

here is the decision coining now. Number one, Industrial Policy Resolution will be carried forward to the next Session for discussion.

SHRI JAGESH DESAI : Positively, it will come in that Session ?

THE VICE-CHAIRMAN

(PRO

F.  
CHANDRESH P. THAKUR) ; Yes, it will come.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : In the first weak.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : That much precise detail, I would not like to determine. That is for the Government to keep in view.

SHRI JAGESH DESAI : You must.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: If it is not, then I do not agree.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR): It will be done. Okay ?

SHRI VISHVJIT P. SINGH: You kindly make sure that it will come.

PROF. MADHU DANDAVATE: Sir, the Government assures that but the procedure is that the Business Advisory Committee have to fix up the time-table.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : Okay, then the next consensus, if I understood it rightly, is that there is demand for Prof. Dandavate's statement on this Customs and Excise refund.

SHRI SIKANDER BAKHT (Madhya Pradesh) : And no clarifications on that.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : Mr. Minister.

#### STATEMENT BY MINISTER

##### Unjust Enrichment Involved in refunds of Customs and Excise Duties

THE MINISTER OF FINANCE (PROF. MADHU DANDAVATE) : Sir, the question of refund of excise and customs duties in cases where the burden

of these levies has already been passed on to the consumers and in particular, the issue of a circular by the Central Board of Excise and Customs on 28-3-1990 in this regard has been the subject matter of a considerable debate both in the Parliament and outside. The position was sought to be clarified in the answer to Lok Sabha Question No. 2331 on 24-8-90 and the Press Note issued by the Ministry on 29th August, 1990, besides clarifications given by me on various occasions in Parliament. However, certain doubts and misgivings still seem to persist and I welcome this opportunity of clarifying the matter once for all to set all doubts at rest in this regard.

All tax laws invariably make provisions for refunds of excess levies collected by the State, so also recoveries of taxes where the collection is less than what is authorised by law. Refunds are therefore a regular feature of all tax laws. However, since in respect of excise duties in particular there was a presumption that the burden of tax is invariably passed on to the consumer, the Public Accounts Committee raised the issue of unjust enrichment of the manufacturers at a result of such refunds. The matter was also raised in various courts by way of writ petitions against rejection of refund claims by the Department and conflicting opinions were expressed in the judicial pronouncements on this subject. There was no unanimity on whether a lawful claim of refund should be withheld on the ground of unjust enrichment and even if this was possible how should the money so withheld be utilised by the Government. The Public Accounts Committee suggested appropriate amendment in the Statute for this purpose. The Attorney General was also consulted in 1985. The proposal to amend the law could not be finalised as, according to the Law Ministry, withholding of refunds on the ground of unjust enrichment could be sustained only if simultaneously a provision was made to refund these amounts to consumers who had borne the burden of the levy. Hon'-ble Members would appreciate the practical difficulties in identifying and locating the consumers who have borne the incidence of the levy and then refunding the exact quantum of the incidence of the

[Prof. Madhu Dandavate]

excess levy to them. However, since a large number of petitions in this regard were pending for consideration in the Supreme Court and a Constitution Bench was expected to be constituted to give a final verdict in the matter, the Law Ministry felt that it would be advisable to await that verdict before carrying out any amendment in the Statute.

Meanwhile on 6th July, 1988 a Division Bench of the Bombay High Court dismissed a writ petition filed by M/s. Roplas (India) Ltd. on the ground that refund of excise duty in their case would constitute unjust enrichment and in pursuance of the same instructions were issued by a Member of the Central Board of Excise and Customs to Collectors on 18-11-88 to reject refund claims where the assesses had passed on the tax burden to the consumers. These instructions were reiterated by another Member of the Board on 10-11-1989. These instructions were issued without consideration of the matter by the Full Board and without consulting the Ministry of Law. Complaints were received in the Ministry and in the Board that the discretion allowed by these instructions to field officers had become a source of corruption and harassment and that some refund claims were being arbitrarily rejected. The refund claims rejected on the ground of unjust enrichment were admitted in appeal by the Central Excise, Customs and Gold (Control) Appellate Tribunal (CEGAT) and the Tribunal expressed the view 'that the Departmental officers did not enjoy the discretion to reject claims of refund! authorised by law on grounds which do not find specific mention in the law itself. Such discretion according to the Tribunal is enjoyed only by High Courts and the Supreme Court who in the exercise : their writ jurisdiction have inherent powers of deciding matters on consideration of equity which may not find specific mention in the Statute. Moreover, Ropla; (India) Ltd. judgement was also reviewed by the Full Bench of the Bombay High Court in the case of M/s. Nev India Industries Ltd. on 27-11-89. The Court held that "when tax has been

collected without the authority of law the State is bound to refund- the same. Ordinarily, the tax illegally collected ought to be returned to the person from whom it had been collected. The concept of unjust enrichment is however not altogether irrelevant in the matter of granting of refund of tax which has been collected without authority of law". The Court also held that it was not open for the Government (Respondent) to withhold lawful refunds on their own and to decide on the manner of their utilisation and this power could be exercised only by the writ court. It observed "We cannot accept the extreme submission made on behalf of the Respondents that in all cases where order for tax refund to the assessee may involve his unjust enrichment, the State ought to be allowed to retain the amount which is refundable and the State ought to be left with the choice of how to benefit those who had borne the burden. Having collected tax without the authority of law, the State cannot have any preferential claim to decide how the amount of tax which is refundable shall be spent. According to the facts and circumstances of each case, the Writ Court would decide whether it is the State or the assessee or any third agency who ought to be entrusted with the duty of extending the benefit of tax refund to those who had ultimately borne the burden". On the question of applicability of this doctrine of unjust enrichment to departmental proceedings the Court observed that "we have not examined the further question whether the said doctrine has any application to suits before civil courts or to department-

mental proceedings for refunds". In view of this judgement as well as the unequivocal pronouncement of CEGAT, the legal authority of departmental officers to withhold refunds was in serious doubt. The full Central Board of Customs and Excise considered this matter on 11-1-90 and took a unanimous view that being creatures of the Statute departmental officers had no legal authority to reject refunds which authorised by law. This view is ported by the observations of the reme Court in their judgement 16th August, 1988 in the case of Collector of Central Excise Chandigarh V

M/s. Doaba Cooperative Sugar Mills where the Court has held that "The authorities functioning under the Act are bound by the provisions of the I Act". The matter was also referred to the Law Ministry which confirmed that there was no proviso or condition in Section 11 B of the Central Excises Act to reject refund claims on the ground of unjust enrichment. Thereafter, on 21-3-90 a telex was issued to all Collectors to decide refund claims according to law as directed in the Board's earlier instructions of 10-8-81. This was followed by a circular of 28-3-90 which is the subject matter of the present controversy.

The Central Board of Excise and Customs is an integral part of the Department of Revenue of the Ministry of Finance. In the interpretation of existing laws including classification of various products etc. and the duty chargeable thereon it has full powers to issue instructions to subordinate authorities. Only in respect of changes in laws or policies does the matter come up to the Secretary and the Minister. Since this was only a matter of informing Collectors of the correct legal interpretation of the existing laws, the Board issued the instructions after taking necessary legal opinion. I am fully satisfied that the action of the Board was legally and administratively correct and the clarifications issued by it were fully within its competence.

Some questions have been raised about the need for staying the operation of the circular of 28-3-90 when there was no infirmity in those instructions. I had received representations in this regard from Members of Parliament as well as some responsible citizens. Further, as I have stated on a number of occasions, I am in full sympathy with the principle of preventing unjust enrichment of importers and manufacturers in cases where the burden of levies has been passed on to the consumers. Therefore when the matter came to my notice, I issued immediate instructions for staying the operation of the said circular of the Board on 24-8-90 which was reflected in the answer given to the Lok Sabha Question No. 233 on that date. This was done to enable the Government to review

the whole matter in all its aspects to determine the legal and administrative feasibility of withholding refunds where they lead to unjust enrichment and their utilisation for public welfare schemes. Any inference drawn from the order staying the operation of the circular of 28-3-90 regarding its propriety is wholly unwarranted.

Unfortunately, a dispassionate consideration of the matter has been clouded! by highly exaggerated figures of refunds quoted in certain statements in the press and elsewhere. The total quantum of refunds of Customs and Excise taken together in the last four years is as follows :

	(Rs. in crores)
1986-87	174.03
1987-88	233.32
1988-89	278.45
1989-90	333.09

Many of these refunds are in compliance of orders of the Tribunals and the Courts. As would be seen that even after issue of instructions by the Board in November, 1988 refunds had not altogether stopped. Further, it is also incorrect to assume that after the issue of this circular of 28-3-90 the Board has opened floodgates for refunds. The figures of refunds for the months of April, May and June, 1990 which are subsequent to the issue of this circular are as follows :

	(Rs. in crores)
April, 1990	39.32
May, 1990	26.98
June, 1990	22.13

Therefore the impression that thousands of crores of revenue have been squandered away by this circular is completely without any basis.

It is indeed unfortunate that all kinds of baseless allegations have been hurled in this regard without ascertaining full facts. I hope the facts brought out by me will allay all misgivings on this question. I can assure the House that I am second to none in my resolve to protect the rights of the consumers and to prevent their exploitation by manufacturers

[Prof. Madhu Dandavate]

and traders and that I will spare no efforts in taking necessary legal and administrative action in furtherance of this objective.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : Now, clarifications from the Minister.

SHRI R. K. DHAWAN (ANDHRA PRADESH) : On page 3 of the Statement, the hon. Minister says :

"These instructions were issued without consideration of the matter by the Full Board and without consulting the Ministry of Law."

What action does the Minister propose to take against the Officer ? It means he took the decision without the knowledge of the Full Board. He caused harassment to the persons to whom the money was to be refunded. So, I would like to know what action has been proposed.

Secondly, on page 5, he says :

"Thereafter, on 21-3-90 a telex was issued...."

What was the agency that issued the telex ? In how many cases such telex messages were issued? What was involved in it? Was any kickback involved? Was any extraneous consideration involved? And when it was followed by a circular after three days, what was the necessity of issuing instructions? When the instructions are already there in operation till 1981, what was the need to issue a telex message? Who was behind this? Who permitted the officers to issue a telex message? Thirdly, when it was brought to the notice of the Minister or for that matter the Prime Minister? Was the Minister or the Prime Minister at the back of issuing of this telex message ?

THE DEPUTY MINISTER IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI JAGDEEP DHAN-KHAR) : No.

SHRI R. K. DHAWAN : Let the Minister reply. You are not the Finance Minister.

Fourthly, when this decision was taken that this refund should be made, did

they take into consideration all the modalities that were suggested by various courts as to how the refund should be made, to whom it should be made? What is the method of selecting the parties to whom the refund is to be made? Is it on the basis first-come-first-served? May I know whether the list was extended? Who are the claimants for the refund? What is the method of selecting the person? To whom it should be made first? May I know whether it was made according to some list or according to some date or according to some priority? May I know whether any licences have also been issued to these persons to whom these refunds were made or were there any applications pending for the licences?

