

sage received from the Lok Sabha signed by I he Secretary-General of the Lok Sabha:

"in accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Constitution (Thirty-sixth Amendment) Bill, 1974, which has been passed by Lok Sabha, at its sitting held on the 4th September, 1974, in accordance with the provisions of article 368 of the Constitution of India."

Sir, I lay the Bill on the Table.

HALF-AN-HOUR DISCUSSION ARISING OUT OF THE ANSWER TO STARRED QUESTION NO. 1 GIVEN ON THE 22nd JULY, 1974, REGARDING VACANCIES OF JUDGES IN HIGH COURTS

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAYA): I understand that both the sections of the House would like to take up Half an-Hour Discussion at this stage. I think this may be taken up now. Shri Lokanath Misra.

SHRI LOKANATH MISRA (Orissa): Madam, Vice-Chairman, after Independence, we have not been able to give much to the people of India. In fact, the Government has failed to give a house to every family, has failed to give two square meals to every man in this country, has failed to curb corruption and has failed to curb the rise in prices and many other things. It is a colossal failure on the whole. To add to it, I would say, Madam, that this Government has also failed to give speedy justice to the litigants. Madam, the figure of the outstanding cases would astound the House. I will read out the figures for the information of the honourable House. In the Supreme Court, there are 12895 pending cases. In the High Courts, it is as follows:

Allahabad, which tops the list—89,577:

Andhra Pradesh—22,332 cases; Bombay—45,145 cases;

Calcutta—66,588 cases; Delhi—19,730 cases;

Gauhati—5,263 cases; Gujarat—12,860 cases;

Himachal Pradesh 1,882 cases; Karnataka—11,600 cases;

Kerala—31,660 cases; Madhya Pradesh —31,569 cases.

34,345 in Madras; 5,865 in Orissa; 26,000 in Patna; 25,320 in Punjab, Haryana; and 15,500 in Rajasthan.

Madam, if we add them up, this would be something like 4 lakhs of cases that are pending with the courts because they cannot cope up with the number of cases. The sanctioned strength of the different High Courts has not been provided by the Government of India to the respective High Courts. That is the basic reason why so many cases are yet pending in the courts.

[The Vice-Chairman (Shri Bipinpal Das) in the Chair.]

In the Allahabad High Court, the number of sanctioned posts at present is 43 while there are 7 vacant posts. In Andhra Pradesh, out of 23 posts, there are 6 vacant posts. In Bombay, out of 35, 2 are vacant. In Gauhati, out of 7, one post is vacant. In Gujarat, out of 18 sanctioned posts, 2 posts are vacant. In Karnataka, out of 16, 3 are vacant. In Madhya Pradesh, out of 21, 3 are vacant. In Madras, out of 22, 3 are vacant. In Punjab, Haryana, out of 23 posts, 9 are vacant. And in Rajasthan, out of 13 posts, 3 are vacant. Sir, because there have been so many vacancies, the cases are piling up. And they have been piling up for a pretty long time, not that it is a piling up of one year or two years, but, probably, it is a piling up of the last six or seven years. There is a saying in English that justice delayed is justice denied. I do not know what impression the hon. Minister has about justice, but he is called the Minister of Justice. I hope we can expect justice out of him. But justice must be evidenced. The instrument of administration is made inadequate in every State. I do not know the reasons but some of the reasons that they have given to us are not believable. They say that the respective Governments in the States have not taken up the issue with the Centre. I am told, Sir, many panels

[Shri Lokanath Misra]

of names have been sent to the Government of India and they are lying with the Government of India for a long time. I do not know due to what the delay is. If some recommendations have come from the States, there should not have been so much of delay in appointing the Judges. One or two months delay is understandable because the Government of India has to get the verifications done about particular persons that are going to be appointed as Judges. But it should not take such an enormously long delay. Some of the State Governments have even complained that though the names have been sent some six or seven months back, the Government of India has not taken a decision. Sir, another reason why there are so many vacancies in the High Courts may be that the salary and other emoluments which are provided for the High Court Judges are not enough compared to the rising prices. Sir, these salaries were fixed immediately after independence, some time in 1948 or 1949 or 1950. Compared to 1950, when a rupee was a rupee, now its worth is 25 paise. Officially they admit that it is worth 29 paise. By artificial manipulation, they raise it by four paise. But it is actually 25 paise. Sir, whatever one is getting in the country is worth only one-fourth of what it was in 1950. Sir, I have my greatest sympathies with those persons who are drawing Rs. 100 or Rs. 200 or Rs. 300 per month. They must be starving and completely starving themselves. I am one of those who plead that the remuneration of those who earn between Rs. 100 and Rs. 300 per month should be raised; it should be doubled at least. In fact, Sir, I would submit to you the information—I hope that everybody who should know in this Government must be knowing it—that in the Great Britain, the U.K., the law now is that nobody can be paid less than the sterling equivalent of Rs. 1,800 per month. So also in France the law is that nobody can be paid less than the equivalent of Rs. 2,200; in Germany nobody can be paid less than the equivalent of Rs. 2,200. In Italy also a similar law exists and the amount there is probably equivalent to Rs. 1,400 and Italy, economically, is not in a very much better off condition as compared to India. But, unfortunately, in this country we have very poorly paid people and compared to them it is ridiculous to say that the High Court

Judges should be paid more. (*Time beH rings.*) It is just seven minutes only, Sir. But, all the same, Sir, some of the High Court Judges feel that the remuneration now offered to them is not much. And, if the present Minister of Justice, Shri Gokhale, could resign ten years earlier complaining against the then salary given to the High Court Judges saying that it was inadequate for which reason he could not continue as a High Court Judge, there are all the more important reasons and justifications for the High Court Judges how to feel that the payment that is being made to them is inadequate and perhaps that is the reason why he is not here today.

Sir, there is now a point for revision of the benefits to the High Court Judges. I do not plead for giving to them a higher salary but, probably, there is a demand even from the States for some benefits to the Judges. If you give them more salary, it would go in the shape of income-tax and it would not benefit them very much. They probably expect a bungalow free, a motor car free and a stenographer or something like that free. The hon. Minister of Justice had been assuring this House and the other House through replies to our Questions that he would soon be bringing forth a Bill. I do not know when he is going to bring forth that Bill. Is he bringing it on a bullock cart from Bombay? It may take, maybe his entire term here as a Minister. But, if he really intends to bring it, let him bring it immediately so that better talent in the country feels reassured. If such a Bill is brought forth, better talent in the country would get attracted to come to the Bench. As it is, Sir, because of the supersession of the Judges the confidence of many people has been undermined, who would otherwise have liked to come and join the Bench. But, if the attraction in salary and other benefits would be such which would compensate the lack of confidence because of the supersession, may be better talent would be attracted and I wish that if we are going to man our Benches with fresh people, they should be people who are luminaries in their own field, who are best in the Bar and who can inspire confidence in the minds of the people of this country so far as the High Courts and the Supreme Court are concerned. Thank you, Sir.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI NITI RAJ SINGH CHAUDHURY): Sir, I think Prakashvirji has also to say something.

THE VICE-CHAIRMAN (SHRI BIPIN PAL DAS): Later.

SHRI NITI RAJ SINGH CHAUDHURY: I thought the questions might be identical.

THE VICE-CHAIRMAN (SHRI BIPIN PAL DAS): This is the procedure.

