

there is an artificial difference between competitive public sector industries and non-competitive public sector industries. When the private sector industrialists can pay bonus to their workers, whether they are facing competition or not, why should the Government raise the question of competitive or non-competitive? Why should that particular right not be given to all the workers, irrespective of the fact whether they are employed in a competitive industrial undertaking or a non-competitive industrial undertaking? It is mere non-sense, Sir, to deny this fundamental right to the workers engaged in the public sector industries.

Sir, my second point is that even today there is a large number of workers who are departmentally employed, e.g. there are employees under the P & T, under the Railways, under the Port Trusts. They are denied the right of bonus on the plea that they are departmentally employed. (*Interruption*) Although the P & T, and Port Trust workers are getting the bonus, they are not getting it as a matter of right; they are getting it as an *ex gratia* payment. Therefore, Sir, I want that this discrimination between competitive and non-competitive industrial undertakings should be done away with and should be eliminated and all the industrial workers working under the Railways, under the P & T and under the Port Trusts should be given the right of bonus as provided in the Bonus Act and they should not be discriminated against.

Sir, the Government waxed eloquent about the achievement in the matter of production in Japan. If we take the example of Japan, we will find that a Japanese worker also gets bonus in two terms during a year and that bonus is permissible to all the workers, whether he is employed in the private industrial house or in the public undertaking or even departmentally. There is no distinction between the workers of one category and those of another category. Therefore my Bill seeks to remove this artificial difference between one category of workers and another category of workers.

Another thing that I want to bring to your notice is that my Bill seeks to increase the quantum of the minimum bonus to 10 per cent. instead of 4 per cent which is in vogue today. This I demand because,

as I said earlier, there is no living wage and there is a widening gap between the money wage and the real wage and this bonus in those particular circumstances can be deemed to be only a wage. Therefore, Sir, in order to relieve the workers to a certain extent by way of bonus, the quantum of minimum bonus should be increased and my Bill seeks to increase it to 10 per cent. of the annual income instead of 4 per cent. which is prevalent today.

Therefore, Sir, I hope that the House would give due consideration to my Bill and see that the Bill is passed so that the Government can be forced to given this fundamental right to all the workers for whom we have been fighting during these decades. Thank you.

The question was proposed

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Mr. D. L. Sen Gupta.

REFERENCE TO CONTINUANCE OF CERTAIN MINISTERS IN THE GOVERNMENT

SHRI MULKA GOVINDA REDDY (Mysore) : Mr. Vice-Chairman, Sir, I want to raise a very important constitutional issue. In today's papers..

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : For that the permission of the Chair is necessary. I would request you to take the permission of the Chair.

SHRI MULKA GOVINDA REDDY : But, Sir, the issue is such that it cannot wait for any longer time.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : We are sitting tomorrow.

THE LEADER OF THE OPPOSITION (SHRI S. N. MISHRA) : Sir, the position has become intolerable. This is a very important issue and therefore, no time should be lost.

SHRI MULKA GOVINDA REDDY : Sir, in today's papers it has been published that three Ministers who were till yesterday

[Shri Mulka Govinda Reddy]

Members of the Rajya Sabha are continuing as Ministers. This is a very important constitutional issue. Articles 74 and 75 of the Constitution say that a Council of Ministers should be there to aid and advise the President, but here there are three Ministers who are continuing in the Council of Ministers, who are not Members.

There is also a provision in the Constitution that any one can be appointed as a Minister on the advice of the Prime Minister even though he is not a Member of the House, and he should get elected within a period of six months. But here the question is entirely different. These three Ministers were sitting Members of this House and they were appointed as Ministers in their capacity as Members of this House. They have now ceased to be Members of this House and they automatically cease to be Members of the Government.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : What about the provision of six months?

SHRI MULKA GOVINDA REDDY : Yes, I will tell you. That provision of six months applies to any person who is not a Member of the House.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : And here they are not Members any more.

SHRI MULKA GOVINDA REDDY : That is true but it does not apply to a member who was till recently a Member of this House. The distinction is to be made from that point of view. You remember, Mr. Vice-Chairman, the cases of some of the Ministers, who were Members of the Rajya Sabha, and who still continued to be Members of the Rajya Sabha after the 1967 elections. When they contested the Lok Sabha elections and when they lost the elections to the Lok Sabha, they tendered their resignations immediately when the results were announced. A healthy precedent has been set up that, even though he was a Member of Parliament and he was entitled to be continued as a Minister, that Member, when he lost his seat, resigned his Ministership. The example of Mr.

D. Sanjivayya I am quoting here. He continued to be a Member of the Rajya Sabha, but still he resigned his Ministership. Under Article 104 any member, referred to therein, any person who comes and participates in the business of the House, has to pay a penalty of five hundred rupees per day, and these Ministers, when they come here, they will be attracted by this Article 104. Even granting that they are entitled to continue as Ministers on the advice of the Prime Minister, when their membership of this House ceased, their Ministership as well ceased, and they should have taken a fresh oath of secrecy; they should have been reappointed as Ministers and they should have taken a fresh oath before the President. This is a very important issue and not much light is thrown in the commentaries. Therefore, the Prime Minister must come and make a statement that these three Ministers, who till recently were Members of this House, are no longer Ministers. And if she wants to continue them as Ministers, she should obtain or the President should obtain the opinion of the Supreme Court in this matter. Meanwhile the Attorney General can be summoned to give his opinion. Under no stretch of imagination can a Minister, who till recently was a Member of this House or the other House, can continue under the Constitution as a Minister of this Government. This will be illegal and unconstitutional. Then the Auditor-General will object and they will not get their pay, and they will have to reimburse all the expenses that are incurred on them. This is a very important issue. Though these members have not come here I request the Chair to direct the Prime Minister to make a statement, and the President may also be advised to seek the opinion of the Supreme Court in this matter.

SHRI S. N. MISHRA : May I have a word? Now, Mr. Vice-Chairman, this is indeed a serious violation of the spirit of the Constitution. Never, never before, the spirit of the Constitution..

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : What about the body of the Constitution?

SHRI S. N. MISHRA : I shall come to the body also. I know that this Government is the worshipper of the body beautiful and its aesthetics extend only to the

body and not to the spirit. This Government is like the German surgeon who said, "I have performed so many operations but I have not come across a single soul." Now the spirit of the Constitution was that a person can be appointed as a Minister but he will have to get elected. The spirit was never that a person can be so appointed even if he is unseated. Then the logic can extend to this.....

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : "Unseated" is a different thing.