Then, another thing, when the circular was issued, did they take into consideration that there are so many appeals pending in various courts. Supreme Court or in CEGAT? They rejected summarily all those appeals. They did not take into consideration this thing. They did not take into account their verdict. I would like to know how many appeals were pending at that time in various courts. That is all. Thank you.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : Shri Vishvjit P. Singh. You will be equally brief.

SHRI VISHVJIT P. SINGH (MAHARASHTRA) : Mr. Vice-Chairman, Sir, I will be very brief but you must understand that this is a very, very important matter about which the whole nation has been excited.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : I will appreciate.

PROF. MADHU DANDAVATE : I am prepared to sit till morning.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : You don't have to because he is going to be brief.

SHRI VISHVJIT P. SINGH : I will be very brief. If it had been any other Minister making this statement, my task would have been made very, very difficult. My task has been made very much

easier by the rectitude shown by the hon. Minister who has insisted on the inclusion of all the facts and I say once again all the facts have been brought out and it is these facts which have been sought to be brought out in a manner not by the Minister but by other forces who did not want to bring those facts on record....

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : But it is his statement.

SHRI VISHVJIT P. SINGH : Yes. My whole point is that first pressure was put on him not to bring the facts out and when the facts have been brought out, certain facts have been put in such a way not by the Minister because he is a good man but by the other people.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : You are imputing motives behind the statement.

PROF. MADHU DANDAVATE : If you don't mind, let me intervene for a minute.

SHRI VISHVJIT P. SINGH : Yes.

PROF. MADHU DANDAVATE : I do not want to allege him of imputing any motives to me because I know that he is a good friend and he means that. But let me tell you that long before I made any statement over here, I made a comprehensive statement in reply to Question No. 233 and after that and after two days this question was raised in the Lok Sabha. I think they went on discussing the matter for two hours and every query that was made, I replied to it on my own. No pressurisation is needed for Madhu Dandavate. I have no skeletons to hide.

SHRI VISHVJIT P. SINGH : I know, you don't have. You don't have, I don't deny. I am not talking about you.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : Go ahead with your points.

SHRI VISHVJIT P. SINGH : I divorce you from the rest of them.

PROF. MADHU DANDAVATE : Why do you want me to divorce? I am a happy married man.

SHRI VISHVJIT P. SINGH : Yes. This is a sordid story. This is a terribly sordid story of corruption, of kickbacks and I

would like to prove it and I can tell you. I would like specific answers from the Minister. Is it not a fact that the circular which was issued on 28-3-1990 had already been in operation from 10-8-1981? Is it not a fact—based on your statement on page 5—that this controversy arose with the judgement of the Division Bench of the Bombay High Court delivered on the 6th July, 1988

in the case of M/s Roplas India Ltd? Is it not a fact that after the court had given the judgement saying that unjust enrichment should not take place, the Central Board of Excise and Customs on 18-11-88 rejected claims where the assessee has passed on the tax burden to the consumers? These instructions were reiterated by another Member of the Board on 10-11-89 and after that, Sir, complaints were received....

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : The mike is working. Your microphone is working. So you do not have to apply your lung power.

SHRI VISHVJIT P. SINGH : I will speak slowly. The complaints were received and....

PROF. MADHU DANDAVATE : A little loudly, please. I cannot hear.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : He is used to that pitch of your voice.

SHRI VISHVJIT P. SINGH : His golden mean is very difficult for me to find. I have always maintained that I do not need microphones and all that. I always speak without them. The complaints were received in the Ministry, in the Board, that the discretion allowed by these instructions to the field officers had

[Shri Vishvjit P. Singh]

become a source of corruption and harassment that some refund claims were being arbitrarily rejected. Who was making these complaints? I would like to know from the Minister about this. Who were making these complaints, Mr. Minister! Were these complaints made by those industrialists who finally benefited from the refund orders issued by you? Were those the people who were coming and making these complaints?

Going further, the Roplas India Limited case was again reviewed by the Bombay High Court, which passed a judgement in the case of M/s New India Industries on 27-11-89 and the Government has relied upon that. On pages 4 and 5, a long narration has been given. Because of that case, these refunds were allowed. What did that case have to say? The full Bench of the High Court held, "When the tax has been collected without authority of law, the State is bound to refund the same. Ordinarily, the tax illegally collected, ought to be returned to the persons from whom it has been collected. The concept of unjust enrichment, however, is not altogether irrelevant in the matter of granting refund of tax which has been collected without authority of law." This is the judgement and it goes on to specify how it will be refunded, goes on to specify the via-media. Deny it if you can, Mr. Minister. I ask you. Didn't that judgement say further? "According to the facts and circumstances of each case, the writ court, I repeat here, the writ court would decide whether it is the State or the assessee or any third agency, who wants to be entrusted with the duty of extending the benefit of tax refund to those who had ultimately borne the burden." Didn't that full Bench of the High Court say categorically that it will be the writ jurisdiction to decide in each individual case, according to the facts and circumstances of each case and is it not a fact, Mr. Minister, that you decided to interpret this judgement in your own manner to enrich those friends, who had come to you with complaints about corruption of those officers who had refused to give them the money? So you decided to pay them. Is that not a fact, Mr. Minister? Now I would, like to say that you all collaborated with each other. This colla-

boration was with everybody because whose sanction do they take? The judgement is not enough. Now they take the sanction of the Law Ministry. Is it not a fact that you referred this matter to the Law Ministry with the express idea of getting collaboration in this scheme of kickbacks? I quote from page 5. "The matter was also referred to the Law Ministry which confirmed that there was no proviso or condition in section HB of the Central Excise Act to reject refund claims on the ground of unjust enrichment." Wonderful! Is it not a fact that the Law Ministry opined it? It is in your statement. "Thereafter, on 21-3-90 a telex was issued to all Collectors to decide refund claims according to law as directed

in the Board's earlier, instructions

..... "

Now I would like to go further. The real story comes out at page 7. The hon. Minister says, "It is not just I, but even in the past it has been done." And he quotes the figures. 1986-87—Rs. 174.03 crores; 1987-88—Rs. 233.32 crores; 1988-89—Rs. 278.45

crores; and 1989-90 \_\_\_\_\_

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : These figures are there already.

SHRI VISHVJIT P. SINGH : No. It is very important, Sir. And is it not a fact that all of these amounts, not most of them, all of these amounts were in compliance of orders of the tribunals and the courts? You have very cleverly said that many of these refunds are in compliance of the orders of the tribunals and the courts. That is what has been said.

PROF. MADHU DANDAVATE : You mean cleverly or intelligently?

SHRI VISHVJIT P. SINGH : I do not know whether it is clever or whether it is intelligent or whether it is a shame. I would call it a shame. (*Interruptions*). I am not casting aspersions. I am levelling. . . . (*Interruption*).

KUMARI CHANDRIKA PREMJI KENIA (MAHARASHTRA) : There is no need to shout at me. I just want to find out whether you were casting any aspersion or it is my... (*Interruption*)...

SHRI VISHVJIT P. SINGH : I am levelling. . . . (*Interruption*).

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR): Keniaji, do not move to ask him.

KUMARI CHANDRIKA PREMJI KENIA : I am addressing the Vice-Chairman.

SHRI VISHVJIT P. SINGH : I am levelling an allegation against the Government. I would have levelled allegations of corruption and kickback ..... (Interruption).

KUMARI CHANDRIKA PREMJI KENIA : Sir, I am on a point of order. This is a statement made by the Finance Minister and we are seeking clarifications. Rather than making all wild allegations, I would request the Member to stick to clarifications.

SHRI VISHVJIT P. SINGH : I would now like to say further that the figures which have been quoted have been randomly, arbitrarily collected. The reason why they have been collected is, in the months of April, May and June, a total of Rs. 88.43 crores has been refunded and if you multiply this by four, you get the figure of Rs. 353.70 crores which would have been refunded by the end of this year. It is only to justify this figure that these figures have been given and these figures have been culled from cases where orders were given by the tribunals and the courts. And these refunds which have been made in the months of April, May and June have been made not in compliance of orders of courts and tribunals, but arbitrarily. Is it not a fact, Mr. Minister ? Therefore, I would like to know from you once again. Is it not a fact that this was a conspiracy by various people in Government to defraud the people of this country, to pass on these huge sums of Rs. 88 crores to various major industrialists who have funded you in elections ? Thank you, Mr. Vice-Chairman.

SHRI JAGESH DESAI (MAHARASHTRA) : Mr. Vice-Chairman, Sir, I am not at all satisfied with the statement of the Finance Minister.

THE VICE-CHAIRMAN (PROF. CHANDRESH P. THAKUR) : Naturally. That is why you are seeking clarifications.

SHRI JAGESH DESAI: It is stated here, '.....on 6th July, 1988 a Division Bench of the Bombay High Court dismissed a writ petition' filed by M/s. Roplas (India) Ltd. on the ground that refund of excise duty in their case would constitute unjust enrichment and in pursuance of the same instructions were issued by a Member of the Central Board ..... And again, on 10-11-1989, the same kind of instructions were given. Now, Sir, as I understand, when crores of rupees are involved, then such an important judgement should have been brought to the notice of the Finance Minister.

[THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : In the Chair]

The Board is not an autonomous board. It is under the Revenue and Finance Ministry. When such an important judgement was there and crores and crores of rupees were sought to be refunded, when an honest officer, a Board member, issued circulars of excise, what happened after that date when he issued the first and the second circulars and when the Board of Customs and Excise Duties issued those circulars? I would like to know what happened to them. The Revenue Secretary was supposed to have been shown this type of a judgement. Was it not the duty of that Secretary to bring it to the notice of the Finance Minister when such a huge amount was involved ? Is it a fact that the Prime Minister was informed by Shri Kalse Patil ? He said that the Prime Minister assured him that we would see that this kind of refund should not be given. After that Shri Kalse Patil had met the Prime Minister and he had given a note to him. Immediately after the judgement he had met the Prime Minister and he was assured that in his Government this would not happen. So I would like to know whether it is a fact that Mr. Kalse Patil had sent a note; and if he had sent a note, on what date he had sent that note and what action was taken on that note. Sir, to some extent I know

(Shri Bhaskar Annaji Masodkar)

about finance. When such huge amounts are involved, it is never done without consulting the Finance Minister. I would like to know whether at any time the Finance Ministry was given this type of judgement and, if so, what action they had taken. If it was not given to them, I think that it is a negligence on the part of the Prime Minister who had known the facts. It was his duty that he should have passed it on to the Finance Minister and accordingly he should have taken action. You have got an honest officer who wanted to save the revenue of the Government. He did a good thing, but the whole Board without discussing with the Finance Ministry or the Finance Secretary issued this type of a circular and it appears that there is something wrong here and I smell a rat in this. So I would request the Finance Minister—for him I have the highest regard—that this case should be investigated to find out as to how this kind of a circular was issued and at whose behest. It appears to me from all the facts which have been given that there is something wrong; otherwise, this would not have happened and that is why I want the whole case should be investigated. Mr. Kalse Patil said that there were responsible persons who had seen that this kind of a circular was being issued. I request that this should be given to CBI to find out how this kind of a circular was being issued and only then the people of this country can rest assured that there is nothing wrong in it, but I do feel from the statement given by the Minister that there is something wrong somewhere and some kickbacks are being given. I would request that a CBI inquiry should be conducted and Kalse Patil should be called to find out who the persons behind that are and as such, because Kalse Patil was a judge and he resigned and joined the Janata Dal....  
(Interruptions)

THE VICE-CHAIRMAN  
(SHRI  
BHASKAR ANNAJI MASODKAR) : Let  
us not bring in names.