SHRI NITI RAJ SINGH CHAUDHURY: Shri Lokanath Misra has raised a few points. I will reply to them one after the other. He said that the justice should be speedy and that delay in justice is the denial of justice. I do not dispute that. I agree but we have to know the reasons why this is so. He says that the total pendency of the cases in the High Courts is 4,39,525 but he has not referred to the annual institution that takes place in the High Court. It is almost equal: it is more than 3i lakhs, almost nearing 4 lakhs. The old cases are decided and new cases are coming and, therefore, that number remains. But I do admit that some cases hang on and they have hanged on for quite some time and to know the reasons a Committee was appointed presided over by Justice J. C. Shah who later became the Chief Justice of India. In his report he has said that the main cause of the delay is adjournments taken by advocates who have lots of briefs, who cannot attend to all the cases, who ask for adjournments and the judges oblige them. So, I think, myself, Shri Lokanath Misra and others in that profession have to persuade our friends not to accept so many briefs and they should see that they do not ask for adjournments. Presently, I may inform that the High Courts and the Supreme Court are taking action to see that adjournments are not granted and, therefore, we hope and let us hope that the delay would be minimised.

The second point to which he referred is that there are very many vacancies and the papers are received here and they are lying here undisposed of. I most respectfully submit that it is not so. May I refer him. and now the House to the

provisions of article 217- Since this article was enacted, a procedure has been laid down and that procedure has worked very well without any trouble. As soon as a vacancy of a judge occurs, the Chief Justice of a State initiates. He suggests names. The Chief Minister and the Governor consider those names. They send their comments. They come here. The Chief Justice of India considers them and after all that they come to us. If there is an agreement everywhere there is no hitch. The matter goes through but if there is any difficulty, if there is any conflict in them, if certain informations are required, they have certainly to be asked for, we have to ascertain and see that no supersessions have taken place, particularly in respect of the persons who are District Judges and whose names are recommended. Their report is called for. We see that everybody has been duly considered. So, to say that papers are pending, lying undisposed of is, I most respectfully submit, not correct. If there is any instance of any High Court or any place, I will try to satisfy my hon. friend that there is no delay here but the process, as I said, takes its own time and sometimes queries have to be made and in making those queries delay does occur.

Then he referred to the salaries and he says that the money value has fallen.

SHRI LOKANATH MISRA: I said about perquisites.

SHRI NITI RAJ SINGH CHAUDHURY: He also referred to my senior that he resigned because of the salaries. He has suggested that increase in salary will not serve the purpose. The perquisites should be increased and he suggested that residence should be provided for, stenographer should be provided free and so on and so forth. He also said that we have been saying all the while that something is being done. I would repeat it again that the matter is actively under consideration and we are taking decisions. But there are certain difficulties. As soon as we have been able to surmount them, decisions will be taken. Government is also thinking on the same lines on which the hon. Member has suggested, that is, not increasing salaries but providing perquisites.

SHRI LOKANATH MISRA: What are the difficulties? Would you kindly let us know?

SHRI NITI RAJ SINGH CHAUDHURY: Let us not get into it. Let me reply to the points raised by you. He suggested that because of these difficulties better talents, better persons who should come to the benches are not coming. That is a matter of opinion. Sometimes, we see persons who have roaring practice at the Bar have come and joined the bench. That is a matter of liking in this line and sometimes persons who are getting much less than what a judge gets do not want to come because they feel that at the Bar they are freer persons, they can talk anything they like and when they become a judge they are tied down. So, they do not want to come. So, to say that because of salaries, proper persons are not coming, is. I most respectfully submit, not correct. Persons do come but as I said it is a matter of one's personal choice.

SHRI LOKANATH MISRA: Would you kindly give a tentative time about this Bill?

SHRI NITI RAJ SINGH CHAUDHURY: You know, Lokanathji, you will not force me to promise some thing which promise I would not be able to keep.

श्री प्रकाशवीर शास्त्री (उत्तर प्रदेश):

उपसभाध्यक्ष जी, जिस प्रश्न के उत्तर में यह चर्चा चल रही है उस प्रश्न का उत्तर देने हुए विधि मंत्री जी ने कहा था कि राज्य सरकारों से कुछ स्थानों की पूर्ति करने के लिए हमारे पास सूचनाएं आई हैं और उनकी हम जानकारी ले रहे हैं या प्रोसेस कर रहे हैं कुछ के लिए हमने राज्य सरकारों को रिमांड किया है। पहली बात मैं यह जानना चाहता हूँ कि आपके पास राज्य सरकारों से कब ये सूचनाएं आई और कब से आप इनको प्रोसेस कर रहे हैं और कब तक यह प्रोसेसिंग का कार्य पूर्ण कर लेंगे? दूसरी बात यह कि आपने जिन

स्थानों के लिए राज्य सरकारों को रिमाइन्डर दिये हैं वे कितने स्थान हैं, कब रिमाइन्डर दिये हैं और किन राज्य सरकारों से उत्तर नहीं आए। ये प्रश्न तो वे हैं जिनका संबंध आपके उत्तर से है और मैं उनकी जानकारी चाहता हूँ। दूसरी बात मैं यह कहना चाहता हूँ कि न्यायालयों का स्थान मनु के शब्दों में धर्म की तरह से है जिसमें लिखा है : कि धर्मो रक्षति रक्षितः अगर न्यायालयों की रक्षा करेंगे तो न्यायालय न्याय की रक्षा करेंगे। आपने अभी वरीयता के अतिक्रमण के संबंध में कुछ चर्चा की। मैं उस प्रश्न में नहीं जाना चाहता कि सर्वोच्च न्यायालय में सुपरसेशन या अतिक्रमण की जो घटनाएं हुई और जिससे जो देश के वरिष्ठतम एडवोकेट्स थे वे किस तरह से सर्वोच्च न्यायालय छोड़कर चले गये, चाहे उनमें श्री बागला हों या श्री सोतलवाड़ हों, वे सर्वोच्च न्यायालय छोड़कर चले गये। इस प्रकार की घटनाएं चाहे घटी हैं। पंजाब उच्च न्यायालय के एक जज जिनको मुख्य न्यायाधीश बनाया जाना था, उनकी वरीयता का अतिक्रमण करके दूसरे को मुख्य न्यायाधीश बना दिया गया और उन्होंने अपना स्थान त्याग पत्र दे दिया। लेकिन अधिष्ठाता महोदय, अब यह चीज महाधिवक्ताओं अर्थात् एडवोकेट जनरल पर भी आ गई है। आज ही समाचार-पत्रों में आपने पढ़ा होगा कि महाराष्ट्र के एडवोकेट जनरल श्री सीरवई ने त्याग-पत्र दे दिया है। महाराष्ट्र के विधि मंत्री श्री अंतले ने उनसे परामर्श किये बिना राज्य सरकार के सलाहकार के रूप में कुछ व्यक्तियों को नियुक्ति कर दी जिसको उन्होंने समझा कि यह महाधिवक्ता, एडवोकेट जनरल के अधिकारों का अतिक्रमण है। इसलिए

श्री सीरबई ने जिनको भारत सरकार ने कमी एटोर्नी जनरल बनाने का प्रस्ताव भेजा था, ऐसी मेरी जानकारी है, उन्होंने महाधिवक्ता के पद से त्याग-पत्र दे दिया। यह चीज न्याय के क्षेत्र में बड़ी चिन्ता की चीज है।