SHRI S. N. MISHRA : And here is a case of being unseated, Mr. Vice-Chairman, and I am bringing to light the case of a particular Minister, whom I like very much, and we would have liked that she should have been with us. But because of the callousness of the ruling party that Minister is not a Member of this House now. But whatever my solicitude for her, the Minister concerned has been rejected at the polls. One of the Ministers has been rejected at the polls and yet she is continuing as a Minister. Therefore, this logic, Mr. Vice-Chairman, would extend even to a person who has been unseated at the polls. Therefore, there should be no flouting of the verdict of the electors. Thereby the verdict of the electors would be complete set at naught. And this had never happened. Now we find that democracy under the present regime is dying inch by inch, and this is a fatal blow on democracy that Ministers, who have ceased to be Members of the Houses, are being continued as Ministers. It is a vital blow to democracy. Rightly, Sir, an example has been pointed out, the shining example of the hon. Member, Mr. D. Sanjivayya. Although he happened to be a Member of the House, he did not continue as Minister. And this is therefore a serious departure. Now what I want to suggest is.....

SHRI AWADHESWAR PRASAD SINHA (Bihar) : Please read clause (5) of Article 75.

SHRI S. N. MISHRA : Yes, I have got that before me, but that relates to the appointment of a Minister.

SHRI MULKA GOVINDA REDDY : New Minister.

SHRI S. N. MISHRA : Now of course out of this legal and constitutional conundrum there could have been a way. But that way also would not have been satisfactory to the spirit of the Constitution. But the Prime Minister could have re-appointed them as Ministers. Then it can come even to this that, if I am appointed as a Minister without being a Member of any of the two Houses and if within six months, say after the first two months, I seek election and I do not get the verdict of the electorate, even after that I can take this plea that I can continue till the sixth month is over. Can logic be as preposterous as that? So my submission is that the Prime Minister has to clarify the position how she has taken this step, this extraordinary step, this abnormal step, which is fatal to the spirit of democracy, how she has continued them as Ministers. Secondly, whether the Prime Minister has continued them as Ministers after reappointment, we really do not know, because everything seems to be behind *purdah*. I do not know why Parliament is kept out of the picture with regard to this. Although the Prime Minister happens to be a lady, I do not think that everything should be behind *purdah*. Parliament must be made to know about this. So, whether the Prime Minister has reappointed them as Ministers, we would like to know. The, Sir, it is also a very right demand made by my hon. friend, Mr. Mulka Govinda Reddy, the Leader of the PSP Group, that the Attorney-General should be summoned to the House to give his opinion in this matter. This is not an ordinary matter which can be brushed aside and we would like to hear the Attorney-General on this subject, because the spirit of democracy is being stifled in the matter. We do not know how are we going to function. And there are certainly certain difficulties which are going to arise in the future with regard to payments, etc. So my submission to you would be not only this that this has to be passed on to the Prime Minister by the Leader of the House, but the Prime Minister has to come just now. We cannot tolerate for a moment these persons being Ministers because they have ceased to be Members of either of the two Houses, and particularly the three Ministers happened to be Members of our House. So we would like the Prime Minister to come forthwith and explain how this

[Shri S. N. Mishra]

extra-ordinary step has been taken and, secondly, if the Prime Minister wants to stick to this position, we would like to hear the Attorney-General in this matter. This is my humble submission.

SHRI M. M. DHARIA (Maharashtra): Mr. Vice-Chairman, Sir, the hon. Shri Reddy has raised a very vital issue. My knowledge is very limited but I was all the while under the impression that these three hon. Ministers by this time must have submitted their resignations. To be very frank, yesterday was the last day and they must have tendered their resignations on the last day. That was my impression and I am yet under that very impression but if these three Ministers have not tendered their resignations I am very clear and categoric that these three hon. Ministers should, in order to maintain the dignity and decorum of Indian democracy, immediately tender their resignations to the Government because the moment they cease to be Members of this or the other House they cease to be Ministers also. The provisions of the Constitution are very clear. These provisions are not meant for persons to be continued as Ministers after they cease to be Members. The provision is if a person is not a Member of either House then he can join the Council of Ministers and then get elected within six months to either of the two Houses and so that is not a provision which can be invoked in the present instance. These three hon. Ministers do not now continue as Members of this House. Unfortunately one of the Lady Ministers was defeated also in the Rajya Sabha election. Under these circumstances it will be absolutely unfair to continue them as Ministers and I make a demand today—of course it will be my appeal to my old friends or old colleagues that in the interests of democracy, or old interests of maintaining the decorum and dignity of this House and parliamentary institutions in the country, these three hon. Ministers should immediately tender their resignations if they have not done so and and at the same time.

SHRI S. N. MISHRA: May I inform my hon. friend that it is my information that the hon. Prime Minister has been pleased to ask them to continue ?

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN): They have submitted their resignations ?

SHRI S. N. MISHRA: They have done so. She is insisting that they must continue.

SHRI M. M. DHARIA: If they have tendered their resignations I would request the hon. Prime Minister to immediately accept their resignations. Otherwise it will not be consistent with the provisions or the spirit of the Constitution. No person who is not re-elected or who ceases to be a Member of either House can continue as Minister. In that case the resignation should be accepted and there can be re-nomination. But it will also look very bad. If they were to have been continued or if nomination were to have taken place, it was better that they should have been elected from somewhere. If it is the position that the hon. Ministers have tendered their resignations and the hon. Prime Minister has requested them to continue, then I think the hon. Prime Minister should immediately accept their resignations and should make a statement in this House and this action should be taken immediately. In that case there would not be any need for calling the Attorney-General or anybody else for advice because ultimately it is not legalities that count in democracy, it is the spirit of democracy, it is the representation of the people which is more material and therefore, Sir, I would submit that the resignations, if they have been submitted, should be immediately accepted and the position should be clarified to this House and no time should be lost in this matter.

SHRI NIREN GHOSH (West Bengal): The Leader of the House should make a statement so that we can know what the facts are.

(Several hon. Members stood up)

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I have got half a dozen names here. Please sit down.

SHRI NIREN GHOSH: Sir, one minute What I say is, let the Leader of the House make a statement.

SHRI K. CHANDRASEKHARAN (Kerala): After hearing us.

SHRI NIREN GHOSH: Then we can comment on the position. It would be better for us. That is the wide point.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I would like to know the view of the House. This matter is before us. There are half a dozen Members who have requested that they would like to express their views on this and there may be more. Is it necessary that we should continue? we can ask the Government to look into the matter.

SOME HON. MEMBERS: No, no.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): The matter can be conveyed.

SHRI K. CHANDRASEKHARAN: It is not a question of merely conveying it.

SHRI S. N. MISHRA: Conveying to the Government does not satisfy the constitutional requirement

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Whatever you have said and what other hon. Members have said, they are all there and I would like the Government to consider and let the House know.

