

**THE MALARIA (PREVENTION AND ERADICATION) BILL, 1995.**

**SHRI SURESH PACHOURI** (Madhya Pradesh): Madam, I beg to move for leave to introduce a Bill to provide for the establishment of an autonomous National Malaria Eradication Authority to monitor and take effective steps for the prevention and eradication of Malaria including the malaria caused by plasmodium falciparum or cerebral malaria which kills thousands of people in various parts of the country every year, particularly in Madhya Pradesh, Rajasthan, Gujarat Maharashtra and National Capital Territory of Delhi, by taking steps to eradicate malaria causing mosquitoes and making available better medication to the affected citizens and for matters connected therewith and incidental thereto.

*The question was put and the motion was adopted.*

**SHRI SURESH PACHOURI**: Madam, I introduce the Bill.

**THE CYCLING (PROMOTION AND INCENTIVES) BILL, 1995**

**SHRI SURESH PACHOURI** (Madhya Pradesh): Madam, I beg to move for leave to introduce a Bill to provide for the promotion of use of bicycle by the employees of public and private sectors and general public for their journey to workplaces and for covering smaller distances and for giving various incentives to such employees and earmarking roads for exclusive use of bicycles in order to reduce the air pollution and also to reduce burden on exchequer by reducing the import of petroleum products and for matters connected therewith or incidental thereto

*The question was put and the motion was adopted.*

**SHRI SURESH PACHOURI**: Madam, I introduce the Bill.

**THE VICE-CHAIRMAN** (SHRI-MATI KAMLA SINHA): Shri Satya Prakash Malaviya not here. Next bill also to be moved by Shri Satya Prakash Malaviya, not here.

The Government of National Capital Territory of Delhi (Amendment) Bill, 1993 was being discussed. Shri Jagesh Desai, your name is here. You can go back to your seat and speak.

**THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) BILL, 1993 (Contd.)**

**SHRI JAGESH DESAI** (Maharashtra): Madam, I would like to say one or two things in this regard.

Without amending the Constitution, I think, this House cannot pass this kind of a Bill. Last time I had pleaded that the best course would be to bring a Constitutional amendment because in this a Union Territory is not covered, only the States and the Union are covered. As such, again, I request my good friend that it is better to withdraw this Bill and he may come with a Constitutional Amendment Bill. I think, this House will definitely give support if it is brought in that form so that Delhi can have its own laws through its own Legislature and according to the wishes of the people. Without amending the Constitution, this cannot be done. I hope, my good friend will definitely think over my suggestion and after the reply of the Minister, he will withdraw this Bill.

**SHRI JAGDISH PRASAD MATHUR** (Uttar Pradesh): He has with

drawn himself from the country itself!

SHRI JAGESH DESAI: When I talked to him personally, I was feeling that he agreed to my proposal. If he brings a Constitutional amendment, definitely, I think, he will get good support from the House. We want that Delhi Legislature must have its own laws, its own regulations so that it can fulfil the desires of the people of Delhi. I again request that he should withdraw the Bill that he should bring a Constitutional Amendment Bill.

THE VICE-CHAIRMAN (SHRI-MATI KAMLA SINHA): I have three names in the list. Prof. V. K. Malhotra, not here. Shri Jagdish Prasad Mathur. Shri Ish Dutt Yadav, not here. Mr. Minister, would you like to say a few words?

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. M. SAYEED): Madam, my esteemed friend, Mr. Sharma introduced this Bill on 13.8.1993. I wish he were here. He has gone out of the country for some purpose. The contents of the Bill were very much highlighted by the mover and many Members have very actively participated in this debate. My task was made easier by some of my friends, particularly Shri Vayalar Ravi who is not here, because the Bill particularly seeks to amend the Government of National Capital Territory of Delhi Act, 1991 through insertion of clause 89... to provide for (a) separate Secretariat staff for the Legislative Assembly (b) that the Legislative Assembly may regulate the recruitment and service conditions of this Secretariat staff and (c) till such time as the provisions are made, the LG, in consultation with the Speaker of Delhi, may take rules