दूसरी बात जो मैं कहना चाहता हूँ वह यह है कि जो उच्च न्यायालयों उनके प्रतिभाशाली एडवोकेट है, वे क्यों नहीं आ रहे हैं। इस बारे में मैंने जानकारी ली तो मुझे पता लगा कि उनको वकील रहते हुए कितने अर्थ की प्राप्ति हो जाती है और जितनी सुविधाएं प्राप्त हो जाती हैं एक अच्छे प्रतिभाशाली वकील होने के नाते, उतनी सुविधाएं न्यायालय में जज के रूप में आने से नहीं मिलती हैं। इसीलिए वे हाईकोर्ट और सुप्रीम कोर्ट का जज बनने से कतराते हैं। जब आपने सेक्रेटरी, एडीशनल सेक्रेटरी, जौयन्ट सेक्रेटरी और ये जितने भी पद हैं इन सब की सुविधाएं बढ़ा दी हैं तो आश्चर्य है कि न्यायालयों की ओर अभी तक इस सरकार का ध्यान क्यों नहीं गया कि जिससे अच्छे प्रतिभाशाली लोग भी न्यायाधीश बन सकें और गौरव का अनुभव जज बनने में कर सकें। इसके साथ-साथ मैं यह भी कहना चाहता हूँ कि न्यायाधीशों को सेवा निवृत्ति के बाद जो पेंशन दी जाती है वह इतनी कम है कि जिससे रिटायर होने के बाद जजों का सरकारी दफ्तरों और मिनिस्ट्रों के दफ्तरों के चक्कर लगाते पड़ते हैं जिससे किसी कमीशन की चेयरमेनशिप मिल जाय। यदि इनको उचित पेंशन मिलती तो इन वरिष्ठ जजों को सरकारी दफ्तरों के चक्कर नहीं

लगाते पड़ते। जहां तक एरियर्स का सवाल है, उसके संबंध में केवल एक बात कहना चाहता हूँ कि संख्या में कमी होने की दृष्टि से जहां एरियर्स बने हैं। वहां क्वालिटी यानी योग्य न्यायाधीश न होने के कारण भी एरियर्स बड़े हैं। मैं जानना चाहता हूँ कि इस दृष्टि से जिन न्यायालयों में मकदमा की संख्या लाखों पर पहुंच गई है, जैसे उत्तर प्रदेश में लगभग 90 हजार की संख्या आपने बताई है, क्या अतिरिक्त जजों जो स्थान पहले से रिक्त है उनमें तो सात की नियुक्ति आपने करनी ही है। उनकी नियुक्ति के संबंध में भी विधि मंत्रालय विचार कर रहा है कि जिससे उन केसेज का जल्दी से जल्दी निपटारा हो सके।

अंत में दो-तीन प्रश्न और करके मैं बैठ जाना चाहता हूँ। एक प्रश्न मेरा यह है कि क्या ये जो हाईकोर्ट हैं, जैसे उत्तर प्रदेश का हाईकोर्ट है, वह इलाहाबाद के अंदर है। अब यहां पश्चिमी उत्तर प्रदेश के दिल्ली गाजियाबाद से जिस व्यक्ति को इलाहाबाद जाना पड़ता है वह तो जा नहीं सकता है। यही मन मार कर रह जाता है। काफी चर्चा चल रही है कि इसका बेन्च मेरठ में स्थापित हो जाए। गोखले साहब से एक वकीलों का डेपुटेशन मिलने आया; उसने कहा कि राजस्थान वाले कह रहे हैं हमारे हाईकोर्ट की बेन्च जोधपुर के सिवाए जयपुर में हो जाए। मध्य प्रदेश का भी प्रश्न इसी तरह का है। इस प्रकार की लोग और भी हो।

THE VICE-CHAIRMAN (SHRI BIPIN-PAL DAS): You finish now.

श्री प्रकाशवीर शास्त्री : अंतिम बात जिसको कह कर मैं बैठना चाहता हूँ यह है कि जहाँ इस पर विचार करेंगे वहाँ एक कारण क्या रह भी है कि कुछ इस तरह की अवैध नियुक्तियाँ भी होने लगी हैं न्यायालयों में जिसके कारण जो अच्छे और प्रतिभाशाली वकील हैं वे न्यायाधीश होने से घबराते हैं। मेरे हाथ में एक प्रश्न का उत्तर है जो राज्य सभा में दिया गया है। 26 अगस्त 1974 को दिल्ली के पास गुड़गाँवा है, गुड़गाँवा के अंदर अधिष्ठाता महोदय जो जिला जज थे वह रिटायर हो गए जो ला कमीशन है उसकी अपनी संस्कृति यह है जज जो बनाए जाएं इस प्रकार के हों जिनका कार्यकाल, तीन, चार, पांच वर्ष तक हो सके। यह नहीं हो कि उनको आज हाईकोर्ट या सुप्रीम कोर्ट का जज बना दिया जाए और 2 महीने बाद रिटायर हो जाए। लेकिन यहाँ एक उल्टी बात है कि ऐसे एक रिटायर्ड जज को इसलिए पंजाब हाईकोर्ट का जज बनाने का विचार किया जा रहा है क्योंकि उन्होंने, किसानों की जमीनों जो मारुति के कारखाने में आ गई थीं, उसका सारा केस गया था और उन्होंने गवर्नमेंट के पक्ष में फैसला किया। इसलिए रिटायर्मेंट के बाद उसको पंजाब के हाईकोर्ट का जज बनाने का विचार किया जा रहा है। और उत्तर में यह भी कहा गया है कि उच्च-न्यायालय की नियुक्तियों में गोपनीयता होती है और लोकहित में उसको बताना ठीक नहीं होता क्योंकि.....

श्री मुस्तान सिंह (हरियाणा): मेरा एक व्यवस्था का प्रश्न है कि जज के जजमेन्ट को इस हाऊस में डिसकस

नहीं कर सकते। (Interruptions)
अध्यक्ष महोदय, उन्होंने कहा है— आप उनके शब्दों को याद करें— मारुति के केस में जो जजमेन्ट दिया है उस पर हमला दिया, उसकी बोनाफाइडे को डाउट किया है। तो मेरी आपसे दख्खवास्त है कि इस किस्म की बातों को कहने की इजाजत नहीं दें।

श्री प्रकाशवीर शास्त्री : मुझे बड़ी खुशी हुई कि हमारे माननीय सदस्य ने इस प्रश्न को उठाया व्यवस्था के रूप में। मैं केवल यह कह रहा था कि ये जो डिस्ट्रिक्ट जज महोदय हैं ये उस समय डिस्ट्रिक्ट जज गुड़गाँवा में थे जब यह मारुति फैक्टरी वहाँ लग रही थी और जिन बेचारे किसानों की जमीन सस्ते-सस्ते दामों पर खरीद कर उजाड़ा जा रहा था उन्होंने अपील की लेकिन उनकी अपील की पर्वाह न करके गवर्नमेंट के पक्ष में निर्णय हुआ। वे रिटायर हो गए और रिटायरमेंट के बाद उनको पुरस्कार दिया जा रहा है और पंजाब हाईकोर्ट का जज बनाया जा रहा है। तो इस तरह की अनियमितताओं से न्यायालय की रक्षा हो सके मैं चाहूँगा विधि राज्य मंत्री इस प्रश्न का भी उत्तर अपने जवाब में दें।

श्री राजनारायण (उत्तर प्रदेश) : श्रीमन्, मैं सरकार से यह जानना चाहता हूँ कि जो आज राज्यों में हाईकोर्ट में बहुत से मुकदमें बिना फैसले के पड़े हुए हैं और जो संख्या वहाँ पर नियत की गई है उन संख्या की पूर्ति नहीं हो रही है, जैसे कि इलाहाबाद में 7 की कमी है, आन्ध्र प्रदेश में 3 की कमी है—हर