SHRI MULKA GOVINDA REDDY: Let other Members also have their say in the matter. This is a very vital matter.

SHRI KRISHAN KANT (Haryana): The more the opinion given on this subject the better it is for the functioning of democracy and Parliament. So anybody who wants to speak you should allow. The Government must understand the views of this House.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I was saying that because it is Private Members' day, and

SHRI KRISHAN KANT: This is more important.

SHRI MULKA GOVINDA REDDY: This is a vital constitutional issue.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): If it is the desire of the House that this matter should be further considered I have no objection.

SHRI MAHAVIR TYAGI (Uttar Pradesh): We must now the factual position as it exists today and it is only then that we can discuss this. Obviously there is a provision that

a non-Member can be appointed as Minister for six months but a Minister cannot continue for six months after he ceases to be a Member. It is only the non-Member for whom six months have been provided.

SHRI K. CHANDRASEKHARAN: Mr. Vice-Chairman. Sir, I am very thankful to you for giving me time to say a few words on this very serious matter. The hon. the Leader of the opposition stated that the spirit of the Constitution is being violated. I shall go immediately into the letter of the Constitution also. In the meanwhile you, Sir, have been pleased to agree that in the case of a defeated Minister it is a different thing and he should normally resign. I would submit that in the case of a person who had been a Member and is continued in office as Minister in his capacity as Member the fact that he has not been nominated, the fact that he has not been elected, amounts to the same thing as defeat in an election after he has been nominated and after he has contested the election. I may immediately state that so far as these three hon. junior Ministers are concerned none of us have anything against them and all of us, I am sure, would have been happy if they had been enabled to continue but that is not a matter on which I should state anything at this stage. So far as Dr. Phulrenu Guha and Dr. Chandrasekhar are concerned, they did not contest the elections at all and so far as Shrimati Jahanara Jaipal Singh is concerned, she contested the election and she was defeated. I should have thought that it is the moral duty of these three Ministers, whatever our personal regards for them might be, to resign and make themselves available if at all for reappointment on the basis of the provisions of the Constitution. The words of the Constitution are quite clear. It was stated by some hon. Members that article 75(5) can be resorted to. It is doubtful; that is the least I would say about it because article 75(5) is in these terms;

"A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister."

The Minister referred to here is the Minister referred to in sub-Article (1) of article 75 which says that the Prime Minister shall be appointed by the President and the other

[Shri K. Chandra Sekharan]
Ministers shall be appointed by the President on the advice of the Prime Minister. My submission, on the wording of sub-articles article (1) to (4) of article 75, is that article 75(5) is clearly available only in the case of a new or a fresh appointment and not for the purpose of continuance in office of a person as Minister after he has ceased to be a member of either House. I submit that, although the hon. Member, Mr. Mohan Dharia, has been able to say frankly that he has no information in this regard, the hon. the Leader of the Opposition stated that his information is that the Prime Minister has asked the Ministers to continue. Press reports this morning are to the effect that the Prime Minister has asked these three junior Ministers to continue till the present Lok Sabha Session is over. I submit that it is not only necessary to keep to the spirit of the Constitution, to a part of which you, Sir, as the presiding officer at this stage, were pleased to agree along with the Leader of the Opposition. In regard to the other part I would submit that it is a matter for closer examination and agreement. Further, in view of the fact that this is only an enabling provision in the Constitution and as the words of the Constitution in article 75(1) to (5) are clear, it is your duty, more than of anybody else's, to see that these three hon. Ministers do not sit in this House and run the risk of or the danger of paying the penalty of Rs. 500 per day. It is a matter in which we are all concerned and I would submit that article 104 is likely to be attracted *suo motu* if this were to happen. It is in the interests of all concerned, in the interests of the letter of the Constitution and the spirit of the Constitution, in the interests of morality and justice, in the interests of the constitutional cause which we all want to uphold, that these three junior Ministers are asked by the Prime Minister, at least at this late hour of the day, to clear out and if the Prime Minister wants to re-appoint them in terms of article 75(5), that is a matter upon which I need not give any advice and this House need not give any advice. So far as this House is concerned certainly these Ministers cannot function as Ministers and they cannot sit in this House in view of the wording of article 75.

SHRI M. S. GURUPADASWAMY (Mysore): Sir, I do not think there is any

precedent, so far, where a Minister who ceased to be a Member of the House was continued as a Minister. Ministership is not a leasehold or tenancy which can be terminated at will or extended at will. The Prime Minister is bound by the Constitution and the Constitution is clear on one point. The Prime Minister has got power to appoint any person as a Minister and that person can become a Member of this House or the other House within six months. It does not apply to a Member who is already a Minister and who ceases to be a Member. She has got power to appoint any person who is not a Member at all. He has to become a Member within six months. But it does not apply to a person who was a Minister and who ceases to become a Member. He cannot be continued as a Minister.....

THE VICE-CHAIRMAN (SHRI AK-BAR ALI KHAN): This case has not arisen before.

SHRI S. N. MISHRA: Never, no precedent.

SHRI M. S. GURUPADASWAMY: That is why I said that there is no precedent of this nature. The Minister has taken oath by virtue of his being a Member of this House or the other House. That oath does not apply to him when he ceases to be a Member. He is a Minister by virtue of his being a Member of this House. When he ceases to be a Member of the House there is no alternative but to resign. If the three hon. Ministers have resigned already, I think the only course open to the Prime Minister is to accept their resignations. Whether they should be reappointed or appointed again, that is a matter that we can discuss later. From my point of view, it is wrong to reappoint a person as a Minister who ceases to be a Member. I do not want to go into that question now. That is a different issue. My only point is that the Prime Minister is committing a grave dereliction of the duty cast upon her by the Constitution by her continuing these Ministers as she pleases. I think it runs counter not only to the spirit but also the letter of the Constitution. I do not know whether she wants it, but these are the days of radicalisation of politics. I do not know whether this is a new brand of radicalism that we are witnessing here. The Prime Minister all along has been

talking about purposiveness and cohesiveness of Ministries. Is it the new purposiveness which she wants to achieve by continuing Ministers who have ceased to be Members of the House? In fairness I should say that the Minister who has lost her election has no right to continue as Minister. In the case of the other two Ministers who were denied tickets by the Congress Party, they have also no right to continue as Ministers. In all the three cases our sympathies are with them, of course, but sympathies cannot take the place of the Constitution. I, therefore, say that the Prime Minister has no alternative but to discontinue them or accept their resignations from the Ministries. With these words, I thank you.

* THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Krishna Kant.

