

OBITUARY REFERENCES

MR. CHAIRMAN: Before we proceed to the next item of the agenda, I have to refer to the passing away of Shri Onkar Nath and Shri D.C. Mallik, two of our ex-Members.

Shri Onkar Nath was born in 1904 and was educated in Delhi. Since 1918 he had been taking active part in the freedom struggle. He joined Mahatma Gandhiji's Dandi March and Civil Disobedience Movement and underwent imprisonment several times. Shri Onkar Nath was Member of this House from 3rd April, 1952 to 16th April, 1955 and again from 24th November, 1956 to 2nd April, 1960. He was well known in Delhi for his active association in the social and cultural activities. It is a tragedy that this veteran political worker died on the 1st January, 1971 in a road accident in New York. We deeply mourn his passing away.

Shri D.C. Mallik was born in 1894. He was educated in Calcutta. He was offered Imperial Police Service in 1919, and later on judicial service in 1921. He declined both the offers and joined non-co-operation movement in the year 1921. Shri Mallik had been associated with the Congress Movement since then. He was a Member of the Lok Sabha from 1957 to 1962 and a Member of this House from 1962 to 1968. By his quiet and dignified manner, Shri Mallik endeared himself to everyone who came into contact with him. We express our sympathy and grief at the loss of such a good soul.

I shall now request Members to stand up and observe a minute's silence as a mark of respect to the memory of Shri Onkar Nath and Shri D.C. Mallik.

(Hon. Members then stood in silence for one minute)

MR. CHAIRMAN : Secretary will convey to the members of the bereave families our sense of grief and profound sympathy.

PROCLAMATIONS UNDER ARTICLE 356 OF THE CONSTITUTION

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF PERSONNEL (SHRI RAM NIWAS MIRDHA): Sir, I beg to lay on the Table.

SHRI BANKA BEHARY DAS (Orissa): Sir, I rise on a point of order. I want to raise this point of order because you will see from the order paper that a Proclamation issued by the President on January 11 is going to be laid on the Table of the House. According to the Constitution before two months the Proclamation ought to have been approved and if the Lok Sabha was dissolved the Rajya Sabha could have been convened to get the Proclamation approved. It has not been done.

Secondly, another Proclamation issued on January 23 is going to be laid on the Table. If that Proclamation is taken for granted then also two months have elapsed yesterday and the other House was sitting for the last two or three days and because the oath was being taken that was not done.

Thirdly, I want to know this. Even today also, I am told though it is not in the order Paper, another Presidential order is going to be laid on the Table of the House with your permission but I want to say that that Proclamation does not indicate the present position of the Assembly which has been constituted after the Gazette Notification. So I take serious objection to all these things. If you so desire I can read article 356 (3) of the Constitution where it has been specifically mentioned.

MR. CHAIRMAN: No, no.

SHRI BANKA BEHARY DAS: So these are highly unconstitutional acts. Rajya Sabha ought to have been convened by the Government, because there was

a Government here, so that at least the Rajya Sabha could have approved this Presidential Order, earlier and now the Lok Sabha could have done. These constitutional provisions have been violated by the Government in regard to Orissa particularly when we have three Presidential Orders within this period.

(several hon. Members stood up)

MR. CHAIRMAN: Let me deal with this point of order. I overrule this point of order and I allow the paper to be laid on the Table.

SHRI N. G. GORAY (Maharashtra): You must give your reasons.

SHRI LOKANATH MISRA (Orissa): You must give your reasons for the ruling. You cannot give a blanket ruling that way.

SHRI BANKA BEHARY DAS: When constitutional points have been raised you must meet the points raised.

MR. CHAIRMAN: The Constitution requires—I read clause (3) of article 356—that every Proclamation under this article shall be laid before each House of Parliament. Now...

SHRI BANKA BEHARY DAS: You read the entire thing.

MR. CHAIRMAN: Yes, it says it shall cease to operate except where it is a Proclamation revoking a previous Proclamation, at the expiration of two months, etc. etc. Now you are not concerned today with the question of when it will cease to operate. You can raise points about its validity at the time when it comes up for discussion.

SOME HON. MEMBERS: No, no.

MR. CHAIRMAN: So far as laying it on the Table is concerned, that is a requirement of the Constitution and no one can challenge it.