जगह की इस तरह की लिस्ट हमारे पास है। तो इसका सबसे बड़ा प्रधान कारण क्या यह है कि जो अच्छे अच्छे बढ़िया प्रतिभावान वकील हैं, एडवोकेट्स हैं वे इस समय हाईकोर्ट जाने से इनकार कर रहे हैं? उसका कारण सबसे प्रधान यह है कि इस समय जो सरकार की नीति के प्रति आबद्ध है उन्हीं को जज बनाने को जरूरत समझती है। एक बड़ा भारी रेप्रेजेंटेशन है तमाम जगह के हाईकोर्ट्स के एडवोकेट्स का और मुझे इस बात की बड़ी खेती है कि इस देश के संपूर्ण बार असोसिएशन ने यह प्रस्ताव किया कि जिस दंग में सर्वोच्च न्यायालय के चीफ जज की नियुक्ति हुई है, बड़े बड़े 3 प्रतिभावान, प्रतिष्ठित, जजों को डका कर, उसके विरोध में आज उन सब लोगों ने प्रस्ताव पास किया। श्रीमन्, इसका एक कारण यह भी है कि चूंकि सर्वोच्च न्यायालय के चीफ जज के विरुद्ध उन्हीं की अदालत में मुकदमा दाखिल है। दिल्ली हाईकोर्ट ने एक जजमेंट दिया है, स्पेशल लीव दिया है श्री [लखनपाल को कि क्या सर्वोच्च न्यायालय के चीफ जज की नियुक्ति सही है? इस प्रश्न का फैसला करने के लिए ये सर्वोच्च न्यायालय में जायें। अब बड़ा भारी प्रश्न उठता है क्योंकि हम जहां भी जाते हैं, वहां हमारे मित्र हैं, हाईकोर्ट में बहुत से मित्र हैं, जज मित्र हैं और बहुत से लोग हैं जो हमारे साथ वकालत पड़े हुए हैं। वे सब लोग प्रश्न करते हैं कि ज्यूडिशियरी में जो न्याय होगा, प्राक्ष दर्शन हो, उसका क्या यह मतलब है कि जिस का एप्पेइलेंटमेंट किया जाय, वही अपने बारे में फैसला करें? मैं आपके द्वारा माननीय मंत्री जी से

पूछ रहा हूं कि सर्वोच्च न्यायालय के मुख्य न्यायाधीश की नियुक्ति सही है या गलत, इस प्रश्न का फैसला करने के लिए सर्वोच्च न्यायालय में मुकदमा है। अब उसका फैसला वही सर्वोच्च न्यायालय के मुख्य न्यायाधीश बैठ कर के करेंगे कि हमारी नियुक्ति सही है या गलत?

श्रीमन्, देखा जाय। यहां पर सर्वोच्च न्यायालय का जो बार है, एडवोकेट एसोसिएशन, उसके चेयरमैन ने अपना बयान दिया है और उन्होंने कहा है कि अगर चीफ जस्टिस रे की जगह पर हम होते तो हम छुट्टी ले लेते और तब तक में छुट्टी में रहता जब तक हमारी नियुक्ति के बारे में अंतिम फैसला सर्वोच्च न्यायालय से न हो जाय। प्रश्न इस समय अब यह खड़ा हो गया कि मान लीजिए सर्वोच्च न्यायालय के मुख्य न्यायाधीश की नियुक्ति गलत सिद्ध हो गई, इल्लिगल करार दे दी गई, अनकांस्टीट्यूशन करार दे दी गई, तो उन्होंने जितने फैसले किये—ड्यूरिंग दिस टाइम—उन फैसलों का क्या होगा?

उप सभाध्यक्ष (श्री विपिनपाल दास):

आप डिबेट में जा रहे हैं। It is a legal point which this house is not competent to deal with.

श्री राजनारायण : यही कारण है कि आज अच्छे लोग नहीं आ रहे हैं और लाखों मुकदमे बिना फैसले के पड़े हुए हैं क्योंकि यह सरकार न्यायालयों की प्रतिभा और न्यायालयों की स्वतंत्रता को खत्म करते जा रही है। आज उत्तर प्रदेश में इतने मुकदमे क्यों रुके तड़े हैं? जब सरकार ने

[श्री राजनारायण]

देखा कि मुकदमे सरकार के विरुद्ध जायेंगे या उनके चहेतों के विरुद्ध जायेंगे, तो फौरन वहां से मुकदमों को एक जज से दूसरे जज के पास और दूसरे जज से तीसरे जज के पास तबदील होते जा रहे हैं और इस तरह की सरकार को आदत पड़ती जा रही है। आज उत्तर प्रदेश के राज्यपाल को उड़ीसा भेजा जा रहा है, तो वहां पर राज्यपाल कौन होगा? इलाहाबाद के चीफ जस्टिस होंगे। सही है। अगर उच्च न्यायालय में वहां के चीफ जस्टिस भले हैं, अच्छे हैं, उनके वहां रहते हुए कहीं सरकार के इच्छानुकूल फैसलान हो, या सरकार के इच्छा के अनुसार उसका केस न बने, झगड़ा छूट जाय, तो उनको दो, चार महीने के लिए गवर्नर बना दिया जाता है। मैं भुक्ताभोगी हूं और इस माने में मैं यह बात कह रहा हूं।

श्रीमन् इस देश में इस समय सब से बड़ा मुकदमा श्रीमती इन्दिरा नेहरू गान्धी के विरुद्ध राजनारायण का इलैक्शन पैटीशन चल रहा है।

उप सभाध्यक्ष (श्री बिपिनपाल दास): आप जल्दी खत्म कीजिये।

श्री राजनारायण: मैं जल्दी भाग रहा हूं। अभी श्री राजनारायण का मुकदमा सर्वोच्च न्यायालय में है और चीफ जस्टिस रे के विरुद्ध हम सार्वजनिक सभाओं में बोलते हैं, इस सदन में बोलते हैं और सब जगह बोलते हैं। हमारा मुकदमा वही चीफ जस्टिस अपनी अदालत में सुनेगा तो हमें कैसे अहसास होगा कि वह हमारे साथ न्याय करेगा। इसलिए मैं कहना चाहता

हूं माननीय मंत्री जी से कि आप चीफ जस्टिस को कम्पलसरीली छुट्टी दिलवाइए कि जब तक तुम्हारी नियुक्ति के बारे में सर्वोच्च न्यायालय से फैसला न हो जाय तुम किसी बेंच में नहीं बैठोगे, वरना श्रीमती इन्दिरा नेहरू गांधी के विरुद्ध वह कोई जजमेंट नहीं दे सकता। मैं चाहूंगा कि जस्टिस रे की बेंच में हमारा मुकदमा हरगिज न हो। जो फैसले नहीं हो रहे हैं, मुकदमे अनिर्णित पड़े हुए हैं उसका कारण यह है कि सरकार जजेज को गुलाम बनाना चाहती है, आवद्ध करना चाहती है, प्रतिबद्ध करना चाहती है।

श्री रणवीर सिंह (हरियाणा): पौइन्ट आफ आर्डर। क्या कोई सदस्य भारत के चीफ जस्टिस के खिलाफ प्रचार कर सकता है?

SHRI KALYAN ROY (West Bengal): In a bourgeois society, the ruling class dominates everything including the judiciary, and uses it to suppress the other classes. In India, the bourgeoisie is using the judiciary to suppress the working class, the peasantry and their movement. In the United States at least, in the past, Chief Justice Mr. Holmes and also Mr. Justice Warren came to defend the civil liberties and the civil rights of the ordinary people. When the Negroes demanded desegregation in buses and in schools and colleges, they did not get justice anywhere except in the Supreme Court. And there was a discussion in the American Press whether Justice Earl Warren should be impeached. When Communist workers were arrested and beaten in the police custody, the US Supreme Court came to their rescue. When the Communist Party was about to be banned and the people were not allowed to go abroad or come in, the Supreme Court of the United States said that this sort of restrictions on individual members are alien to a democratic system. But I regret—and it is our painful experience today—that the judiciary—all judiciary, and all the High Courts and the Supreme Court—are mere rubber stamps of the ruling party and the ruling class. Instead

of defending the civil liberties, the rights of the workers, the Harijans, the downtrodden people, the Supreme Court and the High Courts are coming to the rescue of the vested interests.