SHRI A. G. KULKARNI (Maharashtra): I have a submission to make. My submission is whether the House would like to hear the Law Minister first, otherwise we will be wasting time.

SHRI KRISHAN KANT: I am not going to yield...

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I will exercise my discretion.

SHRI LAL K. ADVANI (Delhi): The Government may reply later, but let us know the facts. Mr. Mohan Dharia said something and Mr. Misra conveys to us some other information. We would like to know what is the position.

SHRI KRISHAN KANT : The question here is different. It is no legal quibbling. Legally even if the Ministers can continue they should not continue. Even if constitutionally they can continue, they should not continue. A country is run not by the mere words of a Constitution, but it is run in the spirit of the Constitution and not merely in the spirit of the Constitution but by the morality of the Constitution. Even if the Law Minister in his wisdom or the Law Ministry in their wisdom or the Attorney-General in his wisdom says that these Ministers can continue for six months, morally it is the duty of the Ministers to resign and it is the duty of the Prime Minister to accept their resignations. It is not a legal quibbling. Mr. Chandrasekharan

and others have said so many things. We want to run the Government on democratic traditions. It is not a totalitarian Government. We do not want to run it only from the legal point of view. We want to run it on good traditions, we want to run it by setting good examples. Gandhiji ran the whole national movement by his example. If these Ministers were so essential, why did not our Congress Party give them tickets? They could have given them tickets at the expense of others if they were so essential. Why should today the Prime Minister think that they have to be kept here? If they have to be kept, let them be brought back. They can be reappointed. We value their services. We want them in the Ministries, but this is not the way. Really it is making fun of democracy. We have had very good traditions in this House when Mr. D. Sanjivayya and Mr. T. N. Singh....

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): That has been already referred to.

SHRI KRISHAN KANT: When they were defeated and though they continued to be Members of this House, they were not made Ministers in the sense that we wanted to respect the views and wishes of the people of India.

Though legally and constitutionally the Law Minister could have come and the Prime Minister could have come and said that they can continue as Ministers, but no, that is not our tradition, that is not the tradition of our Congress Party for the last 22 years. A departure is being made which is a very dangerous departure. Mr. Vice-Chairman. We know what is happening in the State Assemblies and State Governments, and I am afraid that may come here also. It is time that the House must assert itself, the people must assert themselves, that these Ministers should be allowed to go with all our good wishes and with all our appreciation for what they have done. The Prime Minister should not go by legal quibbling and legal niceties. The spirit must be there, the moral aspects must be there. Unless that is there, we are treading a dangerous and slippery path which ultimately lead the people to lose faith in democracy.

SHRI T. CHENGALVAROYAN (Tamil Nadu): Mr. Vice-Chairman, I want to bring one constitutional aspect of the case apart from what my esteemed leader, Mishraji has pointed out. Articles 74 and 75 of the Constitution are the relevant provisions which relate to the Council of Ministers. We know, Mr. Vice-Chairman, how a Minister is appointed and the appointment is on a particular level and procedure. If it is a case of the Prime Minister, he is appointed or she is appointed by the President. If it is the case of other Ministers, the President appoints them on the advice of the Prime Minister. Therefore, in either case my first submission on this question is that the appointing authority is not the Prime Minister but the President. My second submission Mr. Vice-Chairman, is these provisions under article 74 and 75 deal with only two alternate situations. One is the initiative, namely, the appointment, and the other is the cessation of the Ministership. These provisions of article 74 and 75 do not contemplate any principle of continuity of a Minister. When once there is a termination by efflux of time or by cessation of membership, there cannot be a principle of continuity and it cannot be read into articles 74 and 75. Therefore, Mr. Vice-Chairman, if an hon. Minister ceases to be a Member in whatever form that cessation takes place, there must be, if I may say so, an interval of time, however short it may be, between that cessation and a fresh appointment. The appointment moreover, Mr. Vice-Chairman, must be according to the provisions of the Constitution. It must be a recommendation to the President, the President must appoint, and the oath must be taken. Therefore, there is no principle of continuity that is envisaged in the Constitution, which will be absolutely unconstitutional, and I do not think the learned Attorney General will be disturbed to give such an elementary proposition constitutional propriety.

श्री राजनारायण (उत्तर प्रदेश) : श्रीमन, मैं जब इस सांवैधानिक प्रश्न पर बोलने के लिये खड़ा हो रहा हूँ तो मुझको ऐसा लगता है कि शायद हमारे मुख से कुछ ऐसी बात निकल जाय जो कि बहुत से लोग उम्मीद न करते हों।

श्री श्यामनन्दन मिश्र : ऐसी बात न

बोलिये जो कि हम लोगों को पसन्द न हो।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Rajnarain, you are a senior Member. You should not say anything which is...

श्री राजनारायण : अब आप अनावश्यक क्यों बोलते हैं, चेयर पर रहते हुए बहुत कम बोलना चाहिये।

मैं यह कहना चाहता हूँ कि यह जो सारी बात है इसके दो भाग किये जायें, एक लीगल, जुडीशियल और एक पोलिटिकल। इसके दो विभाग होने चाहिये। क्योंकि हम तो श्रुति शास्त्र के अनुसार भी कुछ चलते हैं और हमारे यहां गुरुजनों ने कहा है कि पहले तो विधान निर्मात्री परिषद में जाना ही नहीं चाहिये और यदि कोई जाय तो वहां डर या भय से सत्य को असत्य से बेधना नहीं चाहिये और जो विधान निर्मात्री परिषद के सदस्य सत्य को असत्य से बेधते हैं वह किल्बिषी होते हैं।

तो अब मैं चाहता हूँ कि जो कानूनी और सांवैधानिक बात है उस पहलू को मैं पहले रखूँ। हमारे जो सम्मानित सदस्यगण हैं वह जरा इसका अर्थ हमें बतायें।

“कोई मंत्री जो निरन्तर छः मास की किसी कालावधि तक संसद के किसी सदन का सदस्य न रहे उस कालावधि की समाप्ति पर मंत्री न रहेगा।”

यही है अनुच्छेद 75 की पांचवीं कलम।

श्रीमन् जरा आप कान में लगा लीजिए या फिर अंग्रेजी का संविधान खोल लीजिये। जरा कठिन हिन्दी है।

उपसभाध्यक्ष : (श्री अकबर अली खान) : मैं खूब समझता हूँ।

श्री राजनारायण : कोई यह बताये कि इसमें कहां यह लिखा हुआ है कि नये मंत्री के एप्वाइंटमेंट के लिये यह धारा लागू होगी और पुराने मंत्री के कांतिन्युेशन

के लिये यह लागू नहीं होगी। मैं अदब के साथ यह जानना चाहता हूँ। हम तो ज्युरिस-प्रुडेंस के छात्र हैं।