SHRI JAGESH DESAI . I want a full-  
fledged inquiry and I would say that even a  
Joint Parliamentary Committee

should enquire into this because this is a very serious matter and crores and crores of rupees were involved. Sir, you have given the figures of three earlier years. It is more on the customs side<sup>1</sup> than excise. I do not know the breakup, but I have got some figures. As regards excise in the year 1986-87 it was Rs. 55.24 crores; in 1987-88 Rs. 85.35 crores, in 1988-89 Rs. 78.71 crores. I only wanted this for my information. This is a very serious matter. A Joint Parliamentary Committee should be appointed and this matter should be settled and then only the real culprits will come to light; otherwise, people will not be satisfied.

SHRI V. NARAYANASAMY (Pondicherry) : Mr. Vice-Chairman, the issue of excise refund by the Nattom Front Government in pursuance of the order issued in March 1990 is creating suspicion not only in the minds of Members of Parliament but also of the people of this country that this Government took a wrong decision in ordering a refund of the amounts. Why I am saying this is the honourable Finance Minister said we are acting according to the judgements of the courts. Mr. Minister, there was a judgement of a Division Bench of the Bombay High Court in *Ropla's* case. Thereafter there was another judgement of the Full Bench. I would like to know whether the Government was satisfied with the Full Bench decision of the Bombay High Court or whether it went in appeal to the Supreme Court against that judgement. I would also like to know whether you moved for a stay and whether a stay order was in operation, because Government being the respondent in those matters, I want to know whether you pleaded that you have been aggrieved by the order of the Full Bench. In pursuance of the judgement which was passed in November 1989, did you take up the matter in the Supreme Court and obtain a stay? If not, why not? Who was responsible for the omission? These are the clarifications I would like to have from the honourable Minister.

Sir, I would also like to ask whether before issuing a fresh circular in March 1990 you obtained an opinion of legal experts.



There were reports even from the JanaU Dal leaders, complaints were made by Janata Dal leaders, even Mr. Madni Limaye said, that about Rs. 10,000 crore: were involved. Mr. Chandrasekhar, leader of the Janata Dal, also said that the amounts involved ran into thousands of crores of rupees. I am very happy that the Minister acted immediately after receiving the complaints. But my complaint is that the Prime Minister was informed by letter and in spite of the information given to the Prime Minister, he did not act on it, he did not process the complaints given by Members of Parliament; the Prime Minister did not issue any instructions. I would like to know what action was taken after receipt of the letter from Members of Parliament and statements made by Janata Dal leaders, because, the Finance Minister acted only in the last month when it was brought to his knowledge. Therefore, what was the action of the Prime Minister in this regard? I find serious lapses in the procedure adopted by the Customs and Excise Department in issuing the circular. I, therefore, want a complete probe into the matter and that probe could be complete only if a Joint Parliamentary Committee comprising Members from both Houses of Parliament goes in it. Why we are stressing that point is we would like to know the truth, the truth about the persons involved in ordering the refund and the circumstances in which it was issued and who was responsible 8.00 P.M. for it. It is because we have our own suspicion that there was the role of the big money in that and that kickbacks were involved. Therefore, I would like to know from the honourable Finance Minister whether he is agreeable to a Parliamentary probe by a Parliamentary Committee consisting of Members of both Houses of Parliament. I have no complaints against the Finance Minister, but I suspect the bona fides of those who issued the order.

THE VICE-CHAIRMAN  
(SHRI  
BHASKAR ANNAJI MASODKAR) :  
He is the head of the Finance Ministry and you should have complaints against him.

SHRI V. NARAYANASAMY : I suspect the bona fides of those who issued

' the order because the Prime Minister, in spite of the information given to him did not act immediately. Therefore, I want a Joint Parliamentary Committee.

I hope the Finance Minister will be gracious enough to accept it. Thank you, Sir.

THE VICE-CHAIRMAN  
(SHRI  
BHASKAR ANNAJI  
MASODKAR) : Yes, Mr. Sivaji.

DR. YELAMANCHILI SIVAJI (ANDHRA PRADESH) : Sir, I am thankful to the Finance Minister for his statement. But, at the same time, I would like to mention that several manufacturers like the cigarette manufacturers have already collected the excise duty from the public, but have not paid the money to the exchequer and they take shelter under the various stay orders of the High Courts and the Supreme Court and the amount runs into more than a thousand crores of rupees.

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI  
MASODKAR) : It is, a huge amount.

DR. YELAMANCHILI SIVAJI : Yes, it is more than a thousand crores of rupees. It has appeared in the Press and legal battles are going on. Our standing counsels and the legal officers are not able to settle the cases in the various courts of law to recover the amounts that are due from the manufacturers. They were already collected from the public and the amount has been pending with them for the last seven or eight years. What I feel is that unless these tax laws are brought under the Ninth Schedule of the Constitution I do not think it would be possible, under the existing system, to recover the amount that has already been collected from the public and not paid "into the Government coffers. At the same time, I would suggest that the standing counsels and the law officers may be alerted and vigilance must be exercised so that these people do not collude with the parties to drag on these cases for quite a long time in the courts of law to see that the dues of the Government are not paid properly.

[Dr. Yelamanchili Sivaji]

I would request the Government to take necessary steps to put an end to this malpractice.

THE VICE-CHAIRMAN

(SHRI BHASKAR ANNAJI MASODKAR) : Now, Mr. Bhandare.

SHRIMURLIDHARCHANDRA KANTBHANDARE(MAHARASHTRA) : Thank you, Mr. Vice-Chairman, Sir, for calling me.

Sir, this statement is, undoubtedly, a very exhaustive statement. But it truly displays a sordid state of affairs. Sir, I use my words carefully. It also exhibits not only the bureaucratic callousness, but also deliberate dishonesty. I just fail to understand how the honourable Finance Minister Prof. Madhu Dandavate, for whom I have the highest regard, has been persuaded to place this statement before this House. I just cannot understand—he has referred to the various cases—and I do not think that there was a case on that day, the 28th March 1990, earlier or later, for the issue of such a circular saying, "Please return the money." In fact, if there was any case, it was a case for examination, for addressing themselves to the real issue as to how the Government should keep back the money. And, about this, I do not find a single word in this statement, and that is the callousness, that is the dishonesty and that is the lapse.

I would like to ask the Finance Minister what steps he is going to take against those officers who do not even seem to have raised their little fingers to save this money for the Government and the country. Nothing else is necessary. Why did they not at that time address themselves to the question? Why did they not engage themselves in finding out the modalities how they could prevent the refund and retain the money when every court had said that the manufacturers had no right to it, when it was a question of unjust enrichment. That is why I was not sure, when I wrote to you at that time drawing your special attention to the Bombay Labour Welfare Fund Act, the virus of which I defended in the Supreme Court regarding all the money which are retained by the employers or account of the employees. You know,

Hon'ble Minister, that in Bombay, employees who come from U.P. die in U.P. and their gratuity and other things are not collected. They leave jobs, take another jobs but the last month's salary is not collected. All these uncollected amounts which are in the hands of the employer and to which he has no right, are to be put in the Labour Welfare Fund and utilized for their welfare. I have in the letter suggested to you....

PROF. MADHU DANDAVATE : I have exactly referred to the same scheme in Question No. 233.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: But I am now asking about the consumers' protection part. But I tell you, don't restrict yourself only to your Department, the Finance Ministry. The other day we had heard that several crores of rupees are to be recovered from multinational companies, drug companies, and that is the consumers' money; that is the trust of the consumers. In fact, from every area, every Ministry you have to find out as to where such loopholes are there. I say that all such moneys really belong to the consumers and have to be deposited in that Fund.

There is one more thing when you look at it, that urgently a telex is sent. Mr. Vice-Chairman, you will agree with me that it smells a rat. Nobody sends an urgent telex. And whichever way you may try to defend it, if you have a proper probe—and I and you are not competent to have that probe; the CBI or a parliamentary committee is—you will find that at the back of the telex was definitely to oblige someone, to help someone. The telex exposes the whole thing. The whole show is over. And I don't take it as innocently as put by the bureaucrats to you in this statement. I think I have made my point, and I would really like the Minister to give the exhaustive steps which his Department, the Board of Excise and Customs, took to retain the moneys.

PROF. MADHU DANDAVATE :  
Mr,

Vice-Chairman. I am highly thankful to the entire House for having given me the opportunity to clarify the issues that are

involved in this problem of unjust enrichment. I am happy that there has been no acrimony in this brief debate in which you have sought some clarifications from me. Even if there might be intensity and loudness in seeking clarifications, there was no rancour behind it, and for that I am thankful to the House.

Firstly, let me make it clear that I do not wish to throw the entire blame on my officers. I have been a Minister of a Government for the second time, and my philosophy of administration in relation to officers and myself is that I never take the attitude : Heads I win, tails you lose. If I find there are several lapses on the part of my administrative officers, if at all there are, I shall take the full responsibility of that because a Minister is supposed to head the administration. If at all they have committed any lapses, I, as the Minister who is supposed to give the direction and guidance, shall be responsible, Mr. Bhandare.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : How are you going to fix that responsibility if you own it as a Minister ?

PROF. MADHU DANDAVATE : Mr. Bhandare, I will come to that. I have listened to each one of you. Please have patience and the accommodation to listen to me.

SHRI R. K. DHAWAN : You have also been interrupting.

PROF. MADHU DANDAVATE : No. I have said only humorous things. Mr. Dhawan, you are new to the Parliament as far as humorous sallies are concerned.

SHRI R. K. DHAWAN : I have the distinction of watching the proceedings of Parliament for 25 years.

PROF. MADHU DANDAVATE : Yes, watching from the ivory tower.

SHRI R. K. DHAWAN : I have been watching and listening to the proceedings for 25 years.

PROF. MADHU DANDAVATE : I don't challenge that. But watching the Proceedings from ivory tower is one thing and participating in the living and dynamic experiment of democracy is something different.

SHRI R. K. DHAWAN : Watching is much more educational.