Sir, this is a pamphlet written by Mr. K. R. Ganesh. He has pointed out the case against Bird and Company and stated in the end that the Supreme Court completely acquitted them. Mr. Ganesh stated—

"Several sensational cases of alleged smuggling are still pending in the courts, because under the normal process of law, the accused, with the help of able lawyers, can obtain repeated adjournments. The Rikhye case, in which one Ravi Inderpal Rikhye, the son of retired Gen. Inderpal Rikhye is accused of trying to smuggle about Rs. one crore worth of hashish hidden in musical instruments, has been pending in a Delhi court since November, 1970."

Out of nearly three lakh cases which are still pending, you will find all big business, Mafatlals, Goenkas, Birlas and Shaw Wallace; their cases are pending for years together, from 1954, 1965, even from 1958 the cases are there. The Supreme Court and the High Courts invariably today are the tools of the vested interests. That is the experience. But when the worker gets reinstatement . . .

THE VICE-CHAIRMAN (SHRI BIPINPAL DAS): Your expression is not fortunate.

SHRI KALYAN ROY: I am sorry. I am quite agitated about it. I am not happy.

THE VICE-CHAIRMAN (SHRI BIPINPAL DAS): You can express it in a different way.

SHRI NITI RAJ SINGH CHAUDHURY: Sir, the conduct of the Judges cannot be discussed except on a substantive motion. I am only trying to draw his attention to it.

SHRI KALYAN ROY: I am just pointing the way they are behaving which gives the impression to the people at large that they are the tools of the vested interests. And may I ask the Law Minister

very humbly? What is the criterion for selecting a Judge? I know, recently, in the last two years, five or six Judges have been appointed in the Calcutta High Court. If you see their history, each one of them was only appearing for the monopoly houses, big houses, for the vested interests. Is this the way to select Judges? How many Judges have been selected from those people who are appearing for the workers alone? How many Harijans have been made Judges of the Supreme Court and High Courts? How many Muslims have been made Judges of the Supreme Court and High Courts? How many Santhals, how many Scheduled Castes and Scheduled Tribes people have been made Judges of the Supreme Court and High Courts? The entire country is losing faith in the judiciary. When Naxalites are killed in the jails, when Naxalites are denied civil liberties they go to the High Courts and the Supreme Court, the Supreme Court rejects their appeal. The Defence of India Rules are a slander, they are a blot on our democratic freedom. The Supreme Court defends it. The MISA is applied against the political parties, against the railway workers, against the plantation workers, against the miners and the Supreme Court and the High Courts come to the rescue of the ruling party. That is why I am asking a simple question. What is the criterion of selecting Judges? Is it because he supports the ruling party? Is it because he is the agent of the monopoly houses? Are these people only to be selected? Are these people only to be appointed?

Today I saw in the papers that the Chief Justice, Mr. Shankar Prasad Mitter, of the Calcutta High Court has been appointed Governor of Orissa. This is scandalous. This is wrong. You are only perpetuating the vested interests. That is why you have to bring today amendments after amendments. Why? This particular law relating to agrarian reform should be taken out of the purview of the judiciary. Why? The present role of the judiciary is the role to defend the vested interests, to defend the monopolies. Unless you totally change the present judiciary, unless you put people who are committed to socialism in the country, who are prepared to defend civil liberties of the people, who are prepared to defend democratic right

[Shri Kalyan Roy]

of the people there is no hope of the working class and the peasantry getting justice from this corrupt judiciary.

SHRI SALIL KUMAR GANGULI (West Bengal): Sir, I regret to contradict my friend, Mr. Kalyan Shankar Roy, when he said that the Judges who were appointed during the last five years to the Calcutta High Court had been holding briefs only for the monopolists. It certainly comes in the way of lawyers once in a while to have briefs from the rich men. But I know there are Judges in the High Court who have been appointed very recently who were accepting briefs from the working class, Unions and so on.

THE VICE-CHAIRMAN (SHRI BIPIN-PAL DAS): You mean to say Judges accepting briefs from the working class?

SHRI SALIL KUMAR GANGULI: He says some lawyers have been appointed recently. He was referring to them. And he was saying that they were holding briefs only for the capitalists.

SHRI KALYAN ROY: I said that in the last two years in the Calcutta High Court lawyers who were taking briefs only for the big monopoly houses, for the zamindars are being appointed, not because of the efficiency or competency or because of their knowledge but because they belong to the affluent class, to the rich class and are friendly to the ruling party.

SHRI SALIL KUMAR GANGULI: I make it very clear being a practising lawyer myself that the entire legal profession cares for their reputation. But the law, unfortunately, in this country is made by the bourgeois and the feudal class and the lawyers and the Judges have to interpret the law as they find it. It is not that the judiciary is to be blamed as Mr. Kalyan Shankar Roy said. You have to go to the root of the matter.

SHRI KALYAN ROY: How is it possible that the capitalists . . .

THE VICE-CHAIRMAN (SHRI BIPIN-PAL DAS): You cannot go on interrupting like this?

SHRI SALIL KUMAR GANGULI: In order to survive even a lawyer has to accept briefs . . .

(Interruption)

THE VICE-CHAIRMAN (SHRI BIPIN-PAL DAS): He has better experience about the judiciary than you have.

SHRI SALIL KUMAR GANGULI.
This kind of general statement . . .

SHRI KALYAN ROY: I never accepted brief of a monopolist. Neither Mr. Ganguli. I must say, accepted it. But Mr. Ganguli must not only attack the capitalist class but also the people who have been appointed by the capitalist class to defend their interest.

SHRI SALIL KUMAR GANGULI: I do not see any point in attacking a particular branch of the whole system which is corrupt and wrong. While aligning himself with Mrs. Gandhi and her party who are taking money from the monopolists and sabotaging the Constitution in every manner, they are trying to put the blame on some Judge or a particular person. This is not proper . . . (Interruption). It is quite true that sometimes in appointments also certain influences are exercised. That is not to be denied. • It has happened and it will happen so long as this particular system which is prevailing in this country will continue. But that should not be made a ground for attacking at random all the judges, and particularly those few people who can be identified because they have been appointed recently. I deprecate this practice.

Sir, I would like to confine myself to subject-matter at issue. The issue is that there has been a shortage of judges and why appointments have not been made. Also another issue has been raised, why there are so many arrears in courts, especially in High Courts and the Supreme Court. Sir, I would say that there has not been proper utilisation of the manpower, the judicial experience, by the High Courts in some cases. I will give an illustration. In some High Courts, there is a practice of putting two judges in a division bench to hear appeals of a very small monetary value. For Rs. 5,000 and above, a division bench of two

judges is appointed. Now, I should think that this monetary limit should be raised for proper utilisation of judge power, as I may call it. While a District Judge is given unlimited jurisdiction, it is very strange that in certain High Courts the practice is to keep two judges engaged in a division bench to hear appeals over a value of Rs. 5000. This limit should be raised. The High Courts can clear their arrears by a proper utilisation of the total strength of the judges. Secondly there is the question of premature retirement. I would say premature in this context that their full experience is not being utilised in the national interest. The Law Commission under the Chairmanship of Mr. Setaivad in its Fourteenth Report, published in 1958, stated that the retirement age of the members of the subordinate judiciary should be increased. They also said that the retirement age of High Court and Supreme Court judges should be increased. If the judges are retired at the age of 62 in the case of High Courts and at 65 in the case of the Supreme Court, there is bound to be a shortage. There is certainly a disinclination on the part of some leading lawyers to accept judgeship. And, of course, the experience which a judge gathers on the bench enables him to dispose of cases quickly. Sir, it has been stated by the Law Commission:

"A large majority of the members of the judicial services are at the date of retirement physically and mentally fit. A number of them are re-employed by the State Governments as members of various quasi-judicial tribunals (like Industrial Tribunals, Revenue Tribunals and Election Tribunals. Some of them are appointed also to administrative posts" like Shankar Prasad Mitter.