अब हम 75(1) को पढ़ रहे हैं।

“प्रधान मंत्री की नियुक्ति राष्ट्रपति करेगा तथा अन्य मंत्रियों की नियुक्ति राष्ट्रपति प्रधान-मंत्री की मंत्रणा पर करेगा।”

यही है देखिये संविधान में कि प्रधान-मंत्री को राष्ट्रपति नियुक्त करता है, यह कहीं नहीं लिखा हुआ है कि जो मेजारिटी का नेता है उसी को करे। यह लिखा नहीं है संविधान की रूह में बोलती भिन्न है मगर यह कहीं किसी कलम में लिखा नहीं है कि जो नेता बहुमत-दल का हो उसी को राष्ट्रपति प्रधान मंत्री नियुक्त करे। यह कहीं नहीं लिखा है मगर एक परम्परा है, एक संसदीय प्रथा है, एक व्यवहारिकता है उसको मद्देनजर रखते हुए जो नेता बहुमत का होता है उसी को राष्ट्रपति बुला कर प्रधान मंत्री के पद की शपथ दिलाता है। बाकी मंत्रियों की नियुक्ति प्रधान मंत्री की सलाह पर राष्ट्रपति करते हैं। अब अगर इसको भी हम ठीक तरीके से देखें तो इसमें यह कहाँ आयेगा कि जिस एक मंत्री की नियुक्ति कर दी अगर वह इन दोनों सदनों का सदस्य किसी समय न रहे तो उसका मन्त्रित्व भी समाप्त हो गया। इसका अर्थ स्ट्रेच मत करिये। अगर सुप्रीम कोर्ट की कोई कमेटी भी बैठेगी, यह सुप्रीम कोर्ट के जजेज भी इसको देखेंगे तो जो मैं कह रहा हूँ वही फैसला देंगे। किसी को देखना हो तो जा कर देख लें, एटार्नी जनरल की राय ले लें।

अब आगे भी पढ़ता हूँ। यह तीसरी कलम है :

“मन्त्रि-परिषद् लोक सभा के प्रति सामूहिक रूप से उत्तरदायी होगी।”

यह सब हमने उस समय देखा था जब कि श्रीमती इन्दिरा नेहरू गांधी जी लोक सभा की सम्मानित

सदस्या नहीं थी और राज्य सभा की थी और प्रधान मंत्री बन गई थी। तो इस पर हमने अपना बड़ा दिमाग लगाया कि हम इसी को ले कर के कहें कि जब लोक सभा के प्रति उत्तरदायी होना है तो लोक सभा का जो सदस्य न हो वह प्रधान मंत्री हो ही नहीं सकता, मगर जब तमाम सलाह ली कानून पंडितों की और अपना भी दिमाग लगाया तो हमारा दिमाग चला नहीं, यानी हमारी जो भावना थी उस भावना की ताईद संविधान और कानून ने नहीं की, इसलिये हमने उस सवाल को उठाया नहीं मगर मैं चाहता जरूर था कि कहीं से हमें सहारा मिल जाय और अच्छी तरह से उसकी पुष्टि के लिये हमें समर्थन मिल जाय तो हम इस सवाल को ले कर के राज्य सभा में और लोक सभा में लड़ें कि जब तक श्रीमती इन्दिरा नेहरू गांधी लोक सभा की सम्मानित सदस्या न हों तब तक उनको केवल राज्य सभा के सदस्य होने के नाते प्रधान मंत्री के पद की शपथ न दिलाई जाय। आखिर, उस समय हमारी भावना नहीं चली। इसलिये मैं बहुत से लोगों से यह कहना चाहता हूँ कि केवल अपनी भावना, अपनी इच्छा को संविधान की रूह न दें, संविधान कुछ है और भावना कुछ है।

मेरी भावना जो होगी वह आखिर में बताऊंगा।

अब चौथी बात है, किसी मंत्री के पद ग्रहण करने से पहले राष्ट्रपति शपथ दिलवायेगा। मगर उससे मुख्य है आर्टिकल 75 का 5 वां उपखंड, जो कहता है : कोई मंत्री जो निरन्तर छः मास की किसी कालावधि तक संसद् के किसी सदन का सदस्य न रहे उसके कालावधि की समाप्ति पर वह मंत्री न रहेगा। इसका मतलब यह होगा कि कोई मंत्री जो है वह छः महीने तक मंत्री पद पर चलेगा चाहे किसी सदन का सदस्य हो या नहीं हो...

श्री लोकनाथ मिश्र (उड़ीसा) : जरूर चलेगा।

श्री राजनारायण : देखिये, घबड़ाइये नहीं, हम भी आपकी भावना के हैं।

श्री लोकनाथ मिश्र : एक एक दिन बीच में रिज़ाइन करके 5 साल भी रह सकता है मिनिस्टर।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : You must be patient.

श्री लोकनाथ मिश्र : इसका मतलब यह निकलता है या नहीं, यह मैं पूछना चाहता हूँ, कि एक एक दिन छः महीने के बाद रिज़ाइन करके 5 साल रह सकता है या नहीं?

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN) : They are impatient ; you carry on.

श्री राजनारायण : मैं श्री लोकनाथ मिश्र का बहुत ही शुक्रगुजार हूँ, उन्होंने बात ठीक कही। श्री लोक नाथ मिश्र को जानना चाहिये कि हम लोग भुक्तभोगी हैं श्री विदेश्वरी प्रसाद मंडल के। वह हमारे दल के टिकट पर लोक सभा में चुने गये, लोक सभा का सदस्य रहते हुए वह बिहार के मंत्रिमंडल में पहुँच गये। डा० लोहिया चाहे कानून में कुछ हो, मगर नैतिकता को और राजनीति को शुद्ध रखना चाहते थे। उन्होंने कहा : चूँकि तुम लोक सभा के लिये चुने गये हो इसलिये तुमको मंत्रिपरिषद् से इस्तीफा दे देना चाहिये। संविधान में कहीं नहीं लिखा है। लोहिया जी की सलाह नहीं मानी। छः महीना बीत गया, वह कौंसिल में जाना चाहते थे, हमारी पार्टी ने उनको कौंसिल का टिकट नहीं दिया, मेरा मतलब है विधान परिषद् से। वह पार्टी छोड़ दिये। अब, लोकनाथ जी जानते हैं, यह बीच में छः दिन के लिये कहाँ आया। इस बीच छः दिन के लिये कोई खुशवाहा आया।

