

"It is desirable to vest these powers exclusively in Judicial Magistrates"

**यह भी कहा गया है कि**

"At the same time we do not think that the powers under these sections should be vested concurrently"

आज आखिरी दिन है और इस सेशन में हम को मौका नहीं मिलेगा हम यह चाहते हैं कि जो पोज़िशन मैंने रिट्रेट की है वह 41वें कमीशन से साफ़तौर से कहा है कि कान्फ़रेन्सली नहीं होना चाहिये।

"Under the statutory scheme of separation, such a system is likely to create confusion and even otherwise has nothing to commend it".

उन्होंने साफ़तौर से कहा है कि जुडिशियल मजिस्ट्रेट से ही होना चाहिये।

#### THE CINEMATOGRAPH (AMENDMENT) BILL, 1980

THE MINISTER OF INFORMATION AND BROADCASTING (SHRI V. P. SATHE): Sir, I beg to move for leave to introduce a Bill further to amend the Cinematograph Act, 1952.

*The question was proposed.*

SHRI ERA SEZHIYAN (Tamil Nadu): I am opposing this Motion. I shall give my reasons.

This Bill which is sought to be introduced in this House by the Minister suffers from incompleteness of the Memorandum regarding delegated legislation. The Bill is accompanied by Financial Memorandum, Memorandum regarding delegated legislation and also the President's recommendation. If you have the copy of the Bill, please see the Memorandum regarding delegated legislation. They have not given complete particulars in it. Whenever such a memorandum regarding delegated

legislation is given, they clearly specify which clauses of the Bill attract this one. Here, no mention of the causes of the Bill is seen. They simply say that 'sub-section (2) of section 8 which deals with the power to make rules..'. The reference here is to the Act. Somebody has written this Memorandum earlier and now they are in a hurry to introduce this here. I will give an example. Day before yesterday we were dealing with the National Security Bill. There was a Memorandum regarding delegated legislation. It clearly said that "clause 5(a) of the Bill provides" for such and such delegation. If you had the Maruti Bill as introduced, you would notice that there also the memorandum regarding delegated legislation mentioned the specific clauses of the Bill to empower delegated legislation. Therefore, you have to specifically give the clauses which deal with delegated legislation. Any body who reads the Bill can make this thing. The honourable Minister can say that if one goes through the Bill, one can find where the delegated legislation is. If that is so, then nobody will be insisting on the formality of giving a memorandum. Even if you go to sub-section, 2 of section 8 of the original Bill, you will see that it is now proposed to amend it by clause 19 of the Bill.

MR. DEPUTY CHAIRMAN: Clause 18, not 19.

SHRI ERA SEZHIYAN: Yes. It seeks to amend this. Then you take clause 8 of the present Bill which deals with the constitution of an appellate tribunal. There also, if you see page 4, sub-clause (7) of clause 8 of the present Bill, you will see that here they talk of "such rules as may be made in this behalf". Tribunal is a new thing and it was not there earlier. Only the Board was there. Therefore, this one has not been given. If you take clause 18, it seeks to amend section 8 of the Original Act and there also they say, "without prejudice to the generality of the foregoing powers, rules made

(Shri Era Sezhiyan.)

under this section may provide for... etc., etc.". Then, a new clause they are putting in, that is, clause 8, and it seeks to introduce a new section, that is 5D after 5C of the principal Act. That means that the memorandum regarding the delegated legislation is incomplete and they have not mentioned the particular clauses of this Bill. Somebody has put it gene, rally that a new provision is made. This is unlike what I quoted in the case of the NSO and the Maruti Bills. The relevant sections of the Bill should be mentioned.

Under clause 8 a new provision seeks to appoint a tribunal which is a new thing. Now, rules have to be made for clause 8; Clause 18 to amend the other one cannot cover this.

MR. DEPUTY CHAIRMAN; Is this not in addition to the rule-making power conferred by section 5D? Under '5D also they have the power "to make rules. Under this there is the overriding power.

SHRI ERA SEZHIYAN: But the particular clauses of the Bill should be mentioned which has not been done. So, it is incomplete.

This is the first major point, Sir. Secondly, Sir, I presume that they have taken the permission from the Chair to introduce this Bill.

MR. DEPUTY CHAIRMAN.- I think permission has been given.