Then they say:

"At a time when there is, for a number of reasons, a growing decline in efficiency, the State Governments should not lose the services of judicial officers possessing long experience and maturity of judgment merely because they have reached the age of 55."

They were talking about the subordinate judiciary at that time. The Law Commission further states:

12—11 RSS/ND/74

"With improved standards of health and the advance of medical science, the expectation of life has increased. Thus while in 1931 the average expectation of life in India was 26.91 years for males and 26.56 years for females, it had increased in 1951 to 32.45 years for males and 31.66 years for females according to the last census report. It is significant that the National Health Council at a meeting held recently at Bangalore passed a resolution recommending that the age of retirement..."

THE VICE-CHAIRMAN (SHRI BIPINPAL DAS): What are the points for clarification? You are reading a report which everybody has read.

SHRI SALIL KUMAR GANGULI: Not everybody has read.

THE VICE-CHAIRMAN (SHRI BIPINPAL DAS): At least the Law Minister has read.

SHRI SALIL KUMAR GANGULI: I doubt very much if the Law Ministry has ever cared to open the pages of these reports since 1958. Otherwise, they would have complied with the recommendations. Now, it has been stated:

"In England, the judicial service is governed by its special rule in regard to emoluments and the age of retirement. While Civil Servants retire at the age of 60 years, the County Court Judges and Metropolitan Magistrates retire at 72. In our country also, the tenure and other terms and conditions of service of Supreme Court and High Court Judges stand out from those relating to the administrative services."

They have therefore recommended that the retirement age of the subordinate judiciary in all States should be raised to 58 years. Now, I would like to point out here that after 1958 the expectation of life has increased in the country further, particularly among the middle classes. I would not say subordinate judiciary belongs to the affluent classes. But certainly they belong to the middle class. Therefore, I would ask the Government to consider whether they should not raise the age of retirement of subordinate judiciary to 60. The Law Commission

[Shri Salil Kumar Ganguli]

recommended that such a measure will tend to raise the tone and morale of the judicial service as a whole. It will also be consistent with our recommendation to raise the age of retirement of High Court Judges to 65. Now we are discussing High Court Judges, why High Court Judges should be retired at 62 whereas some of them have been promoted to the Supreme Court and will continue till tillage of 65. This beats anybody's imagination. High Court Judges after retirement are appointed on tribunals, etc. so long as the person is physically and mentally found fit. We find in the Cabinet there are people who are perhaps more than that age. About our Law Minister who is sitting here. I am not very sure but I may make a guess, he is somewhere near 62 years. Now, is he thinking of retiring from politics at this age? He is physically and mentally fit and he will continue up to 85 years, God bless him. I would, therefore, urge that the retirement of Judges should be raised in order to have proper utilisation of their knowledge and experience...

श्री प्रकाशवीर शास्त्री: हमने एक बिल पेश किया है कि पोलिटिशियन हैं जो पार्लियामेंट के एम० पी० हैं या एसम्बली में जो एम० एल० ए० हैं उनकी भी एज मकरर होनी चाहिए।

SHRI SALIL KUMAR GANGULI: It should be raised to 65 in the case of High Court Judges and 70 in the case of Supreme Court Judges...

THE VICE-CHAIRMAN (SHRI BIPIN-PAL DAS): That you will plead until you become 62.

SHRI SALIL KUMAR GANGULI: It should be 70 for Supreme Court Judges. You can find out. High Court Judges after retirement do keep better health. We see them holding commissions and other things beyond the age of 70 sitting in Delhi. So I would strongly urge that in order to enable the nation to have proper services of these experienced people who can dispose of cases quickly, their services should be retained as long as possible. And the Law Commission recommended

this long before and they also recommended increase in the perquisites of these judges.

SHRI S. W. DHABE (Maharashtra): Sir, this is a very important question. About vacancies of judges of the High Court my friend. Mr. Kalyan Roy, in his own philosophic way attacked the system of judiciary. I do not agree with him. It is ridiculous to state that the judges of the Supreme Court and the High Courts are mere rubber stamps and give judgments at anybody's behest. Today we are very proud that in our country we have got an independent judiciary. And that it one of the main pillars of our democratic system. From my experience of 30 years at the bar I can say the quality of judges who are appointed is very high; they are really men of merit, worth appointing, men who have practical experience on labour side, civil income-tax side, in all branches of law. The main question is this, the Law Minister said that there is delay because lawyers take adjournments. I do not agree with him ...

SHRI NITI RAJ SINGH CHAUDHURY: That is one reason.

SHRI S. W. DHABE: That is one reason, but that is not the main reason. The main reason why the number of pending cases is going up is paucity of judges. There are labour matters pending since 1966. I agree with Mr. Kalyan Roy that service matters of workers are not being heard in High Courts. There are service matters pending for the last five or six years. To my information the number of cases pending more than 60000 in High Courts and Supreme Court. I filed a matter in 1969. It is still going on. So if you want to inspire confidence in the people, you should see that cases are disposed of quickly. Especially in service matters, in matters of promotion, cases should not be allowed to prolong for five years and six years in High Courts and Supreme Court. They should be decided quickly. They affect the employees' careers. Therefore, Government must first make up its mind as to what should be the time-limit for decision of cases, one year, six months, or some such limit. Then there should be more benches; otherwise, it is impossible to clear all the labour matters. My suggestion therefore is that

Government must find out a solution so that all labour cases; writ matters, civil matters, are all decided in High Courts and Supreme Court within one year. That has been the practice in the Soviet Union and many other countries. They appoint Judges depending upon the workload.

श्री राजनारायण : इलैक्शन विटि-
शन का फैसला भी छः महीने में होना
चाहिए। श्रीमती इंदिरा नेहरू गांधी
का मामला पिछले साढ़े तीन साल से
चल रहा है। आपने आज ही पढ़ा
होगा कि किस प्रकार से गवाहों को
जबर्दस्ती उठाकर ले जाया जा रहा
है।

SHRI S. W. DHABE: My first suggestion is that volume of work should be taken into consideration while appointing Judges and depending upon the same their number should be increased or even doubled. There should be no vacancy left in the posts of High Court Judges for any reason whatsoever beyond three months.

My next point is about special benches and distribution of work between single bench and division bench. While a rent control matter may go to a single bench, matters connected with Payment of Wages Act or Minimum Wages Act, even though the claim is only Rs. 20, go to the Division Bench. They take lot of time for disposal because there are criminal and other important, pending matters also before them. Main reason for abolition of Labour Appellate Tribunal in 1956 was that labour cases took 5-6 years for decision. Now there is a three tier system of tribunals. Therefore, I suggest that special benches should be appointed and more judges should be appointed to dispose of matters quickly so that people can get justice in good time.

The other point is about restriction of practice for retired Judges in the Supreme Court. High Court Judges are debarred from practice in their own courts or where they have worked as Judges. But they can go to other Courts. A Judge who has retired from Nagpur High Court can go to Jabalpur High Court in Madhya

Pradesh and practice. If you go to Supreme Court Bar Room, you will find number of retired judges practising as Lawyers. There is a joke in this connection. If you throw a stone in any direction, it will hit only retired judges there. I, therefore, suggest that retired Judges should not be allowed to practise in the Supreme Court because they influence people and get all the cases, but I am in favour of service conditions and retiring benefits to Judges being improved. Young lawyers should also get chances in Supreme Court.

It was said here that Harijans and Muslims are not appointed as Judges. It is not true. Our last retired Chief Justice of India was Mr. Hidayatullah, a Muslim.