regulating the recruitments. This the essence that the Bill seeks to amend. The provisions of the Bill were examined by the Ministry of Law from legal and constitutional angles also. Article 239A (1) (a) of the Constitution empowers the Legislative Assembly to make laws for the whole or any part of the NCT with respect to any matter enumerated in the State List or the Concurrent List, as is applicable to the UTs. Under the scheme of the Constitution, Madam, the UTs do not have separate Services. The Constitution contemplates only two kinds of services, namely, the Central Services and the State Public Service. There are no Services in respect of UTs. Services in the UTs are relatable to Entry 70 of the Union List of the Seventh Schedule of the Constitution, namely, the Union Public Services, the All India Services and the Union Public Service Commission. Therefore, the subject matter of the Bill is not within the legislature competence of the Legislative Assembly of the NCT of Delhi, and hence, cannot be constitutionally valid. Hence, I am constrained to oppose this Bill. In the initial stage itself, when Mr. Satish Agarwal was presiding here, I raised an objection whether the Bill as such is maintainable or not. My plea was that it is not maintainable because the matters referred to in the Bill can only be given effect to by way of amendment to the Constitution. Article 239A (1) (a) (3) empowers the Legislative Assembly to make laws in the whole of the NCT or part of that NCT in respect of matters enumerated in the State List or the Concurrent List, as is applicable to the UTs. Under the scheme of the Constitution, UTs do not have services and I have already mentioned it here. The Services in the UTs are relatable to entry 70 only of the Union List in the Seventh Schedule. Mr. Narayanasamy, who raised some matters par-

tiicularly with regard to the difference of opinion between the Governor, Lt. Governor and the Chief Minister he was referring to Pondicherry said that if the elected Government takes a decision, the Lt. Governor can reverse it. Constitutionally the position is that the Lt. Governor can differ. When he differs, he can refer the matter to the Union Government where the decision is taken. Till then, if for urgent public importance, on the same issue, a decision has to be taken, he can take. But the decision finally is to be taken by the Government of India. So, many points have been raised in this Bill but the pointed question is only with regard to the services as I have mentioned already. This is specifically mentioned in the Constitution itself. Therefore, the Bill before the House seeks to make the provision for an independent Secretariat for the Legislative Assembly of the NCT of Delhi on the lines of provisions of article 98 and article 187 of the Constitution. It is stated that for maintaining the independence of the Legislative Assembly and for having a proper and effective control on the executive it is essential that the Legislative Assembly should have an independent Secretariat which will, in addition, develop the requisite skill and expertise in managing the affairs of the Legislative Assembly. Madam, the principle behind the Bill, we can understand. But one has to go by what the Constitution permits. Under the specific provisions made in the Constitution it is not possible to make the proposed amendment to the NCT Act. As the hon. Members are aware, we have after a good deal of deliberations, made a unique arrangement for the administration of the NCT of Delhi whereby we have secured a balance between the interests of the nation by giving the Union Gov-

ernment on the one hand and a complete and comprehensive control over the National Capital, on the other hand, by satisfying the long-felt needs of the people of Delhi to have a democratic, responsible and accountable Government at the local level. To secure this, new provisions of the Constitution expressly retain the status of the Union Territory for the National Capital while providing for a Legislative Assembly and the Council of Ministers on the pattern of a State. It is not, therefore, possible under the Constitution to confer any powers on the Legislative Assembly or the Government of Delhi which would militate against its Constitutional status as a Union Territory. Hon. Member Shri Vayalar Ravi as has already been mentioned by me, has already dealt with the necessity of keeping Delhi as a Union Territory. I need not go over the same ground again. The Balakrishnan Committee has gone in depth into this and has ruled out grant of Statehood to Delhi. The Government and Parliament have accepted this. The subject matter of the Bill relates to the Services in the Union Territory. Under the Constitution, there are only two categories of services, namely, the Union Services and the State Services. There is no separate class of Union Territory Services. All Services in the Union Territories, therefore, come under the Union or Central Services for purposes of the Constitution. Entry 41 of the State List relating to State Public Services applies only to Services in the regular States and not in Union Territories. All Central Government services are governed by rules made by the President under Article 309 or the relevant law on the matter. In view of this it is not constitutionally possible to make a provision as

proposed in the Bill conferring powers on the Legislative Assembly of the Union Territory to make provisions for a separate Secretariat Service in the Union Territory of Delhi. As such, Parliament cannot enact this Bill because of the Constitutional limitations. I would, therefore, request the hon. Member not to press the Bill. But he is not here. Convention demands that I should request him, but he is not here. (*Interruptions*)