SHRI ERA SEZHIYAN; I want to comment on one thing. The Chair should not ordinarily give permission for this on the last day. Today is the last day and we don't get time to go through the Bills. I got up at 5 o'clock and was waiting upto 8.30 or so and I could not get it. I think many of my friends would not have seen this thing. Still I hurried through it and I have to refer to these things.

MR. DEPUTY CHAIRMAN: Your second point is over. Come to the third point.

SHRI ERA SEZHIYAN: My point is that on the last day, they should not introduce the Bills, because they simply hustle them. We do not get them in time and we do not get time to go through them. I have very great respect for Mr. Sathe. But I have to say this. Then, Sir, on the last page of the Bill, the President's recommendation has been given. I think that is not the correct procedure. In the case of others, usually the date and all these things are given. Here it is blank.

MR. DEPUTY CHAIRMAN: This is the only form in which it has been given in all the Bills. This is the procedure that has been followed so far.

SHRI ERA SEZHIYAN: I also know the procedure. In the case of Maruti copy of the letter number and date of the letter such and from Giani Zail Singh, Minister of Home Affairs, and all these things are given. Here nothing is given, it is very crucial, which I will explain later. It should be printed fully. I do not know who obtains the President's recommendation.

MR. DEPUTY CHAIRMAN: The Minister obtains it

SHRI ERA SEZHIYAN: I am not raising objection in the present case. This is for the future.

MR. DEPUTY CHAIRMAN: Yes, Mr. Jha. What is your point?

श्री शिव चन्द्र झा (बिहार): उप-सभापति जी, यह जो चलचित्र (संशोधन) विधेयक, 1980 है, इसका मैं विरोध करता हूँ। जो इसके लिये टेक्नीकल नोसेसिटीज हैं उनके बारे में उन्होंने बता दिया, इस लिये इस बारे में मैं कुछ नहीं कहूँगा। दो मूवों को ही इस बारे में मैं उठाऊँगा।

यह एक साधारण सी बात है कि जो नया बोर्ड आप गठित करेंगे उसमें जो पहले 9 मेम्बर थे, उनको बदलने का कोई औचित्य नहीं है।

MR. DEPUTY CHAIRMAN; Do not go into the<sup>1</sup> merits of the Bill. You can raise technical objections. Don't go into the merits of the Bill. You can oppose it on technical grounds.

श्री शिव चन्द्र झा : दूसरा मेरा मुद्दा यह है कि सेक्शन 4 में वलेरिफिकेशन ले रहे हैं यू० ए० की। मैं मंत्री महोदय से जानना चाहता हूँ कि क्या यह गांधी जी के देश में गांधी का आदर्श है? यू० ए० लगाकर आप उस आदर्श के खिलाफ कदम उठा रहे हैं। इन दो मुद्दों के अलावा जो बात मैं कहना चाहता हूँ वह यह है कि यह जो विधेयक है यह ठीक रूप में लिखा नहीं गया है। इसलिये मेरा कहना है कि इसको फिर से री-कन्सीडर करके पुनः इसको सदन में रखें। मैं इस बिल का इस रूप में विरोध करता हूँ।

SHRI ERA SEZHIYAN; Only one aspect. The Bill can even be opposed on merits as per the Rules. Rule 67 ^ays;

"If a motion for leave to introduce a Bill is opposed, the Chairman, after permitting, if he thinks fit, a brief explanatory statement from the member who move<sub>s</sub> and from the member who opposes the motion, may, without further debate, put the question. . ."

Suppose somebody wants to oppose on merits, only one member can be allowed, but the Chairman may allow full discussion whenever a Bill is 4 opposed on legislative in competence.

MR. DEPUTY CHAIRMAN: He can oppose on technical grounds, not on merits. Anyway, I am not going into that point now. Yes, the Minister.  
1483 RS—4.

SHRI V. P. SATHE; As far as the major technical point raised by my friend, Mr. Era Sezhiyan, is concerned, regarding delegated legislation, I would only like to point out that there is nothing new that we are introducing by sub-section (2) of section 8, because earlier also the provision is there. All matters are not supposed to be exhaustive. Such practice has been adopted in the past. As far as the delegated legislation is concerned, it only enables rule-making, which cannot be exhaustively spelt out in any delegatory legislation. Therefore, Sir, I do not think there need be any apprehension on this ground. No other points have been raised. As far as my friend's objection regarding 'U-A' is concerned, while answering one of the questions I had myself stated here that this is further to strengthen the very-objective which you have mentioned, about the Gandhian philosophy and concept of additional category of parental guidance, so that certain films will be specified where only parents will be able to decide whether their children should see those films. Therefore, they will not be free. This is to further strengthen the position about restricting certain films for certain categories.