SHRI PITAMBER DAS (Uttar Pradesh): Sir, it is rather strange that something which has ceased to exist is sought to be laid on the Table. How can it be laid on the Table of the House?

श्री राजनारायण (उत्तर प्रदेश) : श्रीमान्, मैं आपसे विनम्रता के साथ दो बातों के बारे में निवेदन करूंगा। पहली बात यह है कि आप ऐसी घोषणा को रखने जा रहे हैं जो घोषणा अब आपरेशन में है ही नहीं। तो जो अब आपरेशन में है ही नहीं, जो मर चुकी है उसको इस सदन में रखने की कृपा आप क्यों कर रहे हैं। यह सविधान की आत्मा के विरुद्ध है, इसलिए मैं आपसे निवेदन करूंगा कि आप इस सम्बन्ध में सोचें और आपने अपनी जो अभी व्यवस्था दी है उस पर पुनर्विचार करें, आज के लिए स्थगित करें, जैसे दो महीने बीतने पर वह मरी हुई है, अगर कल भी आप सोच-विचार करके व्यवस्था दे तो उसमें कोई परिवर्तन नहीं होगा।

दूसरी बात यह कहना चाहता हूँ कि मैं उन दिनों भुवनेश्वर में था। हमने वहाँ के राज्यपाल श्री अन्सारी साहब से बात की। वे हमारे अच्छे मित्रों में से हैं। 9 जनवरी को 7 बजे उड़ीसा की सरकार इस्तीफा देती है। राज्यपाल यह कहते हैं कि आपने जो इस्तीफा दिया है और जो आपने पुनः मदन भंग करने की बात की है वह इस समय ठीक नहीं है क्योंकि आपने अपने इस्तीफे में लिखा है कि हमने अपने कैबिनेट के सेम्बरों को कन्सल्ट कर लिया है, आपने कैबिनेट की प्रापर मीटिंग नहीं की, आप जाकर मीटिंग कीजिये। राज्यपाल के कहने के बाद मुख्यमंत्री आता है, अपनी कैबिनेट की मीटिंग बुलाता है, कैबिनेट की मीटिंग बुलाकर उनको इनफार्म करता है साढ़े 8 बजे। अब राज्यपाल यह कहते हैं कि हमने साढ़े आठ बजे मुख्य मंत्री का इस्तीफा मंजूर कर लिया, इसलिए अब मुख्य मंत्री की सलाह मानना हमारे लिए कोई जरूरी नहीं है। फिर 10 और 11 दो दिनों तक वहाँ कोई सरकार थी ही नहीं। उन्होंने मुख्य मंत्री का इस्तीफा मान लिया।

श्री समापति : इससे कोई ताल्लुक नहीं है।

श्री राजनारायण : इसी से ताल्लुक है, आप जरा झुका करके मुनिये। हमने राष्ट्रपति से बात की है टेलीफोन में। हमरा पाइन्ट यह उठ रहा है कि 9 तारीख के साढ़े 8 बजे इस्तीफा मंजूर कर लिया और उन्होंने मुख्य मंत्री को यह नहीं कहा कि टिल फरदर अरेंजमेंट यू वर्क एज केयर टेकर गवर्नमेंट, यह नहीं कहा कि आगे आने वाली व्यवस्था के बनने तक आप केयरटेकर सरकार की तरह काम करो। उन्होंने लिख दिया कि मैं आपके सम्पूर्ण मंत्रिमंडल का इस्तीफा मंजूर करता हूँ और अब आप सरकार में नहीं है। कोई सरकार बनी नहीं, कोई राष्ट्रपति की घोषणा थी नहीं तो 10 और 11 को उड़ीसा में कौन सरकार थी? 11 तारीख को राष्ट्रपति ने जो राष्ट्रपति शासन लागू करने की घोषणा की क्या वह 10 और 11 तारीख को और 9 की रात को साढ़े 8 बजे के बाद जो अनियमितताएँ हुईं उनको वेलिडेट करेगी? मेरा कहना है कि जो राष्ट्रपति की उद्घोषणा रख रहे हैं वह पूर्णतः अवैध है यह घोषणा उड़ीसा की समस्या का समाधान नहीं है। राष्ट्रपति का त्यागपत्र आना चाहिए, इस सरकार का त्यागपत्र आना चाहिए क्योंकि इन्होंने अपने कर्तव्यों का पालन नहीं किया है, इन्होंने उड़ीसा की जनता के साथ खिलवाड़ की है, इन्होंने संविधान के माथ खिलवाड़ की है, इन्होंने कानून के माथ खिलवाड़ की है, जो सरकार संविधान की हत्या करती है, कानून की हत्या करती है, उड़ीसा प्रदेश को तीन दिन तक बिना सरकार चलने देती है...