श्री सुलतान सिंह : उपसभाध्यक्ष
जी, यह जो चर्चा मिश्रा जी ने शुरू
की है, इसके बारे में आपके मारफत
में सरकार से इतना ही अनुरोध करना
चाहता हूँ कि हाई कोर्टों में हजारों
केसेज ऐसे पड़े हैं कि जिनमें फर्ज
कीजिये कि आपकी जमीन पर किसी
ने कब्जा कर लिया और दस साल
से मुकदमा चल रहा है और वह इंतजार
कर रहा है कि इसका फैसला हो
जाय। दस साल से वह जमीन का
मालिक नहीं है और जिसका कब्जा
उस पर है वह उसको बता चला
जाता है। इस तरीके से यह सिल-
सिला चलता रहता है। मैं समझता
हूँ कि इससे जूडिशियरी के प्रति लोगों
की आस्था घट जाती है। इसके
अलावा एक बात आपकी मारफत श्री
राजनारायण जी से और श्री कल्याण
राय जी से भी कहना चाहता हूँ
और वह यह है कि हमारी आपस में
लड़ाई हो सकती है पोलिटिकली, लेकिन
अगर हम जूडिशियरी के खिलाफ इस
तरह से प्रचार करने लगे कि जूडि-
शियरी ईमानदार नहीं है, जूडिशियरी

[श्री सुलतान सिंह]

बिलकुल रबर स्टाम्प है, जुडिशियरी किसी काम की नहीं है, वह पोलिटिकल फैसले करती है तो उसका नतीजा यह होगा कि जुडिशियरी पर लोगों का विश्वास नहीं रहेगा। अभी हमारा जो ला है, उसमें तो ऐसा है कि अगर कोई कत्ल करके भी बरी हो जाता है तो बरी होने के बाद जज के फैसलों को लोग इन्साफ कहते हैं क्योंकि यह न्यायाधीश का फैसला होता है। जजमेंट गिवन बाई ए जज न्याय बन जाता है। तो इस तरह का नफरत आमंत्रण प्रचार जुडीशरी के खिलाफ प्रचार करने से हमारे लोकतंत्र को भी और हमारी जुडीशियरी की फंक्शनिंग को भी बड़ा धक्का मिलेगा।

आपकी मार्फत मैं एक बात और कहना चाहता हूँ जिसका ध्यान शास्त्री जी ने दिलाया। आप गाजियाबाद चले जाएं, गाजियाबाद के एक आदमी को इलाहाबाद हाईकोर्ट जाना पड़ता है, शामपुर के एक आदमी को इलाहाबाद जाना पड़ता है। वेस्टर्न यू० पी० जो बेहतरीन इलाका है जो सबसे ज्यादा दौलत पैदा करता है, सबसे ज्यादा काम करता है, उस इलाके के सामने एक दिक्कत है, अगर उनका कोई काम पड़े स्टेट की सेक्रेट्रिएट में तो वह बेचारा जाएगा लखनऊ। कोई काम पड़े हाईकोर्ट में तो वह जाएगा इलाहाबाद। कितनी बड़ी डिमाण्ड है जो शास्त्री जी कह रहे थे। यह एक एक बच्चे की आवाज है, सारे वेस्टर्न यू० पी० में सर्किट बेंच मेरठ में आना चाहिए।

श्री राजनारायण : मेरठ हो या आगरा हो।

श्री सुलतान सिंह : मुझे एक शक हो जाता है और उससे कई बार मैं अपने आप में सोचता हूँ, सरकार को दिक्कत क्या है? मेरा अंदाजा ऐसा है कि इलाहाबाद के वकीलों का प्रेशर है सरकार पर।

श्री प्रकाशवीर शास्त्री : बिलकुल ठीक है आपका अंदाजा।

श्री सुलतान सिंह : और वे चाहते हैं सर्किट बेंच अगर मेरठ में हो गया तो मेरठ का किसान, मेरठ का आदमी इतना सम्पन्न है जो वकील की फीस पूर्वी इलाके के मुकाबले में ज्यादा देता है और पश्चिमी हिस्से के आदमी हाथ से निकल जाएंगे। अगर सरकार इस दृष्टिकोण से सोचे कि हमने वकील का प्रोफेशन ही चलवाना है जनता का चाहे कितना नुकसान हो, तो यह बड़े दुख की बात है।

उपसभाध्यक्ष (श्री विपिन पाल दास) : अब आप समाप्त करें।

श्री राजनारायण : हर प्राइम मिनिस्टर इलाहाबाद का होता आया है इसलिए इलाहाबाद से हाईकोर्ट हटाता नहीं है। इन्दिरा नेहरू गांधी को प्राइम मिनिस्टरशिप से हटा दीजिए, अपने आप हाईकोर्ट भी हट जाएगा।

श्री सुलतान सिंह : वाइस चेयरमैन साहब, एक बात मैं कह सकता हूँ कि मेरठ में हाईकोर्ट का सर्किटबेंच बने या न बने लेकिन राजनारायण जी के जीवन काल में इन्दिरा गांधी हटने वाली

नहीं हैं। वे देखते रहेंगे—अगर आप रहेंगे हम रहेंगे।

श्री सलिल कुमार गांगुली : क्या उनको मार देंगे ?

श्री राजनारायण : क्या हमारा कत्ल करा देंगे ?

श्री सुलतान सिंह : मैं ऐसा नहीं मानता। मैं चाहता हूँ जहाँ आप 10 की जगह चाहे 20 लें, 25 लें लेकिन लोगों को इंसफ मिलना चाहिए, और जल्दी मिलना चाहिए और सही इंसफ मिलना चाहिए। तो एक तो सर्किट बेंच मेरठ में होता चाहिए। मैं शास्त्री जी की बात का पूरा समर्थन करता हूँ, और जो बैकसीज पड़ी हैं हाईकोर्ट के अंदर या तो सरकार कह दे इस देश में कोई जज बनाने लायक आदमी नहीं होगा और अगर जज बनाने लायक आदमी है तो वह जगह खाली क्यों रखी जाती है। तो इसीलिए ज्यादा सुविधा लोगों को हो सके इस तरीके से सोचना चाहिए और राजनारायण जी से मैं प्रार्थना करूँगा इन्दिरा गांधी जी से लड़ाई है आपकी लेकिन जुडीशरी पर से लोगों की आस्था घटाना लोकतंत्र पर से आस्था घटाना, हर जज को चोर और बेईमान समझता, मैं समझता हूँ इससे देश की बड़ी हानि होती है और जिनको आप खुश करना चाहते हैं, किसी विदेशी को, वह भी उससे खुश होने वाला नहीं है क्योंकि वह जानता है अगर अपने देश के आदमी का अपमान कर सकते हो तो हमारा भी कर सकते हो।

श्री नीतिराज सिंह चौधरी : उप-सभाध्यक्ष महोदय, प्रकाशवीर जी ने

जो प्रश्न उठाए हैं उसके संबंध में सबसे पहले मैं इस बात को कहना चाहता हूँ, जिसमें उन्होंने एक पुराने उत्तर का उद्धरण देते हुए कहा कि गुड़गावा के डिस्ट्रिक्ट जज जो रिटायर हो रहे हैं उनको हाईकोर्ट का जज बनाया जा रहा है, मेरी समझ में नहीं आता उस उत्तर में यह कहाँ लिखा है कि गुड़गावा के रिटायर्ड डिस्ट्रिक्ट जज को पंजाब हाईकोर्ट का जज बनाया जाता है, यह तो उन्होंने कुछ अपने मन से, पता नहीं कहाँ से, कैसे पढ़ लिया उस उत्तर से...