श्री श्यामनन्दन मिश्र : सतीश चन्द्र।

श्री राजनारायण : सतीश चन्द्र को शपथ

दिलवा कर मुख्य मंत्री बना दिया — ढाई दिन या दो दिन कहो। इसलिये बनाया गया श्रीमन्, कि वह सतीश चन्द्र विन्देश्वरी प्रसाद मंडल की सिफारिश करे राज्यपाल से कि वह उनको नामिनेट कर दें। यह सब हो रहा है, यह हुआ है।

श्री श्यामनन्दन मिश्र : यह कांस्टीट्यूशन के मुताबिक हुआ है।

श्री राजनारायण : मगर कांस्टीट्यूशन के मुताबिक वह सही था। मगर मैं पूछना चाहता हूँ : कांस्टीट्यूशन के मुताबिक सही हो मगर नैतिकता क्या कह रही है, पोलिटिक्स क्या कहता है। जो राजनीति को शुद्ध रखना चाहते हैं उनसे मैं कहना चाहता हूँ : क्या यह सही है कि जो आज राज्य सभा के सम्मानित सदस्य नहीं रह गये हैं, वह मंत्रिपरिषद् में कायम रहें यह शुद्धतः अनैतिक है, राजनीति को भ्रष्ट करना है। इससे बढ़ कर राजनीति को भ्रष्ट करने का दूसरा सबूत नहीं है।

इसलिए मैं यह कहना चाहता हूँ कि श्रीमती जहानारा जयपाल को कांग्रेस पार्टी ने टिकट नहीं दिया, बिना टिकट दिये हुए भी वह चुनाव लड़ गई और हार भी गई। वह भी अपने पद पर अभी विराजमान हैं। कांग्रेस पार्टी ने उनको राज्य सभा की सदस्यता आगे न रहे इसको समझकर टिकट नहीं दिया और वह कांग्रेस, जो इन्दिरा नेहरू गांधी की कांग्रेस है, प्रधान मंत्री की कांग्रेस, वह लड़ गई— हमने और आपने पढ़ा अखबारों में — मगर वह लड़ गई तो कोई अनुशासन की कार्यवाही नहीं होगी। अगर जीत जाती तो ठीक ही होता। अभी जो जीत गया, चाहे कितनी ही अनैतिकता के साथ जीता, मगर वह जीतने के बाद प्रधान मंत्री के कैम्प में चला जाता है। मैं पूछना चाहता हूँ अपने मित्र मोहन धारिया से—मैं उनका बड़ा प्रशंसक हूँ—भाई मोहन धारिया, तुम नैतिकता के लिये किस से उम्मीद

किये हो। कहां नैतिकता ढूँढ रहे हो? अगर हम हाथ रखें तो गोटी पूरी घुसड़ जाय जहां कोई जमीन ही न हो। आज प्रधान मंत्री की नैतिकता वह नैतिकता है जहां अंगुली रखिये पूरी गोटी चली जाती है। कहीं अनैतिकता नाम का शब्द नहीं है। वहां तो अनैतिकता हो, अनाचार हो, दुश्चरित्रता हो, तब किसी तरह से काम चले। भाई मोहन धारिया, उससे नैतिकता की आशा कर रहे हो। मैं चाहता हूं कि मोहन धारिया की भावना और वह रूप साकार स्वरूप ग्रहण करे। मगर मैं सफायी के साथ....

श्री एम० एम० धारिया : मैं राजनारायण जी को जरूर बताना चाहता हूं कि यह जो हुआ है और प्रधान मंत्री ने जो ऐसे मंत्री रखे हैं वह लोकतंत्र की हैसियत से पूर्ण अनैतिक काम है, वह तुरन्त बंद होना चाहिये; मैं भी यही कहना चाहता हूं अगर इन मंत्रियों को न हटा दिया जाये तो हमारे हाऊस में तय करना चाहिये कि वह हमारे हाऊस में नहीं आ सकें। आबजेक्शन बहुत है। यह केवल संविधान का काम नहीं है, संविधान के मुताबिक क्या उनकी ओपीनियन है, यह सवाल नहीं है, यह एक अच्छा मूल्य पैदा करने का काम है और यह अच्छा मूल्य प्राप्त करने के लिये प्रधान मंत्री को भी सोचना पड़ेगा नहीं तो हम जरूर उनके खिलाफ जायेंगे। हम कहना चाहते हैं कि यह बेसिकली रोंग है।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN.): You must finish, now.

श्री राजनारायण : अब मैं यह कहना चाहता हूं कि उसी तरह से हमारे मित्र श्री चन्द्रशेखर जी हैं, उसी तरह से श्रीमती फूलरेनु गुह भी हैं। इन तीनों को तत्काल इस्तीफा दे देना चाहिये। एक मिनट भी आगे उनको एक मंत्री के रूप में काम नहीं करना चाहिये। यह राजनीति है।

अब मैं आपके द्वारा नेता सदन से कहना चाहता हूं कि अरे भाई—मिस्टर कृष्णकान्त लर्न मैनस—

SHRI K. CHANDRASEKHARAN : He is making the same representation.

श्री राजनारायण : तो मैं यह निवेदन करना चाहता हूं, ज़रा कृष्णकान्त भी सुने, कि गांधी जी का नाम लेने वालो, संविधान और जनतंत्र का नाम लेने वालो, शुचि साधन का नाम लेने वालो, पवित्रता का नाम लेने वालो, केवल लीगल क्विजलिग और संविधान की धाराओं से काम मत करो। हो सकता है कानून मंत्री कहे कि कानून की रू से ठीक है, मैं भी कह रहा हूं, हो सकता है एटार्नी जनरल कहे कानून की रू ठीक है, हो सकता है सुप्रीम कोर्ट की सलाह हो कि ठीक है। मगर यह अनैतिकता है। हम लोग जो गांधी जी की राजनीति को मानते हैं, हमारे लिये यह अनैतिक है, अनैतिकता की कसौटी में खरा उतर रहा है इसलिये एक मिनट एक पल एक सेकेन्ड भी इन तीनों को मंत्री के रूप में यहां पर नहीं रहना चाहिये। (Time-bell rings)

अब एक दूसरा पहलू रह गया है। मान लीजिए कि टेक्निकलिटी की पूर्ति के लिये, जो बहुत से लोग यहां कर रहे हैं, वह इस्तीफा दे दें और प्राइम मिनिस्टर फिर से राष्ट्रपति को सलाह दे इन्हें नियुक्त कर दो—अगर वह इस्तीफा भी देते हैं और प्राइम मिनिस्टर फिर उन्हीं के नाम की सिफारिश करती हैं—तो मैं इसको भी अनैतिक मानता हूं।