श्री सुंदर सिंह भंडारी (राजस्थान) : उपसभाध्यक्ष महोदय, अगर यह आपत्ति वैलिड थी तो डिस्कशन के लिए कैसे रखा गया और अगर डिस्कशन के लिए रखा गया है तो अब कंस्टीट्यूशनल थार इसमें आता, इसका कोई अर्थ नहीं है।

श्री पी०एम० सईद : मैं इसका अर्थ तो नहीं बोल सकता, मगर मेरी अपनी राय कंस्टीट्यूशनल जो है, मैं वह सभा के सामने रखता हूँ। आप इसे एक्सप्ट करें या नहीं, मेरी अपनी राय कंस्टीट्यूशन के मुताबिक क्या है, मैं हाऊस के सामने रखता हूँ।

श्री जगदीश प्रसाद मथुर (उत्तर प्रदेश) : आप मंत्री के नाते सरकार की तरफ से बोल रहे हैं। अगर सरकार को यह आपत्ति मालूम थी तो जब इसका एडमिट किया गया तो ला मिनिस्ट्री से या किसी स्टेज पर यह चैक होता है

whether it is admissable or not.

यह आपकी सरकार ने या सैक्रेटरी ने उनका एडमिनिस्ट्रिवल माना तभी तो इसको एक्सप्ट किया। अगर एडमिनिस्ट्रिवल नहीं होता तो सरकार की तरफ से इंटरोडक्टरी स्टेज पर ही विरोध होता चाहिए था कि यह एडमिनिस्ट्रिवल नहीं है, कंस्टीट्यूशनली वैलिड नहीं है।

Why did not the Government oppose the Bill at the introduction stage itself?

SHRI P. M. SAYEED: Initially when it was taken up for consideration, I was there. I was there when it was debated last. I raised the matter. At that time, Shri Satish Agarwal, who was in the Chair, said that since it had already been admitted. ....

SHRI JAGDISH PRASAD MATHUR: That is what I am saying.

SHRI P. M. SAYEED: He said that since it had already been admitted, we could have a discussion on it.

SHRI JAGDISH PRASAD MATHUR: That is what I am saying. How was it admitted at all?

SHRI P. M. SAYEED: I am placing the position before the House. It does not debar me from explaining the position to the House.

SHRI JAGDISH PRASAD MATHUR: of Course.

SHRI P. M. SAYEED: This is what I am humbly submitting before the House.

SHRI JAGDISH PRASAD MATHUR: You certainly have the right to express your opinion. But as a Government, when a Bill was being admitted you ought to have scrutinised it. Why was it not done? That is the difficulty.

THE VICE-CHAIRMAN (SHRI-MATI KAMLA SINHA): Let us not go into that now. (*Interruptions*)

श्री जगदीश प्रसाद मथुर : मैं केवल यह दिखाना चाहता हूँ कि आपकी सरकार की स्कूटी कितनी बेईमानी है। आप एक तरफ तो उसको एडमिट करते हैं, दूसरी तरफ कंस्टीट्यूशनल अमेन्डमेंट में उसका विरोध करते हैं। यह आपके सरकार के डिपार्टमेंट जो चैक करते हैं, तो इसको स्वीकार नहीं करना चाहिए था। यह हो कैसे गया ?

श्री पी०एम० साईद : मायुर साहब, मैं आपके इस हाऊस में डेढ़-बा साल से आ रहा हूँ, जा रहा हूँ। मगर आप एक सीनियर मेंबर हैं। एडमिनिस्ट्रिवेटी सरकार नहीं करती है, सैक्रेटरी करते हैं।

if I am correct.

