliament. I heard him say that everybody has a right to become a Member of Parliament and not everybody to hold certain offices. I would like to have your protection in this matter.

**Shri Morarji Desai:** I did not mean any disrespect to the House.

**Mr. Speaker:** Why should anybody underrate himself?

**Shri Morarji Desai:** I am not under-rating. I am only say that it is only in the legislature that the right has been given to every person because everybody has got the unfettered right to direct the government of the country and therefore everybody is entitled to come to the House. But for all other places we have provided qualifications. Here there are only some disqualifications which must not be there. There are no other qualifications which are prescribed. That has been deliberately done. Why should that be taken as an affront, I do not know. I am one of them.

**Mr. Speaker:** I have repeatedly requested hon. Members that they should not make any reference to any hon. Member here. The temptation is there. I have advised hon. Members on this side—on the left side—that whenever something come up and there is a tendency to refer to ourselves it puts us in an embarrassing situation.

**Shri Morarji Desai:** If any embarrassment was caused, Sir, I am very sorry, because it was not my intention at all. But I should think, Sir, we in this hon. House ought not to be so very sensitive where sensitiveness is not required. That is what I thought. But if I am told so I would certainly not do it, and I shall be very careful in future.

**Mr. Speaker:** If anybody can be a Member—the hon. Minister will kindly resume his seat—here, anybody can have over-riding powers of the Attorney-General also. The same member who is qualified to be a Member of Parliament can become the President, can become the Prime Minister, can become the Finance Minister. It is not that the Auditor-General is superior to all those people here. Therefore, it is a peculiar privilege of a Member of this House. A casual—of course, I do not attribute any motives—reference has been made by the hon. Finance Minister. I want to enhance the prestige of the

Members of this House, and I am sure the hon. Finance Minister is equally interested in doing that. Now some people outside may say: "Oh! he is a Member of Parliament". I do not want anybody to say that it is such an easy job to become a Member. We have come clothed with responsibility. We can hold the highest position in this country and equally hold the greatest responsibility in this country. I do not want any mistaken impression to be given. I do not want the hon. Finance Minister's statement here to be misquoted for some other purpose by persons who want to laugh at Members of Parliament. That is all my desire.

**Shri Morarji Desai:** It was therefore that I clarified the point. If I had not clarified it, that might be the meaning put on it.

**Mr. Speaker:** I agree.

**Shri Morarji Desai:** Therefore. I do not want to pursue the point. I am only saying that there cannot be any intention on my part—

**Mr. Speaker:** No, no.

**Shri Morarji Desai:** . . . to belittle myself, let alone my colleagues. I would not be so stupid to do that.

**Shri Harish Chandra Mathur:** It equally applies to the Finance Minister.

**Shri Morarji Desai:** It applies to me; it applies forcefully to me, because I am speaking now. Therefore, how can I commit that crime against myself?

Now, Sir, as I said, this is an office which is not debarred under the article which is quoted in this House by hon. Members, for all the reasons, under the law, that I placed before you. The Attorney-General has clarified these clauses and the meanings in previous cases—not in this particular case—which I would have liked to clarify, because I do not want

[Shri Morarji Desai]

to make any wrong quotation. Let it not be thought at any time even by inference that I have said that this is so and all that. As I said before, we have got other legal opinions taken before, on the interpretation of the words "further office", "further employment", etc., and all that applies to this office. It is all there.

Then, in spite of that, I was again careful enough to consult my hon. colleague, the Law Minister. After doing all this, we got this appointment made by the President. Therefore, there is no question of thought not having been given to this matter. How can there be any scope for any corruption if a person is appointed to a post like this, where there is no guidance, where there is no remuneration, where there is no advantage gained? And he is not exercising any power and is not going to rule anybody or order anybody, and on the contrary, it is an onerous duty which he has to perform and he may have to displease many people and perhaps satisfy none, and I do not know how anybody could be lured to this office of Chairman of the Finance Commission. It is only when some people want to perform a public duty even at the cost of popularity that they will join the Finance Commission and no others will want to come into it. Therefore, there is no question of there being any scope for any corruption or any allurement in this office. All these considerations governed us in making this appointment. I do not see how I would not have been well-advised in making this appointment. I personally consider that there is absolutely no infringement of any discretion or any good advice or any good test or any consideration which is relevant in this appointment. That is what I have got to submit.

**Shri Braj Raj Singh:** May I invite your attention to section 4 of the Finance Commission (Miscellaneous Provisions) Act 1951? The latter portion of section 4 says as follows:

"and the President shall also satisfy himself from time to time

with respect to every member of the Commission that he has no such interest and any person who is, or whom the President proposes to appoint to be, a member of the Commission shall, whenever required by the President so to do, furnish to him such information as the President considers necessary for the performance by him of his duties under this section."

My point is, this section provides that during the pendency of the appointment of the Chairman of the Commission, the President is empowered to direct a member to give information with respect to these provisions. Suppose the person is disqualified after the report is received during the tenure of his office, will not the Finance Minister get him removed?

**Shri Morarji Desai:** There is no question of my getting him removed. If he is disqualified, he is disqualified. He goes.

**Shri Braj Raj Singh:** How?

**Shri Morarji Desai:** He goes automatically. He has to vacate.

**Shri Khadilkar:** Who decides the question of disqualification finally?

**Shri Morarji Desai:** The President will decide. (Interruptions).

**Shri Khadilkar:** It is you again!

**Shri Morarji Desai:** But the President cannot decide so easily like that. The President is not going to decide like that. The President is not an office which will be deciding in that manner. (Interruptions). It is an issue which can be taken to the court and can be decided. It is not an issue which can be decided without any consideration or without there being any doubt at all in the matter. The disqualifications have to be considered before the appointment and they are relevant. They are all

prescribed by Parliament; they are not prescribed by executive authority.