श्री महावीर त्यागी : मैं आपको बता दूं वे इस्तीफा दे देगे। सिर्फ लोक सभा का सेशन खत्म हो जाय उसके बाद करेंगे वरना झगड़ा हो जाने का खतरा है।

श्री राजनारायण : मैं एक बात आपके द्वारा मोहन धारिया को बताना चाहता हूं कि उनके इस्तीफे पर ही उनको संतुष्ट

[श्री राजनारायण]

नहीं हो जाना चाहिये। उनके इस्तीफा देने से अगर प्राइम मिनिस्टर साहिबा को यह मालूम हो कि उनके दल में दरार पड़ सकती है तो कहें कि भाई तुम टेकनिकली इस्तीफा दे दो, तुम्हारा इस्तीफा और तुम्हारा एपाइन्टमेन्ट दोनों साथ-साथ हो सकता है। उनका क्या बिगड़ता है। इसलिये यह कानून की रू में मत जाइये कि इस्तीफा दे दो, फिर से अपाइन्टमेन्ट हो। मैं कहना चाहता हूँ, अगर फिर से एपाइन्टमेन्ट होता है, तो वह भी अनैतिकता है और बड़ी अनैतिकता है। केवल जहाँनारा जो राज्य सभा की सीट नहीं जीत पायी हैं अगर उनके इस्तीफा देने के बाद, प्रधान मंत्री साहिबा उनकी नियुक्ति की सिफारिश करती हैं तो यह प्रधान मंत्री की अनैतिकता होगी। इस्तीफा न देना यह इन मंत्रियों की अनैतिकता है और उनकी नामों की सिफारिश करना, उनको बराबर कायम रखना, यह प्रधान मंत्री की अनैतिकता है। तो मैं अपने मित्र श्री मोहन धारिया से कहना चाहता हूँ कि तुम अपने प्रधान मंत्री के विरुद्ध झंडा उठाओ तब ही देश बनेगा। यह छोटी पिढी है और इसको पकड़ो। क्या पिढी, क्या पिढी का शोरबा। अगर देश को तेजी की तरफ बढ़ाना है तो प्रधान मंत्री पर चोट करो क्योंकि प्रधान मंत्री आज सभी प्रकार की अनैतिकता की जड़ जमाये हुए हैं।

इसलिए जनाब सदर साहब, मैं अदब के साथ अर्ज करना चाहता हूँ कि आप प्रधान मंत्री साहिबा को इस सदन की इच्छा के लिये और यह सदन की इच्छा है कि...

श्री अवधेश्वर प्रसाद सिंह : मैं विनती के साथ श्री राजनारायण जी से कहना चाहता हूँ कि क्या यह कहना मुनासिब है कि सभी गलतियों की जड़ प्राइम मिनिस्टर है और क्या इस तरह की बात कहना

पार्लियामेंटरी पद्धति है। इस तरह की बात किसी सज्जन के विरुद्ध कहना या बोलना क्या यह उचित है।

श्री राजनारायण : मैं अपने भाई श्री अवधेश्वर प्रसाद सिंह की इज्जत करता हूँ क्योंकि वे पहले हमारे दल में रह चुके हैं। मैं उनकी इज्जत इसलिए भी करता हूँ क्योंकि वह हमारे पहले सहभाई थे। जब वे प्वाइन्ट आफ आर्डर उठाते हैं तो हमें लगता है कि वे कहां चले गये हैं और किस ने उन्हें पकड़ लिया है। (Interruptions) तो मैं यह निवेदन करना चाहता हूँ कि उनका कोई भी प्वाइन्ट आफ आर्डर नहीं है। एक साथ सब सब सब साथ सब जाय। क्योंकि आज प्रधान मंत्री जिस को चाहे मंत्री बनाये और जिस को चाहे मेम्बर बनाये और आज वे इस तरह से सर्वेसर्वी बनी हुई हैं। इसलिए मैं फिर कहना चाहता हूँ कि इन मंत्रियों से प्रधान मंत्री द्वारा इस्तीफा न मांगना यह प्रधान मंत्री की अनैतिकता है। उन्हें इस प्रकार का आश्वासन देना कि वे कान्टिन्यू करें यह प्रधान मंत्री की अनैतिकता है। तो जिस देश का प्रधान मंत्री अनैतिक हो उस देश का शासन किस तरह से चल सकता है, इस पर सदन के सम्मानित सदस्यों को विचार करना चाहिये।

तो मैं यह कहना चाहता हूँ कि जनतंत्र, संसदीय प्रथा और संसदीय परम्परा के मुताबिक इन मंत्रियों का मंत्री परिषद् से हटना ही जरूरी है। अगर ऐसा न हो तो आप स्वयं इस बात को सोचिये और उस स्थिति की कल्पना कीजिये चैयरमैन साहब। मान लीजिये कोई मंत्री मेम्बर न हो, मैं इस बात को इसलिये कहना चाहता हूँ कि इस तरह से कोई मंत्री बिना मेम्बर बने 6 महीने के लिए रह सकता है, यह तो एक अपवाद है। आप इस को कोई जनरल रूल नहीं बना सकते हैं वरना इसको एक सामान्य नीति मान ली जायेगी।

तो कोई भी स्थिति आ सकती है और इस तरह से बिना मेम्बर बने पूरे का पूरा कैबिनेट छः महीने तक चल सकता है। इस तरह की भी स्थिति आ सकती है। इस चीज़ को भी मद्दे नज़र रखना होगा अगर हमें जनतंत्र को चलाना है। केवल जनतंत्र की खाल ओढ़कर और संविधान की भाषा के मुताबिक काम करने से हम देश को बहुत दिनों तक नहीं बचा सकते हैं क्योंकि आज हम इसकी दुर्दशा को देख रहे हैं कि इस देश में क्या हो रहा है। इसलिए मैं इस नुक्ते नज़र से, हर एंगिल से, हर दृष्टिकोण से यह कहना चाहता हूँ और मैं इस निश्चित मत का हूँ कि राज्य-सभा का सदस्य जिस दिन से कोई नहीं रहेगा, उस दिन से किसी का मंत्री परिषद में रहना अनाचार और दुराचार है। वह अनाचार और दुराचार का भागी बनेगा और उसकी सर्वेसर्वा प्रधान मंत्री है।

श्री निरंजन वर्मा (मध्य प्रदेश) : श्रीमन्, सदन के सामने जो इस समय प्रश्न उपस्थित है उसके संबंध में मैं यह निवेदन करना चाहता हूँ कि इसका संबंध सीधे प्रधान मंत्री से है। आज प्रेस में प्रातःकाल रिपोर्ट थी कि ये तीनों मंत्री सदस्य नहीं रहे और इन तीनों मंत्रियों को प्रधान मंत्री ने मंत्री के रूप में बने रहने के लिए बैठने की आज्ञा दे दी है।