श्री समापति : मैंने काफी मुन लिया है।

श्री राजनारायण : आगे देखिए, टेलीफोन संदेश।

श्री समापति : यह पाइन्ट आफ़ ऑर्डर था, मैंने मुन लिया है, अब आप बैठ जाए।

श्री निरंजन वर्मा (मध्य प्रदेश) : इस विषय पर सरकार का क्या मत है वह मालूम पड़ जाय।

SHRI LOKANATH MISRA : Sir, I have a point of order. While I have to bow to your ruling because you are the Chairman of this House, I am in the painful

circumstances of becoming a Member of this House. I have to bow to your ruling, but while bowing to your ruling I have the right also of indicating to you what I feel about the interpretation that you make of the Constitution. My interpretation of the Constitution I am going to lay before you. If you so desire and wish you have the right again to rule it out. Now, the point is you have said that within two months the Proclamation has to be passed by both the Houses of Parliament. Unless that is done, it lapses and the President is fully authorised to issue another Proclamation...

MR. CHAIRMAN : I never said all that.

SHRI LOKANATH MISRA : ...for a period of two months.

MR. CHAIRMAN : No, no. You asked me to read something which I said must be relevant at this stage. I read it, but I never put it forward as the basis of my ruling.

SHRI LOKANATH MISRA : It cannot be irrelevant, something laid on the Table of the House under the provisions of the Constitution. Something else pertaining to that also must be taken together. You cannot isolate the Government part of it and rule out the opposition part of it.

MR. CHAIRMAN : No, no.

SHRI LOKANATH MISRA : You cannot do it that way. Therefore, you have also to read this particular proviso while you read that particular part of the Constitution that gives the right to the Treasury Benches to lay something on the Table of the House. Let me put it in my own way. What has happened? There was a Proclamation on the 11th of January, 1971, saying that article 356 has been introduced in Orissa. You are aware of it, Mr. Bhupesh Gupta?

SHRI BHUP. SH GUPTA (West Bengal) : I am aware that the Swatantra Party is out.

SHRI LOKANATH MISRA : So also you are out ; not that you are in. The next point is that under the same provision of the Constitution, and with the same contents and for the same purpose, the Governor recommended to the President that the President's rule should be continued. Instead of continuing it—because it would become illegal, because they did not want to convene the Rajya Sabha for passing it as the Lok Sabha was not in being—therefore what was done was there was a serious violation of the Constitution and the President issued another Proclamation saying that it starts from a date which was not 11th January but a subsequent one the 23rd of January, which would ultimately make it possible...

श्री नेकीराम (ह ख्याणा) : क्या आप कह रहे हैं ।

श्री लोकनाथ मिश्र : तुम नहीं समझोगे । यह थोड़ी ऊँची बात है ।

Therefore, since the President felt—probably he was advised wrongly also—that 23rd would be the right date for making it come within two months for allowing the Papers to be laid on the Table of Parliament, at least on the Table of Rajya Sabha, therefore, another Proclamation on the same terms, for the very purpose, on the same conditions, was issued. Does the Constitution allow that the President can go on issuing Proclamation after proclamation for the same purpose without bringing it to the House within two months ? Can it go on perpetually ? Therefore, there has been a serious violation of the Constitution. The two months' time has been violated and deliberately violated.

MR. CHAIRMAN : It has been converted into a debate. A point of order is not a debate. I will not allow a point of order to be converted into a debate.

श्री ना० कृ० शेजवलकर : (मध्य प्रदेश) : आप सुनते तो हैं नहीं और एक निर्णय दे देते हैं ।

श्री सभापति : आप बैठ जाइये ।

श्री ना० कृ० शेजवलकर : मुझे कुछ कहना है...