PROF. MADHU DANDAVATE : Yes, yes. You need education and, therefore, you are getting educated. We will settle our accounts outside. As far as you are concerned, I never cast aspersions on you. If you had listened to me from the Official Gallery even during the latest controversy, you would know what attitude I had taken. My attitude is never determined by individuals, neither in favour nor due to any prejudice. Let it be understood very clearly. And you have experienced that. You yourself have experienced that. I am sorry I must not lose my temper on a senior colleague like Mr. Dhawan. I am coming to the subject. He interrupted and that is why I said that.

Let it be very clear. As far as the doctrine of unjust enrichment is concerned, it is very clear that if some excess duty has been recovered by the Government and, in the meantime, if the manufacturers and the importers have passed on the burden to the consumers, then in one way they have already got all the burden returned. At the same time, if the Government also gives them the amount through refund, in that case they are doubly enriched and, therefore, it is an unjust enrichment. I completely subscribe to that particular doctrine. Let there be no doubt about it. As far as the legalities are concerned, let me tell you that though I am not a lawyer, for the last several years I have been participating very actively in the debates on law, Constitution and all that. Therefore, I carefully went through all the legal aspects. I also contacted some of the legal luminaries and sought their advice. Therefore, as far as the legal position is concerned, I need not go through all the judgements. I come to the crucial and the most critical judgement which is very often quoted. This is the judgement of the full Bench of the Bombay High

[Prof. Madhu Dandavate] Court. That judgement has been also got two components. First of all, they have seen the relevance of the doctrine of unjust enrichment. But, at the same time, the same High Court did not undertake the responsibility of directing. They said that you have to get the necessary decision through proper forums. It might be High Court. It might be Supreme Court. It might be a tribunal. It might be the Collector or Assistant Collector. There are various forums from which this direction is to be taken.

SHRI VISHVJIT P. SINGH : They specifically said "Writ Courts".

PROF. MADHU DANDAVATE: Writ courts. Go through that. Therefore, they did not take the responsibility. Either they had no time or they wanted this responsibility to be left to the writ courts. That is the position.

Thirdly, let me make my and my Government's position very clear. Mr. Bhandare, I am not only not committed to the doctrine of unjust enrichment, but further I have made it very clear and it is not only in relation to the excise duty and customs duty. I fully agree with you. There are various departments of the Government which collect taxes and which try to collect duties and there might be excess duties. They will have to be refunded. If we find that there is an unjust enrichment you can never pass on that amount to the individual consumers. You are right there. Therefore, the only method is that either we keep it with ourselves or if the burden has been passed on to the consumers by the manufacturers and importers the most neutral entity will be that of a welfare fund or a consumer fund, whatever it might be. You may call it a welfare scheme. The name can be anything. What is there in a name ? But if you are able to build up that in that case put the entire collected excess amount in that and that can be utilised for the welfare of the consumers. And I don't think any consumer will have any grudge about it.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Nobody has.

PROF. MADHU DANDAVATE: And for that of course, certain changes in law

will be necessary. And I want to make it very clear that there were such situations in the past also. And in the past also, even when our Government was not there, when this was pointed out, there were efforts to explore the possibility of administrative and legal changes by which such an institution or a fund could be built up and then the whole amount could be transferred to that. It is unfortunate that those efforts of amendment did not succeed or they did not come to the final conclusion. But I will very seriously explore that, and in consultation with the Members of this House and legal luminaries.....

SHRI JAGESH DESAI : In Maharashtra, we have a provision that if an excess amount has been collected by way of sales-tax, it has to be refunded to the person to whom it is sold, if it is proved. Otherwise, the amount is forfeited and it goes to the State Government.

PROF. MADHU DANDAVATE : I do not basically disagree with you. But I would not like that to be swallowed by the Government. If it is kept as Bhan-dareji said with some sort of a consumer or a welfare fund that would be a better course because even if some small-scale manufacturers or small-scale factory people feel that some injustice has been done to them the Government can say that we have not swallowed the fund, but in the interest of the consumers, we have kept it in a consumer fund or a welfare fund or a welfare scheme. And, therefore, that is the most neutral type of gear that will be created. And I don't think on that the House will have any distinction.

Then, Members have pointed out that if some officers have taken the decision and the full Central Board of Excise and Customs took the decision, did not even consult the Revenue Secretary, did not even consult the Minister and went ahead with the procedure, initially issued the telex, later on confirmed it through a detailed circular, if all this was done, is it not a lapse on their part ? And while putting the blame on them—I am very sorry to say; you have a right to say it—in

both the Houses, some Members went to the extent of saying that they suspect a rat, and the highest among the high, and two Members referred to the Prime Minister also...

SHRI JAGESH DESAI: I have not..

PROF. MADHU DANDAVATE : You did not refer to that at all. You need not take the blame on you. And then a reference was given. Some gave it obliquely, some gave it directly.

SHRI R. K. DHAWAN : I referred to the Prime Minister. I asked : The circular and the telex message was issued at the behest of the Minister or the Prime Minister ? I asked a very specific question as to who was behind the issue of the telex message and about the urgency of it.

SHRI V. NARAYANASAMY : What about the urgency ?

SHRI R. K. DHAWAN : Mr. Minister, we are not here to score a debating point. My request to you would be to reply to the question.

PROF. MADHU DANDAVATE : I have listened to you very carefully. Let me complete my answer.

SHRI R. K. DHAWAN : You have referred to my reference to the Prime Minister. I did refer to the Prime Minister. At whose instance the telex message was issued ? Was it at your instance or the Prime Minister ?

PROF. MADHU DANDAVATE : Not at all. I have made it clear. In fact, if you have read the statement, it was made clear that neither the Revenue Secretary nor the Minister...

SHRI R. K. DHAWAN : It does not say the Minister or the Prime Minister. Your statement does not say so. *(Interruptions)*.

PROF. MADHU DANDAVATE : Mr. Dhawan, he is not involved. And if you want a clear cut answer on the floor of the House...

SHRI R. K. DHAWAN : We want a clear-cut answer. *(Interruptions)*.

PROF. MADHU DANDAVATE : I do not want to yield. Let me reply.

SHRI R. K. DHAWAN : That is why I asked for a clarification. Why are you not giving a clear-cut answer ?

PROF. MADHU DANDAVATE : I am giving it here and now. You wait till the end of the speech. I will refer to every point. And if you are asking me a straight question whether...

SHRI R. K. DHAWAN : I asked a very simple question.

PROF. MADHU DANDAVATE : I am giving a very simple answer. Please listen to me. Everybody is listening. I would also request you with folded hands, please listen to me. I am replying to your question. Your straight question is whether it was the Prime Minister that was responsible for pressurising to send the telex message. I wish to make it explicitly clear that the Prime Minister was not at all involved in the entire procedure at all.

SHRI R. K. DHAWAN : You are confused. *(Interruptions)*.

PROF. MADHU DANDAVATE : You might not have been convinced.

"SHRI R. K. DHAWAN : Mr. Vice-Chairman, Sir, he is again confusing. I asked : 'At whose instance the telex message was sent?' Was it at the behest of the Finance Minister or the Prime Minister ? He is again confusing.

PROF. MADHU DANDAVATE : I am not confusing. I have common sense, though I have not got the intelligence.

SHRI R. K. DHAWAN : I am not doubting your common sense at all. I have also common sense.

PROF. MADHU DANDAVATE : You have a lot, but I have not got as much as you have got.

Let me make it clear. Your question was—I repeat—"Was it at the instance of the Finance Minister, or, was it at the instance of the Prime Minister, that the telex message was sent ?".

SHRI R. K. DHAWAN : At whose behest it was sent ? This must also be told.

PROF. MADHU DANDAVATE : Yes. To that, my reply is : It was not at the behest of the Prime Minister. *(Interruptions)*.

SHRI VISHVJIT P. SINGH : Mr. Minister, you complete the sentence and then ] will ask.

PROF. MADHU DANDAVATE : All right. You can ask.

SHRI VISHVJIT P. SINGH : I am glad, the hon. Finance Minister has said this and made it abundantly clear. The fact is that we were suffering from certain misapprehensions. Our' misapprehension was because, Mr. Potse Patil had met the Prime Minister, had met the Finance Minister, brought it to their notice and it is only after that the circular was issued.

PROF. MADHU DANDAVATE : I will try to clarify. He met me. He met the Prime Minister. In fact, the Prime Minister was not aware of the fact that such a circular had gone. Long before that he had contacted me. He had contacted me in the party meeting. He had never pointed to me. . . . *(Interruptions)*.

SHRI V. NARAYANASAMY : Do you want us to believe that ?

PROF. MADHU DANDAVATE : Don't believe it. I shall not tell any untruth in the House. Let me say. Mr. Kose Patil is my associate and colleague. He sent a letter after I replied to Question No. 233 in the Lok Sabha congratulating me and the Prime Minister. After I reply to the clarifications, I am prepared to lay it on the Table of the House.

SHRI VISHVJIT P. SINGH : He is a member of the Janata Dal.

PROF. MADHU DANDAVATE : All right. That is the cheap way you can describe that.

SHRI JAGESH DESAI : When did he meet you and when did he bring it to your notice ?

PROF. MADHU DANDAVATE : Months back he had pointed out to me.

SHRI JAGESH DESAI : Earlier also ? *(Interruptions)*.

PROF. MADHU DANDAVATE : Yes. | At a later stage, when he pointed out to ' me about the circular, I told him. I am prepared to reveal. In fact, he is not a Member of this House. I rang him up and told him : 'As soon as you told me this, I checked it. Next Friday, i.e., tomorrow, is my Question day in the Lok Sabha. I would not like to reveal to you personally what I am going to say tomorrow while replying to the question, but all that I want to tell you is that I have taken cognizance of what you have suggested and my response will be known tomorrow'. This is what I told him.

SHRI JAGESH DESAI : When did he meet you ? Was it before the circular or after the circular ?

PROF. MADHU DANDAVATE : Before the circular. *(Interruptions)* I shall not tell an iota of untruth in the House. He brought it to my notice. He said : 'It is a strange thing'. He started explaining about it. In the meantime, instead of responding to that, all of a sudden I found the circular. I said : 'I will check up on this'.

SHRI JAGESH DESAI : It means, he met you before and he met you afterwards also. He met you twice.

PROF. MADHU DANDAVATE : TWice. He is my colleague in the party. I meet him repeatedly. He discussed the matter. He gave in writing. In the meantime, all of a sudden, I found the circular. Then, I rang him up and told him. I told him : I have taken cognizance of what you have said'. I told him : 'You are right. The circular was issued. I was not in the know of that. You pointed out to me and I checked up on this. The circular is there. Whatever I wish to say in the matter, I would say when I reply to the question tomorrow'. This is what I told him.

SHRI R. K. DHAWAN : The telex message and the circular are there; both. Not only the circular.