**Mr. Speaker:** Rightly Shri Braj Raj Singh has raised this point. Of course, before appointment if there is any disqualification, he would not be appointed. That is clear. Unless the President appoints him, he cannot become a member merely because he has no disqualification. Likewise, is it stated here that automatically he ceases to be a member if he incurs a disqualification after appointment? Is it not necessary for the President to remove him?

**Shri Morarji Desai:** If he is of unsound mind, that must be judged by what? It is not the President calling him as being of unsound mind or my calling him. If he is an undischarged insolvent, that is also under the law. It cannot be the President's wish or Government's wish or desire or discretion that he can be removed. If he has been convicted of an offence involving moral turpitude, that also does not depend upon the judgment of the President. If he has any financial or other interest, that also will have to be referred to the Supreme Court.

**Mr. Speaker:** If a disqualification is there, does it require a removal by the President or not?

**Shri Morarji Desai:** It is not necessary. There is no such provision. He has to be convinced and the man disputes.

**Shri A. K. Sen:** This is a very common occurrence in the discharge of statutory duties. Where there is a statutory disqualification, it is not a question of discretion of the appointing authority to remove him or not. It is a statutory duty to see that he does not continue.

**Mr. Speaker:** Is a formal order necessary or not?

**Shri A. K. Sen:** No formal order is necessary. Only an intimation is necessary.

**Mr. Speaker:** If he continues to be there, what will happen?

**Shri A. K. Sen:** It will be the duty of the President to remove him. It is not the power of the President to remove him; it is the duty of the President. If the President does not do his duty of seeing that he does not continue, of course, a writ will lie not against the President, but against the Central Government.

**Shri Braj Raj Singh:** I am only referring to the conditions to which the Finance Minister himself referred. Section 4 says that the President shall satisfy himself that the person will have no financial interest or other interest as is likely to affect prejudicially his functions. Supposing this disqualification is incurred during the pendency of the term, what does he do then?

**Mr. Speaker:** That is what he said. It will be the duty of the President to remove him.

**Shri Braj Raj Singh:** Does he have the power to do it?

**Mr. Speaker:** It is the duty of the President to appoint him and also to remove him in certain circumstances. All the same, it is not an employment. We are not deciding any issue here. We are only discussing.

**Shri Tangamani:** The Finance Minister was pleased to refer to the Attorney General in connection with the re-appointment of the Chairman of the UPSC. While giving us information about this reappointment, he also referred to this further office. There are conflicting views about office and office of profit and further office. This case has arisen in connection with the Auditor General.

**Mr. Speaker:** He wants to know whether a specific reference may not be made?

**Shri Tangamani:** My submission is, the Attorney General may be made to give his opinion on this particular matter.

**Mr. Speaker:** We are not deciding the issue whether his appointment is *ultra vires*. I only wanted to give an opportunity to this House. Enough has been said and even more has been said. There is a half an hour discussion.

**Shri Morarji Desai:** May I say that this opinion was obtained in 1955? But in that, in one paragraph he has mentioned also the Comptroller and Auditor-General. It was that paragraph that was mentioned. He has considered that also.

**Shri A. K. Sen:** That is why a specific reference of this case was not considered necessary.

#### RE: HALF-AN-HOUR DISCUSSION

**Mr. Speaker:** Is the House in a mood to have the half-an-hour discussion? We have sat so long.

**Shri Nathwani (Sorath):** We will have it in the next session.

**Shri Tangamani (Madurai):** When the question arose the hon. Deputy-Speaker was pleased to direct that one half-an-hour discussion may be taken up today and the other one during the next session.

**Mr. Speaker:** We will have two half-an-hour discussions, one after the other, tomorrow. Unlike today, we do not expect to sit till 7.30 p.m. with the other business. We will conclude the normal business at 5 O'Clock and we will sit till 6 O'Clock.

**Shri Tangamani:** May I suggest that mine may be taken up first tomorrow?

**Mr. Speaker:** Very well. I will give priority to this.

**The Minister of Law (Shri A. K. Sen):** I do not mind this being taken up today, because tomorrow I have a Cabinet meeting at 5 O'Clock.

**Mr. Speaker:** Can he not attend that at 5.30 after finishing this?

**Shri A. K. Sen:** Let us finish it now. I have answered so many questions on this subject. So, it will not take much time.

**Mr Speaker:** Very well. I am willing to sit.

**Shri Tangamani:** As you have directed, I shall be very very brief. On the 2nd December 1960, Starred question No. 636 was answered and this half-an-hour discussion arises out of the reply given by the hon. Minister. The main part of the question was about the recommendations of the Election Commission after the conclusion of the second general elections. Many recommendations were given and repeatedly questions were asked in this House.

**Mr. Speaker:** I ask the hon. Member: is this only to satisfy himself? I remember, when the question was put, a number of hon. Members wanted to know what exactly was happening.

**Shri A. K. Sen:** I think the question was directed mainly with regard to the ascertainment of the Government's attitude regarding double member constituencies. Because, I think it would be fruitful if the hon. Member indicates which particular recommendation he thinks should have been implemented but has not been implemented.

**Mr. Speaker:** What I say is.....

**Shri Tangamani:** May I point out that.....

**Mr. Speaker:** Order, order. Am I not here to see that a full discussion takes place on this subject. There is no quorum now. Of course, we do not expect any quorum at this late hour. The subject of the Election