श्री प्रकाशवीर शास्त्री : केवल इतना अपने उत्तर में कह दें कि उनको नहीं बनाने जा रहे हैं।

श्री नीतिराज सिंह चौधरी : मैं क्यों कहूँ। आपने जो कहा वह उस उत्तर में नहीं है। दूसरी बात उन्होंने कही कि लॉ कमीशन ने सिफारिश की है कि कोई आदमी जिसको तीन, चार, पांच साल अपने कार्यकाल के न रहें उसको न बनाया जाए जज तो प्रकाशवीर जी शायद यह भूल गए कि हाईकोर्ट के जज की रिटायरमेंट की एज 62 साल है और स्टेटों में कहीं 58 और कहीं 55 है। अगर कोई आदमी नौकरी करता है और उसके रिटायरमेंट का समय बाकी है और उसकी हाईकोर्ट में नियुक्ति हो जाती है तो उसको 4 साल की लाइफ मिल जाती है और लॉ कमीशन की सिफारिश की अवलहेना नहीं होती है।

उन्होंने यह कहा कि संख्या की कमी है। इलाहाबाद का उन्होंने विशेष उदाहरण दिया कि संख्या की कमी

[श्री नीतिराज सिंह चौधरी]

है। यह केन्द्रीय शासन ने भी महसूस किया और इसके ऊपर सब प्रदेशों को लिखा गया कि आपके यहां चूंकि मुकदमों की संख्या बढ़ गई है इसलिए जजों की भी संख्या बढ़ाएं। उसका निर्णय प्रदेशों को करना है और हमने उनको लिखा और वहां से जिन स्टेटों ने संख्या बढ़ाने को कहा उस पर हम सहमत हुए हैं, यहां से कोई आपत्ति नहीं हुई है। अभी भी कहा जाता है जहां आवश्यक है वहां बढ़ाएं; यू० पी० में इलाहाबाद में 30 से 43 संख्या कर दी गई थी। दूसरी बात उन्होंने यह कही कि हाईकोर्ट की बेंचें मेरठ, आगरा, बरेली, जयपुर आदि स्थानों पर होनी चाहिए। यह बात भी केन्द्र को निश्चय नहीं करना है बल्कि यह प्रदेशों को निश्चय करना है। प्रदेशों के शासन ही इस बारे में उत्तरदायी है। प्रदेशों के शासन इस बात को तय करें और उसके पश्चात् यहां आये तो हम इस बारे में विचार कर सकते हैं। यदि प्रदेशों की सरकार इस बारे में विचार ही न करें, कुछ प्रस्ताव ही न करें, तो यहां से बात कैसे शुरू की जा सकती है।

उन्होंने जजों की पेंशन के बारे में भी चर्चा की और कहा कि उनकी पेंशनें उचित होनी चाहिए। मैं अंशतः इस बात से सहमत हूं, लेकिन "उचित" शब्द कितना होना चाहिए, यह विवाद की बात है। क्योंकि कोई आदमी ऐसा भी होता है कि चार, पांच साल के बाद रिटायर हो जाता है, कोई सात साल बाद होता है, कोई दस साल बाद होता है, तो ऐसी

हालत में हर एक की पेंशन एक जैसी नहीं हो सकती है आज जो पेंशन सम्बन्धी रूल्स हैं, उसमें यह देखा जाता है कि कोई जज कितने साल रहता है और इस चीज को विचार करके पेंशन निर्धारित की जाती है। हां, इस बात से मैं सहमत हूं कि पेंशन के बारे में विचार होना चाहिए।

SHRI KALYAN ROY: What about pension of workers?

SHRI NITI RAJ SINGH CHAUDHURY : We are discussing the Judges' matter. Therefore, I am only limiting myself to them.

उन्होंने यह बात भी कही कि शासन ने सेक्रेटरीज, ज्वाइंट सेक्रेटरीज, इनके वेतन बढ़ा दिये हैं, लेकिन जजों के नहीं बढ़ाये हैं। यह जरा उचित चीज नहीं है क्योंकि सेक्रेटरीज को जितना वेतन मिलता है, ज्वाइंट सेक्रेटरीज को जितना वेतन मिलता है, उसमें वृद्धि नहीं हुई है। जजों के जो वेतन हैं वे अपने स्थान पर हैं और इनके वेतन अपने स्थान पर हैं। जैसा श्री लोकनाथ मिश्र जी ने सुझाव दिया है और जैसा मैंने उत्तर दिया है, इसलिए इस बात की आवश्यकता नहीं है।

श्री राजनारायण जी ने जो बात कही है जजों के बारे में, तो मैंने जो आप से अर्ज की थी कि जो मामले सब्जुडिस हों, उसके ऊपर विचार नहीं किया जा सकता है क्योंकि सुप्रीम कोर्ट के चीफ जस्टिस की नियुक्ति सब्जुडिस है, इसलिए इस वक्त कुछ नहीं कहा जा सकता है। (Interruption) जजों के आचरण के ऊपर

भी सदन में विचार नहीं किया जा सकता है। लेकिन इतना मैं कह सकता हूँ कि कोई भी जज जिसमें स्वाभिमान है, वह स्वतः के मामले में कभी भी उस कुर्सी में बैठकर निर्णय नहीं करेगा। सुप्रीम कोर्ट में चीफ जस्टिस के सिवाय अनेक जज हैं, जो इस मामले को सुन सकते हैं और निर्णय कर सकते हैं।

Then, Shri Kalyan Roy referred to the Judges and said, that they are rubber stamps and they are tools of monopoly houses. That may be his view. I respectfully disagree with him.

Then he also said that Harijans and Muslims are not appointed. I request him to peruse the list of Judges who are working in the various High Courts and he will find how many Harijans and Muslims are working there...

SHRI KALYAN ROY: How many Harijans and Muslims are there in the Supreme Court?

SHRI NITI RAJ SINGH CHAUDHURY: We are discussing the High Courts' matter now.

The next point that was raised was, what is the criteria for selection of a judge. If he reads Article 217(2) of the Constitution, he will find the qualifications. I said originally while reply-Lokanath Misra how proposals come. The proposals come from the Chief Justice of the State, and after taking into consideration the qualifications laid down in the Constitution, recommend.

Ganguli said that we have accepted the Commission's recommendation. If we did, we would have had the retirement of Judges. I may say that the average age of Judges was 60 years, which was reduced in 1963 by a Bill.

As a result of this, it is made, I think, to the States. I think that it is for the benefit of the law. It is for the

various States to decide as to what it should be..

SHRI SALIL KUMAR GANGULI: Do you think that it is proper not to utilize the services of these experienced people and allow them to get away?

SHRI NITI RAJ SINGH CHAUDHURY: May I put a counter-question to Shri Ganguli? Should we not give an opportunity to young persons who are coming up, to go to the Bench and show their merit?

SHRI SALIL KUMAR GANGULI: Not at the expense of delay in the administration of justice.

SHRI NITI RAJ SINGH CHAUDHURY: Then, he also referred to special benches for labour and agrarian matters, etc. We have made enquiries and we find that special benches have been constituted. We made enquiries in the Supreme Court also and we have been informed that a bench is hearing labour matters constantly.

SHRI KALYAN ROY: Is there a case of a single dismissed worker?

THE VICE-CHAIRMAN (SHRI BIPINPAL DAS): Will you go on asking questions till the end of the day?

SHRI NITI RAJ SINGH CHAUDHURY: Shri Sultan Singh referred to three matters which I have replied to. One was about the Circuit Bench at Meerut. About the long pendency in the High Courts, as I have said, since the pendency increased, the Central Government moved the State Governments and requested them to consider an increase in the number of Judges. We have agreed to such of the States as have agreed and have sent recommendation to us and the strength of Judges there has already increased. Even if further increase is necessary, we shall not lag behind.

THE VICE CHAIRMAN: The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at forty-seven minutes past six of the clock till eleven of the clock on Friday, the 6th September, 1974.