PROF. MADHU DANDAVATE : I said I will react to that. At the first available opportunity, I rang him up and told him I corrected it; I have removed the

distortion'. He has sent a letter warm!} congratulating me on the step I had taken.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : An enquiry is needed. Mr. Minister, on the basis of your own statement, it is needed.

PROF. MADHU DANDAVATE : Mr. Bhandare, please listen to me. I am coming to the enquiry and other aspects. The trouble is, even before I complete my reply, without anticipating whether I will touch on the enquiry aspect or not, you are getting up. It is not fair.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : I am sorry.

PROF. MADHU DANDAVATE : When you were speaking, many times I could have got up and contradicted you, but I did not do it. I will refer to it. (*Interruptions*) Mr. Dhawan, please get up. In the best Parliamentary tradition, I yield to you.

SHRI R. K. DHAWAN : If I want, I will ask the Vice-Chairman. Not you.

PROF. MADHU DANDAVATE : Generally, one has to yield when a person is on his legs.

SHRI R. K. DHAWAN : [ will not ask you to yield. I will ask the Chair.

PROF. MADHU DANDAVATE : No, no, that is also not done. You have to ask me.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Let us not enter into this.

PROF. MADHU DANDAVATE : So, it is very clear that on such matters neither the Revenue Secretary, nor the Minister, nor the Finance Minister was contacted. After I have stated in writing the full-fledged Central Board of Excise and Customs had unanimously taken a decision and first the telex and then the circular was sent.

. Having elaborated all these points of view, of course, Jogeshbhai asked me the question as to how we have given the total.

It is a very

SHRI JAGESH DESAI minor matter. 14—523RSS/90

PROF. MADHU DANDAVATE : You asked me. If you do not want it, I have nothing to say.

SHRI V. NARAYANASAMY : One minute. One specific question was asked and I would like to ask the Minister once again, what was the necessity for a telex message ? That is a very pertinent question. I am asking this question because you were going to the other question of figures.

PROF. MADHU DANDAVATE : I have not completed my submission. In between I just wanted to make a mention of that. After my submission is completed, even up to early morning if you ask me questions, I am prepared to reply.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : This is unlike of a Finance Minister. You are getting agitated.

PROF. MADHU DANDAVATE : No, no, I am not agitated. (*Interruptions*). Mr. Dhawan and Madhu Dandavate are the old loves. Don't worry about it. We have no misunderstanding between ourselves.

Having said all these topics that nobody's directions were taken, that there was no violation, that the Board did it on its own, there was no lapse, etc., the question comes whether one can believe in all the statements and whether it is necessary to go into the enquiry. Here I am very happy to tell you one thing. I would not refer to what happened in the other House. As in the House of Commons it is said 'at the other place', I will also use the same term here. So, when at the other place it was mentioned that an enquiry was being demanded, the Chairman of the Estimates Committee got up and said that this particular episode of unjust enrichment is already in the possession of the Estimates Committee. It is going to enquire into that threadbare. But as far as I am concerned, let me make it clear, in either of the Houses if, any enquiry is made—I am not proposing any enquiry—or I would like to go to the extent of saying, that if any veteran member in this House—for instance Shri Shiv Shankerji is the Leader of the Opposition—if he says or if anyone wants, I am prepared to place the documents before him. All these documents

[Prof. Madhu Dandavate]  
are already there before the Estimates Committee.

SHRI R. K. DHAWAN : I have asked a very pertinent question. When the orders to make such refunds were already in existence in 1981, what was the necessity of sending a telex message ? That reply has not come. You have come to the enquiry, but you have not said a word about that.

PROF. MADHU DANDAVATE : I have gone to the other aspect in between. I have the notes. In between some Members make submissions.

SHRI R. K. DHAWAN : His was the last submission. Mine was the first submission.

PROF. MADHU DANDAVATE : Mr. Dhawan, don't be so impatient. I have never avoided the issues. If some questions are left out, you can get up and ask me. I do not want to avoid issues because I have no guilty conscience and I am not standing in the dock, I am standing in the House.

SHRI JAGESH DESAI : About you nobody is saying.

PROF. MADHU DANDAVATE : I am not avoiding, I will come to that. As far as the enquiry is concerned, the Estimates Committee is already seized of the matter. But if the Members from both the Houses prefer any other methodology, as far as I am concerned my conscience is clear and let any one enquire.

SHRI JAGESH DESAI : In the Estimates Committee Rajya Sabha Members are not there.

PROF. MADHU DANDAVATE : I know, but there is the Public Accounts Committee also. Some Members of the Public Accounts Committee have also suggested that no doubt, the Estimates Committee is seized of this but the right forum would be the Public Accounts Committee. That also was said. I am not worried about the forum.

Further, Mr. Dhawan rightly said that earlier if conflicting judgements might be there and they were there, in spite of that what was the necessity to issue a telex message followed by circular ? Now this

interpretation of those who have sent the circular is that because a lot of controversy was started after the latest full Bombay High Court judgement, and conflicting interpretations were there, in the judgement itself there were contradiction and since the Board unanimously felt that he had not got unilateral authority to act in this particular manner—the judgement might be wrong, I might differ, you might differ, but their judgement was that—in view of that they sent a telex message and that was followed also by the circular.

SHRI R. K. DHAWAN : It is strange that the Finance Ministry took such hasty action.

SHRI JAGESH DESAI : Such big amount was involved and without the consent of the Minister, how could they do it?

PROF. MADHU DANDAVATE : Jageshbhai, I tell you, I can wear that as far as Board is concerned, they consulted neither the Revenue Secretary, nor the Member, nor the Prime Minister. They did it on their own responsibility. In so many words they have told me. You may not accept it.

SHRI R. K. DHAWAN : They were so deviated to the Finance Minister that they took such hasty action !

PROF. MADHU DANDAVATE : That is all right, Mr. Dhawan. You can talk sarcastically to your heart's content.

SHRI R. K. DHAWAN : I have knowledge about the working of the Finance Ministry and other Ministries. I have never come across a case in which the Finance Ministry acted in such haste. There must have been so many cases....

PROF. MADHU DANDAVATE : On the contrary, I have given you...

SHRI R. K. DHAWAN : I know the working of the Finance Minister I have I dealt with that.

PROF. MADHU DANDAVATE : If every two minutes you want to jump up and try to interrupt, you can do it. I do not mind it. But just as you have understanding of the Finance Ministry, for twenty years of my parliamentary career in which I had taken deep interest in financial



matters, I have also studied the working of the Finance Ministry and I tell you that even in this particular matter of return or non-return of funds that were collected, I have found out on a number of occasions that it is only the Board that has taken the decision and in such matters, whether Dandavate was the Finance Minister or Mr. V. P. Singh was the Finance Minister, every time these matters have never come to the Minister at all.

SHRI R. K. DHAWAN : Would you kindly let me know if telex message was sent in any similar case ?

PROF. MADHU DANDAVATE : Telex message, I do not know, but decisions were taken.

SHRI R. K. DHAWAN : I want to know whether such a decision was conveyed to all the Collectors by telex message in any other matter.

PROF. MADHU DANDAVATE : In the last 20—25 years, whether it was the circular that was sent or a telex message was sent, I cannot on the spot give a reply. But it will enquire into it.

SHRI R. K. DHAWAN : Kindly check up and let us know.

PROF. MADHU DANDAVATE : I will check up.

SHRI R. K. DHAWAN : Thank you very much.

PROF. MADHU DANDAVATE : I am also thankful to you for raising this question.

Sir, that is the reason why they had sent the telex message which was followed by a circular.

Now, almost all the issues that were raised by different Members—and they were almost identical—I have touched the major issues.. I touched the question why a telex was sent. I touched the issue as to what was the propriety of sending a telex message and the circular. I also touched the issue—under whose instructions they were sent—whether of the Finance Minister or the Prime Minister or any one else. The question of fund and the necessary amendment was also raised. I have also touched

that issue. The question of building up the consumer fund was referred to. That also I have touched. And lastly, I have also pointed out that the Estimates Committee is already seized of the matter. But I am not worried about the forum that is taken into account.

Yes, if you want to know the various circulars that were sent, I may point out that there have been various types of circulars that were sent. Circular No. 58/81 dated 10-8-81, Circular No. 58/81 dated 1-9-88, telex dated 22-9-88, letter dated 24-10-88, circulating copy of reply, letter dated 18-11-88 circulating the note of Director Revenue. Then again, telex dated 10-11-89.

SHRI VISHVJIT P. SINGH : Mr. Minister, will you yield for a minute ?

SHRI JAGESH DESAI : What is the telex about ?

PROF. MADHU DANDAVATE : All in relation to the refund and the question of duties... *(Interruptions)*... All in connection with such things... *(Interruptions)*...

SHRI JAGESH DESAI : Is it general ?

PROF. MADHU DANDAVATE : I will place before you what exactly the text of the telex message was.

SHRI VISHVJIT P. SINGH : Sir....  
... *(Interruptions)*...

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR)  
: i Honourable Members cannot cross-examine the Minister.

SHRI VISHVJIT P. SINGH : I am not cross-examining him.

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR)  
: He is giving you the details.

SHRI R. K. DHAWAN : Sir, the Minister was kind enough to offer...

PROF. MADHU DANDAVATE : I don't mind. I told you that I am prepared to give you. Sir, asking questions in Parliament I never treated as an affront to the Minister. Therefore, any number of questions that you wanted to ask, I never objected to.

SHRI VISHVJIT P. SINGH : Sir, the Minister has replied to a very simple question. "Were any circulars in the past sent through a telex message to the Collectors ?

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : He will check up, he said.

SHRI VISHVJIT P. SINGH : And the officer from the Official Gallery has sent him a note which he is...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : ... reading out.

SHRI VISHVJIT P. SINGH : ...reading out. Obviously, he is replying to what he has asked. Since he is replying, I would like him kindly to complete it because he can then tell us that he is referring to the telex dated ...

PROF. MADHU DANDAVATE : The problem is solved..... (Interruptions). ... I am happy that the problem is solved. I will read out the telex.

SHRI VISHVJIT P. SINGH : Very proudly he is mentioning telex numbers. "C-stroke-dash-stroke-dash-stroke." That is very wonderful. I would like to know if these are circulars.

PROF. MADHU DANDAVATE : Mr. Singh, you need not ridicule me. I will read out the messages.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Mr. Minister, you are....

PROF. MADHU DANDAVATE : No, no, Sir..... (Interruptions) .... I will not yield. I will read out the messages. Having indirectly pointed out that these telexes are not in relation to unjust enrichment.. (Interruptions).... I will read out to you. There are others. I will give you the page numbers and I will give you the file also. As an illustration, I will read out one telex message. One telex message was dated 1-9-1988 issued from F/No 390/90 88-AO regarding implementation of orders passed by CEGAT :

"Collectors /Appeals

Attention of the Collectors is invited to various decisions. Of course, In the matter of fortuitous benefits and undue enrichment, where the assessee is not in a position to refund the amount to the actual person, in addition to the decisions of High Courts of Gujarat, Calcutta, Madras, Andhra Pradesh, attention is invited to the latest decision of Bombay High Court in the case of ....."