SHRI ERA SEZHIYAN; He has not answered my point.

MR. DEPUTY CHAIRMAN: Don't repeat what you have already said. We have heard it.

SHRI ERA SEZHIYAN: Are you going to give a ruling? I referred to a specific section. As in other cases, specific clauses should be mentioned. In the Bill a new clause has been introduced. The rules cannot be taken from section (2) only. Therefore I say that it is incomplete. Unless it is completed, it cannot be introduced. It is a technical flaw.

MR. DEPUTY CHAIRMAN; I think you can raise these objections later on at the stage of discussion.

SHRI SUNDER SINGH BHANDARI (Uttar Pradesh): It\* you uphold (he objection, then this is the only time it can be done.

MR. DEPUTY CHAIRMAN: So far as this objection is concerned, it can be discussed later on. The Minister has said that he is not going to bring in any new provision.

SHRI KRISHNA CHANDRA PANT (Uttar Pradesh): May I, with all respect, submit that what the Minister said was that this is not an altogether new provision? Secondly, he said that the rules cannot be elaborated in the main Bill. This is perfectly all right. The rules cannot be elaborated. But it is expected that the memorandum of delegated legislation will specify each clause which involves delegated legislation. That is its whole business. I do not think this technical infirmity can be swept under the carpet. It is a technical infirmity. It is nothing more than that. Therefore, I would like you to take a firm stand. After all, these things should be adhered to. If they are adhered to, they add to the dignity of the House and they strengthen the procedures of the House. You are the guardian of the House. If you are convinced that there is an infirmity, then I would request you and the Minister that it can be taken up on the first day of the next session.

SHRI VASANT SATHE: I would have gladly accepted if I felt that it is like that. There is no hurry as such.

If I felt that there was infirmity, I would have accepted your suggestion.

I am willing to sit with you or with my friend, Mr. Era Sezhiyan and correct it. As it is today, we have at length given the explanation in the memorandum of delegated legislation. If you turn to it, all the points which Mr. Pant has raised just now have been covered there. The areas, the powers and the delegated legislation have been specified.

SHRI ERA SEZHIYAN: Which clause, and which provisions? I can show you the other memoranda.

SHRI VASANT SATHE: Ah I can assure you is that if there is any lacuna, technical lacuna, it will be corrected. We need not delay the Bill for that.

MR. DEPUTY CHAIRMAN: They have stated in the Memorandum that the new provisions set out in detail various matters in respect of which rules have to be made and these inter alia deal with the terms and conditions.... All the steps are there. Therefore, I think that there is no lacuna at this stage and the Bill can be introduced.

The question is:

"That leave to introduce the Cinematograph (Amendment) Bill, 1980, be granted."

The Motion was adopted.

SHRI VASANT SATHE: Sir, I introduce the Bill.

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#### THE SPECIAL COURTS (REPEAL) BILL, 1980

THE MINISTER OF HOME AFFAIRS (GIANI ZAIL SINGH): Sir, I beg to move for leave to introduce a Bill to repeal the Special Courts Act, 1979.

The Question was proposed.

श्री शिव चन्द्र झा (बिहार) : मैं इस विधेयक का, जो अभी मंत्री जी ने पेश किया है या इसके लिए इजाजत मांगते हैं इसलिए विरोध करता हूँ और यह मुझे बता दें कि जो पहला एक्ट बना था जो खुद कहते हैं स्पीडी ट्रायल के लिए आपने महसूस किया कि वह काम नहीं कर रहा है, इन फेक्टिव हो गया तो क्या यह आपका ग्लेअरिंग इनकम्पिटेंस नहीं है, फेल्योर नहीं है कि आप अपने एक्ट को फिर कार्यान्वित नहीं कर पा रहे हैं।

दूसरी बात, इसको तो आप रिपील कर रहे हैं, उसकी जगह पर स्पीडी ट्रायल सर्टिफ