SYED SIBTEY RAZI (Uttar Pradesh): You are right.

SHRI P. M. SAYEED: Therefore, let us not..

THE VICE-CHAIRMAN (SHRIMATI KAMLA SINHA): Let us not go into that debate. Since it had been admitted and since the discussion on it is almost complete now...

SHRI P. M. SAYEED: Madam, I am not raising that matter. I am putting an end to that.

THE VICE-CHAIRMAN (SHRIMATI KAMLA SINHA): Okay.

SHRI P. M. SAYEED: I do not want to rake up that issue. I would, however, add, Madam, that every possible effort should be made to ensure that the Secretariat of the Assembly functions properly and efficiently and that the Speaker should not face any difficulty in the discharge of his duties. This, however, is a matter which must be governed by proper conventions and healthy practices.

SHRI JAGDISH PRASAD MATHUR: Right.

SHRI P. M. SAYEED: It should not be difficult to have a working arrangement between the Lt. Governor and the Speaker in the matter of control over the staff assigned to the Legislative Assembly. The Central Government is as much interested in the proper functioning of the Legislative Assembly of Delhi, as the Government

of the National Capital Territory of Delhi.

May I, therefore, request that the Bill be withdrawn since, under the provisions of the Constitution, we cannot confer the power on the Legislative Assembly, which the Bill wants to?

SHRI JAGDISH PRASAD MATHUR:

Madam, I have a few observations to make—

मैं स्वागत करता हूँ मंत्री महोदय का कि अपने वक्तव्य में उन्होंने कहा। क्योंकि उनका कहना है कि कंस्टीट्यूशनली पासिबिल नहीं है। लेकिन एक बात उन्होंने सही कही है कि हेल्थ कंवेन्शन के माध्यम से होना चाहिए। तो मैं आशा करता हूँ कि सरकार इस विषय में असल में हेल्थी कंवेन्शन डालेगी और दिल्ली असेंबली के स्पीकर आदि को इतनी इजाजत देंगे कि वह अपने चाइस के अधिकारियों को रख सकें और उनसे स्वतंत्रता से काम ले सकें और उनको कोई कठिनाई न हो। तो यह हेल्थी कंवेन्शन आपके आज के भाषण तक सीमित नहीं रहेगा, व्यवहार में रहेगा, ऐसी मैं आशा करता हूँ।

श्री श्री० पी० कोहली : (दिल्ली) मैं सिर्फ यह कहना चाहता हूँ कि मंत्री महोदय ने जो यह कहा कि हेल्दी कनवेन्शन हो सकती है, बर्किंग अरेंजमेंट हो सकता है तो मेरा यह सवाल है कि इसकी पहल केन्द्र की ओर से होनी चाहिए और दिल्ली सरकार के प्रतिनिधियों के साथ बैठ कर केन्द्र सरकार यह विचार करे कि ये हेल्दी कनवेन्शन क्या हो सकती है और बर्किंग अरेंजमेंट क्या हो सकता है? एक निर्वाचित सरकार अपना कामकाज ठीक ढंग से कर सके, इसके लिए उत्तको जो इनफ्रास्ट्रक्चर सुविधाएँ मिलनी चाहिए, जो उसका अपना एक सेक्रेटेरिएट होना चाहिए, जो अपने अफसरों पर उसका अधिकार होना चाहिए, पोस्ट क्रीएट करने

का, उनको रखने का, अगर ये सब कुछ नहीं होता है तो एक निर्वाचित सरकार काम कैसे कर सकती है? इसलिए मैं मंत्री महोदय की इस बात से बिल्कुल सहमत हूँ कि उन्होंने ठीक भावना से यह बात कही है कि अगर आवश्यकता है सरकार को अपना काम सुचारू रूप से चलाने की तो इसके लिए कोई न कोई बकिंग अरेंजमेंट होना चाहिए और वह बकिंग अरेंजमेंट क्या हो सकता है, मंत्री महोदय के मन में भी उसकी कुछ न कुछ कल्पना होगी, उसको बैठ कर दिल्ली सरकार के प्रतिनिधियों के साथ डिसकस करना चाहिए, चर्चा करनी चाहिए, उसको इबाल्व करना चाहिए, इस सारे प्रस्ताव में से मैं समझता हूँ कि यह काम की बात निकलती है।