So, all these circulars regarding unjust enrichment and, if you want.. (Interruptions)

....

SHRI R.K. DHAWAN : What is the conclusion? Please read out that also.

PROF. MADHU DANDAVATE : I have read out the whole thing. (Interruptions) SHRI V. NARAYANASAMY : Retid out the conclusion.

PROF. MADHU DANDAVATE : -In the case of Ropals (India) Limited vs. Union of India in W.P. No. 22042/88 dated 6th July, 1988 wherein the Court has also referred to various decisions of the Supreme Court, copy being sent by pbsf, Board circular cited supra does not supersede the judicial pronouncements. Acknowledge receipt."

Further, I will give you one more.

SHRI VISHVJIT P. SINGH : No, no. V. (Interruptions) ....

SHRI V. NARAYANASAMY : It does not refer to refund.

SHRI S.S. AHLUWALIA : This particular telex doesn't refer to refund. This particular telex we want to know ... (Interruptions) ...

SHRI R. K. DHAWAN : Refund in crores... (Interruptions)...

SHRI V. NARAYANASAMY : This cannot be done in a hasty manner. (Interruptions) ..

SHRI MURLIDHAR CHANDRAKANT BHANDARE : That particular telex which is just now ... (Interruptions) ...

SHRI S. S. AHLUWALIA (Bihar) : Will you go through that particular telex? .... (Interruptions) . . . The assessee is not in a position to i&fund. . . (Interruptions)

SHRI R. K. DHAWAN : As far as my knowledge goes this telex says that no refund should be made. . . (Interruptions)

PROF. MADHU DANDAVATE : Just listen to me. What I am pointing out to you is, whenever various judgements have come, sometimes contradictory telex messages have gone. . . (Interruptions) . . .

SHRI R. K. DHAWAN : No, no.

SHRI S. S. AHLUWALIA : Will you go through that telex again ?

PROF. MADHU DANDAVATE : Mr. Vice-Chairman, there are various telex messages....

SHRI S. S. AHLUWALIA : Please go through that very telex message again. f

PROF. MADHU DANDAVATE : I shall read it out to you ----- (Interruptions) . . .

Whenever any judgement have come, different types of telex messages have come and I am prepared to lay the entire file on the Table of the House (Interruptions) . . . I am prepared to lay it on the Table of the House so that it becomes the property. . . . (Interruptions) ....

SHRI V. NARAYANASAMY : Lay it on the Table of the House.

. . . (Interruption) . . .

SHRI VISHVJIT P. SINGH : Sir, I am very sorry, this is something unprecedented, I think it is very rude to the Minister. But I have to do it. I have no choice.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : You need not be apologetic about it.

SHRI VISHVJIT P. SINGH : No, no. I am apologetic about it - I am very rude because he is my elder, he is my senior I asked the Minister a specific question whether any circular was issued in the form of a telex earlier. The Minister has read

out the telex. It is a circular issued stopping payment of refund. That is the telex which he has read out. That is why it was important for our Government to issue that telex to stop the refund. He is justifying his issuing of the telex to pay refund by that telex which we issued to stop the refund. What was the urgency? We felt that it was urgent to stop the refund. They felt that it was urgent to pay the refund.

Thank you Mr. Minister, thank you very much. You have done the nation a great service!

PROF. MADHU DANDAVATE : Just listen to me. There are different telex messages and circulars about different directions.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Mr. Minister, you can lay it on the table.

PROF. MADHU DANDAVATE : I am prepared to lay the entire file of different circulars on the Table of the House.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : If you want. It is for you to decide about it.

PROF. MADHU DANDAVATE : No. no. If they want, I am prepared to lay them on the Table of the House. There are conflicting circulars.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : You are clarifying. It is your clarification. You have to make up your mind.

THE LEADER OF THE HOUSE (SHRI M. S. GURUPADASWAMY) : May I just

श्री राम नरेश यादव (उत्तर प्रदेश) : उप-सभाध्यक्ष महोदय, मैं आपके माध्यम से माननीय मंत्री जी से यह कहना चाहता हूँ कि सम्मानित सदस्यों ने जो कहा है व उसकी जानकारी कर लें और उसके बाद बताएं।  
... (व्यवधान) ...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Let us see what the Leader of the House has to say.

SHRI M. S. GURUPADASWAMY : Sir, the question was asked of my colleague whether there were instances of telexes having been sent earlier. *(Interruptions)*

SHRI JAGESH DESAI : Don't go round. *(Interruptions)*

SHRI M. S. GURUPADASWAMY : Let me hear one by one.

SHRI V. NARAYANSAMY : The matter has to be further probed because the amount involved is crores of rupees. It is a very serious thing..... *(Interruptions)*

SHRI VISHVJIT P. SINGH : You don't get involved in this. *(Interruptions)* ... I will advise you at this stage not to get involved in this. *(Interruptions)*

SHRI M. S. GURUPADASWAMY : I am only on a small point. I am not entering into any debate at all. I am only drawing your attention to the fact that you raised the issue whether there were previous telex circulars sent. *(Interruptions)*.

SHRI V. NARAYANASAMY : Of the same nature. *(Interruptions)*.

PROF. MAHDU DANDAVATE : I will give another telex message. Here is another telex message, F. No. 390/93/88 AO:

"Refer instructions dated 18-11-88 and telex dated 10-11-89 from F. No. 390/93/88-AO on the issue of unjust enrichment. In supersession of the said instructions you are directed to sanction refund claims in accordance with law and wherever admissible under provisions of section 11B of the Central Excises and Salt Act, 1944."

SHRI V. NARAYANASAMY : When was it issued? *(Interruptions)*.

PROF. MAHDU DANDAVATE : Just listen to me. The point is clear. It has been my contention... *(Interruptions)*.

SHRI VISHVJIT P. SINGH : When was Lt issued? *(Interruptions)*.

PROF. MADHU DANDAVATE : This has been :

'Refer instructions dated *(Interruptions)*

SHRI VISHVJIT P. SINGH : When was this issued?

PROF. MADHU DANDAVATE : Telex 10-11-89 ..... *(Interruptions)*.

SHRI VISHVJIT P. SINGH : When was this issued? *(Interruptions)*.

SHRI S. S. AHLUWALIA : You are talking about the same telex.

PROF. MADHU DANDAVATE : You asked whether the telex was issued for the first time ....

SHRI VISHVJIT P. SINGH : I am asking the date of this telex.

PROF. MADHU DANDAVATE : Listen to me.

SHRI VISHVJIT P. SINGH : I ;,m sorry I am losing my temper now.

PROF. MAHDU DANDAVAIL : Why? You need not.

SHRI VISHVJIT P. SINGH : You please tell me what is the date of this telex. *(Interruptions)*. What is the date of this telex?

PROF. MADHU DANDAVATE : Why do you threaten me?

SHRI VISHVJIT P. SINGH : Because you are withholding the date. *(Interruptions)*.

SHRI M. S. GURUPADASWAMY : What has happened to you ? Why don't you are patient ? *(Interruptions)*.

PROF. MADHU DANDAVATE : What do you mean ? Don't threaten me.

SHRI VISHVJIT P. SINGH : You give the date.

PROF. MADHU DANDAVATE : I will give. I told you that in that there is a reference that even later messages were sent, they had quoted earlier messages. These two earlier messages have

been quoted dated 21-3-1990(*Interruptions*). Just listen to me. (*Interruptions*). I cannot be cowed down like that. (*Interruptions*).

SHRI R. K. DHAWAN : Can you quote a single telex in which refund was asked for? (*Interruptions*).

PROF. MADHU DANDAVATE : On the contrary, I told you in the Statement where I said about earlier messages and here in fact, the number and the date, exactly everything has been quoted, unless you say these are fabricated numbers and dates. I have given these to you clearly. (*Interruptions*). Just listen to me. (*Interruptions*) "Reference instructions dated 18-11-88 and telex dated 10-11-89, F. No. 390-93-88 on the issue of unjust enrichment..." (*Interruptions*).

SHRI R. K. DHAWAN : What was the text of those telexes which were quoted? Please tell us the contents of those telexes. (*Interruptions*).

PROF. MADHU DANDAVATE : You cannot browbeat me like that. You can ask the question. (*Interruptions*). Please take your seat. (*Interruptions*).

SHRI V. NARAYANASAMY : We would like to know whether any telex was sent earlier for refund. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Mr. Minister I am on my legs please. Please let us follow some procedure. The Minister is giving clarifications. Let us hear him. If there are any doubts, you can again ask. But let us not disturb. (*Interruptions*).

SHRI S. S. AHLUWALIA : He should read out the text of the telex. (*Interruptions*).

PROF. MADHU DANDAVATE : All right. I will read out. They have almost suggested that, when I had quoted

(*Interruptions*).

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Mr. Minister, I am on my legs. Let me make the position clear that you are clarifying the doubt;\* raised by the hon. Members They fee» agitated about certain suspicious 16—523RSS/90

circumstances which they have put to you in the clarifications and the questions raised. Otherwise this way the proceedings will not go on properly. I would just request you to give the clarifications.

SHRI M. S. GURUPADASWAMY

:  
May I just make a request ?

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Let us not be over-enthusiastic about everything.

SHRI M. S. GURUPADASWAMY : Clarification can be raised and questions can be asked. After all this is part of the debate.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : It is not a debate.

"SHRI M. S. GURUPADASWAMY : Anyway a discussion is going on.

SHRI S. S. AHLUWALIA : Sir, we want everything. Why is he not agreeing to it? If the Minister is here and if papers are there.... (*Interruptions*).

SHRI M. S. GURUPADASWAMY :  
This is how you conduct yourself.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Let him clarify.

SHRI S. S. AHLUWALIA : Why are you not accepting for a JPC ? .... (*Interruptions*) .....

SHRI M. S. GURUPADASWAMY : This is how you conduct yourself. I only say that there must be patience. Let him make his speech. Afterwards if there are any doubts he can clarify later.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : No, if the Minister wants to enter into a controversy, what can be done?

SHRI M. S. GURUPADASWAMY : Let him make his speech.

PROF. MADHU DANDAVATE : That is all right. I will concede 10 your demand .... (*Interruptions*) ....

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Let us not

[Shri Bhaskar Annaji Masodkar]  
 .... (Interruptions) .... We should not get agitated.

SHRI R. K. DHAWAN : He is able to locate.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : If you address me probably the question would be solved.

PROF. MADHU DANDAVATE : Definitely, Sir, your face is more attractive than their faces.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : So you go by that attractions ... (Interruptions).

PROF. MADHU DANDAVATE : Ahluwaliaji you are more charming than the Chairman ..... (Interruption?) .... Ahluwalia^, you are more charming than the Vice-Chairman.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : That I concede.

