

SHRI H. R. GOKHALE : There was a Joint Committee, I think, presided over by Mr. A. K. Sen. That Committee was to function but in the meanwhile, the Lok Sabha was dissolved. So, it could not go ahead and I can assure you, similar steps are being taken now to see that the same proposals go before the Joint Committee.

SHRI T. V. ANANDAN (Tamil Nadu) : The Minister has not answered why not the results be announced the very next day, why the bags are kept for 10 days.

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN) : Now I will put the Motion to vote. The question is ;

"This House resolves that in pursuance of sub-section (3) of section 169 of the Representation of the People Act, 1951 (43 of 1951), the Conduct of Elections (Second Amendment), Rules, 1971, published in the Gazette of India by Notification No. S. O. 479, dated January 27, 1971 and laid on the Table of the House on March 29, 1971, be annulled.

This House recommends to Lok Sabha that Lok Sabha do concur in this resolution."

*The motion was negatived*

**THE BENGAL FINANCE (SALES TAX)  
(DELHI VALIDATION OF  
APPOINTMENTS AND PROCEEDINGS)  
BILL, 1971**

T-JE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH) : I beg to move :

"That the Bill to validate appointments of certain officers under the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union Territory of Delhi, and proceedings taken by such officers under that Act and the Central Sales Tax Act, 1956 as passed by Lok Sabha be taken into consideration".

Sir, as the hon. Members are aware, Section 3 of the Bengal Finance (Sales Tax) Act, 1941 extended to the Union Territory of Delhi in 1951, provides that for carrying

out the purposes of the Act, the Chief Commissioner (now Lt. Governor), may appoint a person to be Commissioner of Sales Tax together with such other persons to assist him as the Lt. Governor thinks fit. In several cases the officers were appointed not under the said Section 3 but under the service rules wherein the appointing authorities are not the Lt. Governor in all cases. Though these officers were subsequently appointed by the Lt. Governor under Section 3, with retrospective effect, their appointments are not in accordance with the provisions of that Section as the Section does not permit any appointment with retrospective effect.

These appointments are, therefore, for obvious reasons of doubtful validity. In a writ petition filed before the Delhi High Court, the Delhi Woollen Mills challenged the appointment of one Assistant Sales Tax Officer who was appointed with retrospective effect from 15.2.1965 by an order of the Lt. Governor dated 26.4.1968 issued under the said Section 3.

The Delhi Administration reviewed the position and found that there were nearly 374 such appointments which had been given retrospective effect. It was also found that in about 5.55 lakh cases assessments have been framed by such officers and a demand of Rs. 15.25 crores (both under the local Sales Tax Act and Central Sales Tax Act) was created by them. The Assistant Commissioners of Sales Tax likewise appointed and who exercised appellate jurisdiction, disposed of over 32 thousand appeals since 1st November, 1951 when the liability to pay tax under the Act commenced. Under the law, the dealers, on whom assessments have been made by officers not validly appointed, can challenge them within a period of three years from the date of an adverse judicial pronouncement. Such assessments can also be challenged by dealers in the course of recovery proceedings. In case the refunds of tax already collected were to be allowed as a result of any adverse judicial pronouncement, it would, apart from creating serious inroads to the resources position of the Government, have resulted in an unintended benefit to the dealers and not to the purchasers from whom the dealers would have collected the tax. Taking into account all these considerations, Delhi Administration, with the approval of the Executive Council, moved the Government of

^ India for the immediate promulgation of an Ordinance to rectify the defect.

5. Accordingly the Bengal Finance (Sales Tax) (Delhi Validation of Appointments and Proceedings) Ordinance, 1971 was Promulgated by the President on 18th May, 1971. The Ordinance seeks to validate appointments of the officers concerned and the proceedings taken by such officers under the aforesaid Bengal Act and the Central Sales Tax Act, 1955. The need for validating the proceedings under the latter Act has arisen because the administrative authorities under both the Acts are the same.

6. Sir, the present Bill seeks to replace the above Ordinance by an Act of Parliament. I request the House to unanimously accept the Bill.

Sir, I move.

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

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : We shall now take up clause by clause consideration of the Bill.

*Clauses 2 to 4 were added to the BUI.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI K. R. GANESH : Sir, I move :

"That the Bill be returned."

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

#### THE GOLD (CONTROL) AMENDMENT BILL, 1971

श्री निरंजन वर्मा (मध्य प्रदेश) : यह आगे जो गोल्ड कंट्रोल (अमेन्डमेंट) बिल है, वह कल लिया जाय। आज कैसे लिया जा सकता है।

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN) : He may move it ; we shall take it up tomorrow. I think the Statutory Resolution is not being moved by the Member. Am I right ?

श्री निरंजन वर्मा : जी हाँ।

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN) : Mr. Ganesh.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH) : Sir, I move :—

"That the Bill further to amend the Gold (Control) Act, 1968, as passed by the Lok Sabha, be taken into consideration.

As I mentioned in my statement which was laid on the Table of the House under Rule 66(1), certain provisions of the Gold (Control) Act, 1968 as also the validity of the Act were challenged before the Supreme Court. By a judgment delivered on 30th March, 1971, the Court upheld the validity of the Act as also of the provisions relating to submission of returns by pawn brokers, ban on possession of primary gold by private persons, filing of declarations, search, levy of penalty, and prosecution for non-declaration. The Court, however, held that Section 71 relating to confiscation of gold or other thing was unconstitutional as it appeared to place an unreasonable restriction on the right of a person to acquire, hold and dispose of gold articles or gold ornaments, and could be applied indiscriminately.

Section 71 is an omnibus provision which provides for confiscation of gold not only for non-declaration but also for contravention of other provisions of the Act. While this section only creates a liability for confiscation of gold, the enforcement of this liability is provided for by Section 73 which provides for levy of a fine in lieu of confiscation equal to twice the value of the gold or other thing confiscated.

The Supreme Court was dealing with the question of gold in the hands of a pawn broker in excess of the exemption limits which became liable to confiscation because of the default of non-declaration by the pawnee, even though the persons to whom these belonged had not committed any offence under the Act in relation to their gold. In this context, the Court has observed that although the law provides that the owner has, under Section 79, to be given a hearing, and he has a right of appeal under Section 80, the provision of Section 73 which allows for the levy of a