**श्री पी०एम० साई :** महोदय, जो भावनाएँ यहां व्यक्त की गई हैं, उसमें मैं भी आशा करता हूँ कि यह जो विधेयक है नेशनल कैपिटल टेरिटरी, एक खास विधेयक पास करके इसे यूनियन टेरिटरी बना दिया गया है। इस विधेयक को पास करने से पहले ही राजधानी के जितने राजनीति में काम करने वाले मेरे मित्र हैं, उन सबसे राय पूछ कर ही यह विधेयक यहां पार्लियामेंट में पेश किया गया था। इसके अंतर्गत क्या हो सकता है संविधान के अंदर, वे बात मैंने सभा के सामने रखी हैं। उसके अंतर्गत उपराज्यपाल का अपना एक स्थान है। उपराज्यपाल और वहां के जो सभापति असेंबली के स्पीकर, वे दोनों मिलकर इसका हल ढूँढ सकते हैं। केन्द्र सरकार इस विधेयक के अंदर आती नहीं है इसलिए हम भी आशा करते हैं कि वे दोनों ऐसा एक बकिंग अरेंजमेंट करें जिसे कार्यान्वित करने में कोई कष्ट नहीं होना चाहिए। इसमें मैं भी सहमत हूँ।

**THE VICE-CHAIRMAN (SHRI-MATI KAMLA SINHA):** I shall now put the motion for consideration of the Bill to vote. The question is:

"That the Bill further to amend the National Capital Territory of Delhi Act, 1991, be taken into consideration."

*The motion was negatived.*

**श्री सुन्दर सिंह भंडारी :** फिर ये डिबेट... (व्यवधान)... मैडम, अब आप कंसिडरेशन का मांशान रख रही हैं? ... (व्यवधान) कंसिडरेशन तो हा गया है।

**THE VICE-CHAIRMAN (SHRI-MATI KAMLA SINHA):** The motion has been negatived. The mover is also not here.

**SHRI P. M. SAYEED:** Consideration of the Bill has been negatived.

**SHRI SUNDER SINGH BHANDARI:** The Bill is the property of the House. The House can accept it or reject it. Once it has been accepted and the discussion has taken place, now it is the property of the House. It is for the House either to accept it to or to reject it.

**THE VICE-CHAIRMAN (SHRI-MATI KAMLA SINHA):** Okay. The House has decided it. Consideration of the Bill has been negatived.

**THE ELECTROPATHY SYSTEM OF MEDICINE (RECOGNITION) BILL 1993.**

**श्री जगन्नाथ सिंह (सध्य प्रदेश) :** उपसभाध्यक्ष महोदय, मैं प्रस्ताव करता कि इलैक्ट्रोपैथी चिकित्सा पदति (मान्यता) विधेयक, 1993 पर विचार किया जाए।

उपसभाध्यक्ष महोदय, मैं एक महत्वपूर्ण विषय की ओर सदन की ध्यान आकृष्ट करते हुए निवेदन करना चाहूंगा कि आज हमारे देश में एक नवीन चिकित्सा पदति का प्रावेइड स्तर पर व्यापक रूप से प्रचार और प्रसार हो रहा है। वास्तव में मेडिकल साइंस, चिकित्सा विज्ञान को किसी देश की सीमा के अंदर बांधकर नहीं रखा जा सकता है। नये नये अधिकारों द्वारा विज्ञान की जो उपलब्धियाँ हैं वह विश्व की मानवता के लिए है। आज की परिस्थिति में हमारा देश, जो दुनिया के उन देशों में से है जिसका स्थान आबादी की दृष्टि से विश्व में दूसरा है, तो यहां पर रहने वाले लोगों