PROF. MADHU DANDAVATE: Mr. Vice-Chairman, "No. 3969388, refer Board's letter of even number dt. 18-11-1988 regarding undue enrichment fortuitous benefit in refund cases. Board decides decision of Bombay High Court in writ petition No. 2204 of 1988, in the case of Roplas India Ltd., be followed by all field formations. The appeal against the above order is pending in the Supreme Court. Further the Bombay High Court observed that the decisions of other High Courts upholding fortuitous benefits and undue enrichment has been held to be against the law laid down by the Supreme Court. Para 9, principles laid down by the Supreme Court in the case of M/s. Shivshanker Dal Mills versus State of Haryana AIR 98 SC 1037, be referred. Any amount collected either under mistake of law or purported authority of law should not be refunded unless the ultimate person who has paid the money is found. The pending cases of refunds be decided according to above decisions of Bombay High Court... (Interruptions)... in the matter of undue unjust enrichment civil appeal 612 or 976 filed by the Union of India against the decision of Gujarat High Court in the cases of M/s. Ahmeda, etc., and M/s. Calico Printing Company againsl

writ No. 1058 of 972 as admitted by the hon. Supreme Court." So the messages have been sent ... (Interruptions)...

श्री सुरेन्द्रजीत सिंह अहलुवालिया : यह बड़ा साधारण सा सवाल है कि यह सारे टेलिक्स भेजे गए, जिनमें कहा गया कि रिफण्ड मत दो। और आपने जो टेलिक्स भेजा, उसमें कहा कि रिफण्ड दो। यही फर्क है।

SHRI V. NARAYANASAMY : We want a JPC. ... (Interruptions)...

SHRI S. S. AHLUWALIA : Mr. Vice-Chairman, Sir, we want a JPC on this. We want a House Committee on this. . (Interruptions) .....

SHRI R. K. DHAWAN : That telex message says the refund should not be made and your telex message says the refund should be made.

SHRI V. NARAYANASAMY : Mr. Finance Minister, you agree for the JPC probe... (Interruptions)...

SHRI R. K. DHAWAN : No, no, let him say what he wants to say.

SHRI V. NARAYANASAMY : This involves thousands of crores of rupees.

PROF. MADHU DANDAVATE: Again there is another circular.

SHRI R. K. DHAWAN : We do not want ... (Interruptions) ...

PROF. MADHU DANDAVATE: Mr. Jagesh Desai, in another circular it has been clearly stated that unless this has been stayed by the court, they should be implemented. That is what I have been telling you. I am prepared to lay the entire file on the Table of the House ... (Interruptions)...

SHRI V. NARAYANASAMY We want a JPC on this.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : It is for the Minister to lay the files on the Table. (Interruptions).

SHRI R. K. DHAWAN : Sir, the Minister himself is confused now. All the telexes which he has quoted, go against him. (Interruptions).

PROF. MADHU DANDAVATE : I am not at all confused. What I want to point

out is that different directions and different instructions have gone in the form of either circulars or telexes. *(Interruptions)*.

SHRI V. NARAYANASAMY : Why telex was sent? *(Interruptions)*.

SHRI R. K. DHAWAN : My point was, has ever a telex been sent asking the collectorate to refund crores of rupees ? *(Interruptions)*.

PROF. MADHU DANDAVATE: There has been a list of summary of... *(Interruptions)* various circulars. *(Interruptions)*.

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR) : Just listen to me. It is possible that you have a point, Mr. Minister. But that may not satisfy the query of the Members. Mr. Minister, please understand. It is possible that you have a point but that really may not satisfy the Members. But that is no reason that you should stop clarifications. You finish your clarifications. Why should you enter into a debate ? *(Interruptions)* I am not saying that.

PROF. MADHU DANDAVATE: These telex messages. *(Interruptions)*. There is no question of bureaucrats. *(Interruptions)*.

SHRI M. M. JACOB (Kerala) : Is it possible that this can be taken up ? *(Interruptions)* Allow this motion for the setting up of a JPC. Can the Chair consider this? *(Interruptions)*. He is studying files even now. *(Interruptions)*. We know the limitations of the Minister. But how can we go on like this ? *(Interruptions)*.

THE VICE-CHAIRMAN

(SH

RI

BHASKAR ANNAJI MASODKAR) : Mr. Jacob, you had been a Minister. You know the predicaments of the Minister. *(Interruptions)*.

SHRI M. M. JACOB : I am trying to help the Minister. Why not we go in for a JPC. Why not we accept such a motion ?

THE VICE-CHAIRMAN(SHRI  
BHASKAR ANNAJI MASODKAR) : Mr. Minister, it would be better if you complete.

PROF. MADHU DANDAVATE : And therefore I conclude by referring again to 10th August 1981." While sanctioning claims, you may, of course, ensure that instructions contained in Board's F. N. 658/ SO dated 23rd February, 1981 are kept in view. The receipt of this letter may please be acknowledged." And this has been sent to all Collectors of Central Excise. So at that particular point of time, whatever be the policy of the Central Excise Board, that has been indicated. *(Interruptions)*.

SHRI VISHVJIT P. SINGH : The Minister has not found a single telex..... *(Interruptions)*.

PROF. MADHU DANDAVATE : I had read out 1981 circular also. On the basis of that, as far as our position is concerned, we have made it explicitly clear that though there were conflicting judgments of different courts, even the so-called judgment of the full High Court Bench that has got two components. In view of this, the Central Excise Board in its own judgment and authority which it has carried on for years together sent the telexes followed by the circular and when it came to my notice and when I felt that this particular doctrine of unjust enrichment has to be implemented. I gave an assurance that pending the Supreme Court judgment, we are also suspending this particular circular that was issued and I will explore the administrative as well as legal feasibility to make the necessary amendments so that whenever it is unjust enrichment, the manufacturers and importers will not get back the refund but that can be put in the coffers of some sort of a welfare scheme or a welfare fund. *(Interruptions)*.

SHRI R. K. DHAWAN : My points have not been answered. I have a right to ask. *(Interruptions)*.

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR) : I will permit only one Member *(Interruptions)*.

SHRI R. K. DHAWAN : No, no. I will raise only those points which have not been replied by him. *(Interruptions)*.

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR) : You know the *procedure* that when the statements are made and clarifications are given, it is not necessary that you are satisfied. (*Interruptions*).

SHRI R. K. DHAWAN : If the Minister does not give reply at all, then what happens ? (*Interruptions*).

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR) : Therefore, I am granting permission to one of you or two of you and you may ask. But the procedure is, if you are not satisfied, there are other methods by which you can bring it before the House.

But the procedure is, if you are 9.00 P.M. not satisfied, there are other methods by which you can bring it before the House. You can record your dissatisfaction.

SHRI R. K. DHAWAN : Sir, I will not refer to the points which he has given reply to. My point is, in his statement, he has said that a particular member of the board took the decision without the consultation of the entire Board or the Law Ministry for that matter, the Minister or the Prime Minister. What action is contemplated against that officer ? Is it a normal practice to take such a decision ? Then another point... (*Interruptions*) Let me complete a point which you have not replied.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Mr. Minister, you please make a note of it.

SHRI R. K. DHAWAN : My second point is this. What is the criteria for selecting the parties to whom this refund is to be made ? He has not replied to that point. And the third main point which remains unanswered is, is there any practice by which a telex was sent by the Ministry asking all the collectorates to refund crores of rupees ?

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Mr. Bhandare, do you want to ask anything ?

PROF. MADHU DANDAVATE: You will reply to these. (*Interruptions*). You

cannot go on having a debate on this like this. I only want to tell Mr. Dhawan that since I have taken the view—you might not agree with it—that in the normal course, since the Board of Central Excise and Customs has the inherent authority to take the necessary decisions and send a circular... (*Interruptions*). For the simple reason that I came to the conclusion, on my own assessment, that I accept this particular doctrine of unjust enrichment and I want to explore the feasibility of amending the law as far as we can build up a consumer fund and that being my approach, I have declared in the Lok Sabha that I am suspending this. I do not want to challenge the *bona fides* of the officer and therefore, there is no question of taking any action against him. (*Interruptions*).

SHRI R. K. DHAWAN : What is the criteria for selecting the parties for payment ?

PROF. MADHU DANDAVATE: There is no question like that. Whenever a refund has taken place, it is not against 'X' or V.

THE VICE-CHAIRMAN  
(SHRI

BHASKAR ANNAJI MASODKAR) : You need not answer.

PROF. MADHU DANDAVATE: You yourself ask him to ask the question and you say, 'Do not reply'.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : No. No. I am saying.. (*Interruptions*).

PROF. MADHU DANDAVATE: I have made it clear that there was no discrimination between one party and the other.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : That is all. That is the end of the matter.

SHRI JAGESH DESAI : Mr. Minister. ... (*Interruptions*)... to send a circular. Why did you not take action at that time?

PROF. MADHU DANDAVATE: That is what I want to tell you. Just listen to me. (*Interruptions*). Prior to my answering a question in the Lok Sabha, in



one of the meetings in Pune, he pointed out that such a circular has come. Within a week, I took the decision to announce it in the Lok Sabha. *(Interruptions)*.

AN HON. MEMBER: We are waiting to make our special mentions. We do not want all this. *(Interruptions)*.

SHRI VISHVJIT P. SINGH : We want a Joint Committee of both the Houses.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : Mr. Vice-Chairman, I am asking for your permission to make this point.

THE VICE-CHAIRMAN(SHRI BHASKAR ANNAJI MASODKAR) : How much time we have already spent on it. We should stick to some procedure.

SHRI JAGDEEP DHANKHAR: Mr. Bhandare, you are a senior counsel. *(Interruptions)*.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am only seeking your permission to move this : That the House resolves to appoint a Joint Parliamentary Committee...' *(Interruptions)*.

THE VICE-CHAIRMAN(SHRI BHASKAR ANNAJI MASODKAR) : No. That cannot be taken up now.

SHRI JAGDEEP DHANKHAR : Mr. Bhandare, you are a senior counsel. How can you raise that point without notice ? It is not warranted at all.

THE VICE-CHAIRMAN(SHRI BHASKAR ANNAJI MASODKAR) : I cannot be taken up now. You must give notice of that motion.

PROF. MADHU DANDAVATE : Sir, a regular notice has to be given. All the hon. Members in the House must be conversant with that notice. *(Interruptions)*.

SHRI S. S. AHLUWALIA : Just as you want to lay the papers on the Table of the House... *(Interruptions)*.

PROF. MADHU DANDAVATE: Notice has to be given. It has to be circulated. The Members of the House must be conversant with that. *(Interrup-*

SHRI S. S. AHLUWALIA : We want a Committee of our House.

SHRIMURLIDHAR CHANDRAKANT BHANDARE : Sir, you can suspend the rule. *(Interruptions)*. This House can control all the procedures. *(Interruptions)*.