SHRI LOKANATH MISRA : If you so feel, you can rule my point of order out. I would not expect that at this stage you would give a ruling in my favour. But all the same let the House know, let the country know, that something very wrong has been done by the President in a partisan way.

(Some hon. Members stood up.)

MR. CHAIRMAN : I am not going to hear everybody. I have heard sufficiently.

श्री ना० कृ० शेजवलकर : श्रीमन्, मुझे कुछ कहना है...

श्री सभापति : नहीं, अब आप बैठ जाइये ।

श्री ना० कृ० शेजवलकर : मेरी बात भी सुन ली जाय ।

श्री सभापति : मैंने बहुत सुन लिया है । अब आप बैठ जाइये । (Interruption)

No, please. No, please. I will not hear any further argument.

श्री ना० कृ० शेजवलकर : मैं प्वाइंट आफ आर्डर पर कुछ नहीं कह रहा हूँ । मेरा निवेदन यह है कि आखिरकार प्वाइंट आफ आर्डर अगर कोई प्रस्तुत किया जाता है तो आप एकदम से निर्णय दे देने हैं । आप पहले उसे सुनिये तो सही ।

MR. CHAIRMAN : No more debate. Sorry, no. Please sit down.

SHRI DWIJENDRA LAL SEN GUPTA (West Bengal) : Mr. Chairman, I should be allowed.

MR. CHAIRMAN : I have already ruled that the Constitution requires every Proclamation to be laid on the Table of the House. What is its validity, when it will expire, these are matters which cannot be discussed at this stage. This is my ruling.

SHRI DWIJENDRALAL SEN GUPTA : Since the period has lapsed, you cannot do that. You are not a Court here. You have no inherent power to condone the period of limitation here.

श्री ना० कृ० शंजवलकर : मैं जो निवेदन करना चाहता हूँ वह रुलिंग के बारे में नहीं है। मैं यह निवेदन करना चाहता हूँ कि कम से कम यह स्वीकार कर लिया जाय कि शासन अपना कर्त्तव्य पालन करने से च्युत रहा है। सदन में यह बात रिकार्ड कर ली जाय।

MR. CHAIRMAN : I have given my ruling.

PAPERS LAID ON THE TABLE

PROCLAMATIONS ISSUED BY THE PRESIDENT IN RELATION TO THE STATE OF ORISSA AND RELATED PAPERS

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SRI RAM NIWAS MIRDHA) : Sir, I beg to lay on the Table a copy each of the following papers (in English and Hindi):—

I. (i) Proclamation (G.S.R. No. 67) issued by the President on January 11, 1971, under article 356 of the Constitution, in relation to the State of Orissa, under clause (3) of the said article.

(ii) Order dated January 11, 1971, made by the President under sub-clause (i) of clause (c) of the Proclamation.

[Placed in Library. See No. LT-6/71 for (i) and (ii)].

(iii) Report of the Governor of Orissa dated January 11, 1971, of the President recommending the

suspension of the State Legislative Assembly. [Placed in Library See No. LT-7/71].

II. Proclamation (G.S.R. No. 119) issued by the President on January, 23, 1971 revoking the Proclamation made by him on January, 11, 1971, under article 356 of the Constitution, in relation to the State of Orissa, under clause (3) of the said article. [Placed in Library. See No. LT-8/71].

III. (i) Proclamation (G.S.R. No. 120) issued by the President on January 23, 1971, under article 356 of the Constitution, in relation to the State of Orissa, under clause (3) of the said article.

(ii) Order dated January 23, 1971, made by the President under sub-clause (i) of clause (c) of the Proclamation.

[Placed in Library. See No. LT-8/71 for (i) and (ii)].

(iii) Report of the Governor of Orissa, dated January, 20, 1971, to the President recommending the dissolution of the State Legislative Assembly. [Placed in Library. See No. LT-9/71].

Sir, I also beg to lay on the Table a copy each of the following papers (in English and Hindi) :—

IV. (i) Proclamation (G.S.R. No. 398) issued by the President on March 23, 1971, under article 357 of the Constitution, in relation to the State of Orissa, under clause (3) of the said article. [Placed in Library. See No. LT-10/71].

(ii) Order dated March 23, 1971, made by the President under sub-clause (i) of clause (c) of the Proclamation. [Placed in Library. See No. LT-9/71].