' SHRI JAGDEEP DHANKHAR : May I remind Mr. Bhandare that when the Vice-Chairman is on his legs, we will have to resume our seats ? Mr. Vice-Chairman is on his legs.

SHRI V. NARAYANASAMY : Sir, he is trying to cover up.

SHRI S. S. AHLUWALIA : We want a committee. We demand a committee of this House to go into the whole matter.

THE VICE-CHAIRMAN(SHRI BHASKAR ANNAJI MASODKAR) : You move a motion according to rules. Your demand is there. You move a motion.

SHRI S. S. AHLUWALIA: Sir, five minutes before you said, "There is no mala fide intention."

DR. YELAMANCHILI SIVAJI: Sir, they are raising all sorts of questions. Actually there is no quorum now. You should adjourn the House.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : Sir, I want to move for suspension of rules.

THE VICE-CHAIRMAN(SHRI BHASKAR ANNAJI MASODKAR) : Please understand the position, Mr. Bhandare.

SHRI MURLIDHAR CHANDRAKANT BHANDARE : Sir. I move for suspension of rules. Let us not enter into the formalities.

THE VICE-CHAIRMAN(SHRI BHASKAR ANNAJI MASODKAR) : That matter is closed. We proceed to . Special Mentions.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You can suspend the rules.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): This is not the occasion.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You give a ruling.

SHRI R. K. DHAWAN: Why is the Minister afraid of placing the papers on the Table of the House?

SHRI V. NARAYANASAMY: The Minister is covering it up.

PROF. MADHU DANDAVATE: 'You

श्री सुरेश पचौरी (मध्य प्रदेश): करोड़ों रुपए खाए हैं सरकार ने और वह दूर्भाग्य है कि मधु दण्डवत जी भी उसमें लिप्त पाए जा रहे हैं। ... (व्यवधान) ...

श्री सुरेन्द्रजीत सिंह अहलुवालिया: और जो कह रहे हैं कि मैं पाक-साफ हूँ ... (व्यवधान)

श्री सुरेश पचौरी: यदि आप अपने आपको पाक-साफ साबित करना चाहते हैं तो आप ... (व्यवधान)

just spring up in the House and demand that papers should be laid on the Table of the House, but that is never done. There is a procedure for laying papers on the Table. Notice should be given for doing so. Whenever Mr. Jagesh Desai was in the Chair, he used to tell us that if any motion was to be moved, a notice should be given and it would be circulated .... (Interruptions)...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Mr. Vice-Chairman, I am asking for your permission. Are you prepared to give permission?

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): No, I am not giving any further permission. The question about this particular aspect is closed.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I abide by your ruling.

श्री सुरेश पचौरी: दण्डवत जी, जैसे सारी परम्पराएं तोड़कर आपने प्रश्नों के उत्तर दिए हैं वैसे ही आप ... (व्यवधान) ...

श्री सुरेन्द्रजीत सिंह अहलुवालिया: अब कहां गई वफादारी? अब कहां गया वह पाक? पाक-साफ अगर है तो सारे दोष रखें टेबल पर और हाऊस कमिटी को दें कि हाऊस कमिटी देखें। ... (व्यवधान) ... उपसभाध्यक्ष जी, अभी इन्होंने कहा था कि यह पूरी फाइल टेबल पर रखेंगे, वह भी वापिस ले गए। ... (व्यवधान) ... वह फाइल टेबल पर रखें। ... (व्यवधान) ...

SHRI M. M. JACOB: Mr. Vice-Chairman, only with the permission of the Chair, we can move the motion. I know that. So we are seeking your permission.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): I am sorry. I am not giving permission.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You have given the ruling. I will abide by it.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): I have already told Mr. Desai... (Interruptions)...

SHRI V. NARAYANASAMY: Sir, I am on a point of order.

श्री सुरेन्द्रजीत सिंह अहलुवालिया: मधु दण्डवत जी, मुझे यह विश्वास नहीं होता कि आपने किकबैक लिया है। बदनामी में क्यों पड़ते हो? उस फाइल को टेबल पर रखो ताकि सदस्य जान सकें और सारा भारत जान सके। किकबैक किसी ने ली है और बदनामी का कलंक आप ले रहे हो।

KUMARI CHANDRIKA PREMJI KENIA: I am on a point of order, Sir. ... (Interruptions)...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Let us conclude one business. ... (Interruptions) ...

Mr. Ahluwalia, Mr. Narayanaswamy, Mr. Desai, please sit down  
-----(*Interrup*  
*tions*) ----- Well, Mr. Bhandare, just-see I  
am not granting any permission to suspend  
the rules... (*Interruptions*)...

SHRI R. K. DHAWAN : What about  
Minister's promise that he is not afraid of  
any inquiry ? He said, he is not afraid of  
anything.

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI MASODKAR) : If  
the Minister is agreeing, I have no ob-  
jection.

PROF. MADHU DANDAVATE : Sir,  
I will collect all the circulars and  
messages and I will lay them on the Table  
of the House.

SHRI S. S. AHLUWALIA : Mr. Vice-  
Chairman, is the Minister going to make  
an inquiry or not ?

PROF. MADHU DANDAVATE :  
will collect all the circulars and letters and  
place them on the Table of the House. But  
there is a procedure for it. I say I have to  
authenticate all the available telex  
messages. I shall authenticate them and lay  
them on the Table of the House.

SHRI R. K. DHAWAN : How are we to  
know that they will not be tampered with ?

PROF. MADHU DANDAVATE : I  
have said in the course of my statements  
that I shall collect all the circulars and  
telexes ... (*Interruptions*).

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI MASODKAR) : I  
request honourable Members, let us have  
order in the House. Honourable Members,  
your suspicions do hang somewhere. It  
does appear so. But the Minister has  
already assured you that if some of you  
want to see the files, they are welcome.  
(*Interruptions*)

PROF. MADHU DANDAVATE  
:  
Let me make the position clear...

SHRI JAGDEEP DHANKHAR : Then  
are two issues before us. One is request  
for a Joint Parliamentary Committee.

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI MASODKAR) :  
That I am not permitting.

SHRI MURLIDHAR CHANDRA-  
KANT BHANDARE : Suspension of the  
rules.

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI MASODKAR) :  
That I have ruled out. (*Interruptions*) You  
don't want me to complete my  
statement....

SHRI JAGDEEP DHANKHAR : Mr.  
Vice-Chairman, the issue is \_\_\_\_

SHRI R. K. DHAWAN : You are not  
the Finance Minister.

SHRI JAGDEEP DHANKHAR know I  
am a Deputy Minister. And I have no  
intention of becoming Finance Minister.  
But I have to react to a certain situation.

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI MASODKAR)  
:

The Minister has assured that all the  
papers concerned will be laid on the  
Table of the  
House.

PROF. MADHU DANDAVATE :  
There are many circulars and telex mes-  
sages and I have said that I am prepared to  
lay them on the Table.

SHRI R. K. DHAWAN : Mr. Vice-  
Chairman, what is your ruling ? If a  
Minister quotes from a file, will that docu-  
ment be placed on the Table or not ?

THE VICE-CHAIRMAN (SHRI  
BHASKAR ANNAJI MASODKAR) : If  
the Minister refers to a document and he  
has given you a gist, he need not lay it on  
the Table of the House. It is his choice.

SHRI V. NARAYANASAMY :  
He  
! said he will lay it on the Table.

SHRI VISHVJIT P. SINGH : In this  
course of his clarifications the honourable  
Minister has at various points of time  
offered to lay the papers on the Table of  
the House.

SHRI R. K. DHAWAN : From which  
he has quoted.

SHRI VISHVJIT P. SINGH : Apart from those papers from which he was quoting, he also said, "I can even lay the entire file on the Table of the House.".. *(Interruptions)*... Sir, I am convinced that there is no matter of national security involved. Of course, I can understand the security of a particular individual ... *(Interruptions)*...

THE VICE-CHAIRMAN

(S

HRI  
BHASKAR ANNAJI MASODKAR)  
: What is your point of order ?

SHRI VISHVJIT P. SINGH :  
My  
point is that if the security of individuals is not involved, if the security of the nation is not involved, and since the Minister has also assured that he would lay the papers on the Table of the House, the files may be placed on the Table of the House so that we may know the truth, the nation may know the truth .. . *(Interruptions)*.. .

THE VICE-CHAIRMAN (SHRI, BHASKAR ANNAJI MASODKAR)  
: Very good. Mr. Minister, what do you want to do now ? You created the confusion ... *(Interruptions)*.. .

PROF. MADHU DANDAVATE :  
There is no confusion. I told you, I would collect.... *(Interruptions)*.... I will collect all the relevant documents and all the telex messages and the circulars and will lay them on the Table of the House.... *(Interruptions)*....

THE VICE-CHAIRMAN  
(SHRI BHASKAR ANNAJI MASODKAR) : Very good. That is enough... *(Interruptions)*...

SOME HON. MEMBERS : No, no ... *(Interruptions)*.. .

SHRI M. M. JACOB : Sir, we are not satisfied with the reply of the Minister. . . *(Interruptions)*.... We are not satisfied With the reply of the Minister. It is an unfortunate thing that he has not even complied with our request. Therefore, as a protest, we walk out.... *(Interruptions)* ....

[At this stage, some hon. Members left the Chamber.]

#### SPECIAL MENTIONS

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR)  
:

Now, we shall take up Special Mentions. Mr. Hiphei. Not here. Mr. Kuthiravattom. Not here. Mrs. Pratibha Singh. Not here. Shrimati Sushila Tiria. Not here. Mr. Basudeb Mohapatra. Not here, Yes, Kumari Chandrika Kenia.

#### Need to allocate six per cent of G.N.P\*to educate and improve teachings in Navodaya Vidyalayas

KUMARI CHANDRIKA PREMJI KENIA (Maharashtra): Mr. Vice-Chairman, Sir, I want to make my Special Mention for which I have been waiting right from 5 o'clock.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : It is a Special Mention and, naturally, you have to wait.

SHRI SHANKAR DAYAL SINGH (Bihar) : Sir, I am on a point of order. I want to raise the issue of quorum now.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : Against whom ?

SHRI SHANKAR DAYAL SINGH r  
Against anybody. There is no quorum now.. . *(Interruptions)*... As a Member of this House, it is my privilege to raise the issue of quorum when there is no quorum. I have a right to raise this issue and you have to hear me ... *(Interruptions)* ....

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR) : I am willing to hear you at length. We are now on Special Mentions and what is your point of order ?

SHRI SHANKAR DAYAL SINGH  
:  
Whether it is Special mention or something else, there must be quorum. I wanted to raise the issue of quorum because there was no quorum. Now since the Members who went out are coming, there is quorum. Now, she can start her Special Mention.

KUMARI CHANDRIKA PREMJI KENIA : Sir, I take this opportunity to raise a very important and significant matter through my Special Mention on the last day of the current Session.