श्री महावीर त्यागी : यह भी हो सकता है कि खबर गलत हो।

श्री निरंजन वर्मा : खबर तो गलत नहीं है। मैं आपके ज्ञान के लिए इतना कह देना चाहता हूँ कि लोकसभा में इस प्रश्न पर अभी भी विचार चल रहा है। वहां पर जब श्रीमती जहानारा जयपालसिंह आई तो सदस्यों ने इसका विरोध किया और जिस के ऊपर वहां पर काफी वादविवाद हुआ। इसलिए बात तो सही है, लेकिन एक बात अवश्य निवेदन कर देना चाहता हूँ कि कानून में चाहे कुछ भी हो, इस सरकार

का यह नैतिक कर्तव्य था और नैतिक कर्तव्य होना चाहिये कि जब तीनों सदस्य चुनाव नहीं लड़े, चुनाव में हार गये और वे इस माननीय सदन के सदस्य नहीं रहे, तो प्रधान मंत्री को यह अधिकार नहीं है कि वे उनको फिर से मंत्री के रूप में बैठने के लिए आमंत्रित करे। अभी तक इस संबंध में प्रधान मंत्री की ओर से कोई घोषणा नहीं हुई है और न ही प्रधान मंत्री को इस तरह की घोषणा करने का अधिकार ही है। इस तरह की घोषणा करने का अधिकार राष्ट्रपति जी को है। राष्ट्रपति जी अपने अधिकार से ही उन्हें शपथ दिलायेंगे और तब ही वे मंत्री के रूप में बैठ सकते हैं। जब तक वे शपथ ही लेंगे तब तक वे मंत्री के रूप में नहीं बैठ सकते हैं।

उदाहरण के लिए श्रीमान्, मैं आपको यह बतलाना चाहता हूँ कि आज सुबह सदन के सामने जो कालिंग अटेंशन का प्रस्ताव था उसमें श्री भूपेश गुप्त का नाम नहीं था जबकि उन्होंने अपना नाम भी इसमें दिया हुआ था। इस बात पर सदन में विवाद हुआ और इस बारे में हाउस का जो सर्वसम्मत मत हुआ वह इस प्रकार का था कि जबतक श्री भूपेश गुप्त इस सदन में निश्चित रूप से शपथ नहीं ले लेते हैं तबतक वे कार्यवाही में भाग लेने में अक्षम हैं। तो यह नैतिकता का तकाजा है और मैं श्रीमान् के सामने इस संबंध में एक ओर तथ्य रखूंगा।

हमारे पीछे श्री मानसिंह वर्मा जो बैठते हैं। ये उत्तर प्रदेश में मिनिस्टर थे और मिनिस्टर रहते हुए इन्होंने विधान परिषद् का चुनाव लड़ा। चुनाव लड़ने के बाद उन्हें ऐसा मालूम पड़ा कि वे चुनाव हार रहे हैं तो उन्होंने तत्काल शासन से इस्तीफा दे दिया। अगर वह चाहते तो उस सरकार में 6 महीने के लिए कांटेन्स कर सकते थे और वहां की सरकार भी उन्हें 6 महीने के लिए और रख सकती थी क्योंकि

[श्री निरंजन वर्मा]

इसमें किसी प्रकार की बाधा नहीं थी और न ही कोई आपत्ति उठाई जा सकती थी। लेकिन नैतिकता का तकाजा था, उनका भी यह कर्तव्य था और इसीलिए उन्होंने वहां के शासन से इस्तीफा दे दिया। तो हम समझते हैं कि नैतिकता का सब से जबर्दस्त प्रभाव होता है अगर यह सरकार इस नैतिकता को नहीं निभायेगी तो यह देश आगे चलने वाला नहीं है। इसलिए यह सरकार जो नैतिकता को न निभाने की नीति अपना रही है, वह नीति किसी भी प्रकार से देश के लिए अच्छी नहीं है।

मैं अपने मित्र श्री मोहन धारिया से बिल्कुल सहमत हूँ कि सरकार की इस प्रकार की अनैतिक नीति के लिए, अगर वह इस प्रकार का काम करती है तो इस तरह के प्रदर्शन किये जाने चाहिये और हर हालत में मंत्री को इस्तीफा देने के लिए विवश किया जाना चाहिये।

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

SHRI NIREN GHOSH: But I wanted to speak long ago.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I am sorry. I should have called you. Would you like to speak just now?

SHRI NIREN GHOSH: Yes, Sir.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Schamnad, please sit down. It is my mistake.

SHRI NIREN GHOSH: I would be very brief. I am not accustomed to making long speeches. I think legally and constitutionally they can continue. Why I am saying so is this. I may state the Legislative Council was abolished and the three Minister Members of the Council continued for six months. Then they resigned from the Council of Ministers. They were then re-elected and reappointed....

SHRI S. N. MISHRA: But after the abolition of the Council,

SHRI NIREN GHOSH: No. They continued as Ministers even after the abolition of the Council.

SHRI LOKANATH MISRA: Only because the C. P. (M) was committed to it.

SHRI NIREN GHOSH: Mr. Lokanath Misra is so ignorant. He ought to know that the three Ministers belonged to three different parties. So he should be a bit informative.

SHRI LOKANATH MISRA: Well enough.

SHRI NIREN GHOSH: So they continued for six months. After the expiry of six months they resigned from the Council of Ministers. They fought the election, were re-elected, came back and got re-appointed as Ministers. It was all legal and constitutional. There was no bar. Because these Ministers were appointed in the beginning of the formation of the Ministry and suddenly the Council was abolished, nobody at least in Bengal thought that it was something immoral on their part to continue.

4 P-M- as cat note

But here I think the case is a bit different. That is the whole thing. They were Ministers; then elections came; they were not given tickets, or they were not elected. In these circumstances, if they are to continue, then the question might be raised. Let them discontinue, and then after six or seven months, the Government can make provision for them so that they can come back as Members of the Lok Sabha and then they can be re-appointed. In this case, they were Members. The House has not ceased to exist. We continue. This is a permanent House. Nobody can abolish it unless the Constitution is suspended. They could have come back as Members. Somehow or other they were debarred. Two of them were not given tickets and the other one who contested the election could not get in. So perhaps they should not continue. That is my feeling. They should not continue under these circumstances. As regards the Constitution, Mr. Rajnarain swears by the Constitution. But the way he has explained, it appears that the Constitution is a bogus one.

श्री राजनारायण: श्रीमन्, इन्होंने हमको मिस्त्रान्डरस्टैंड किया है। मैं बिल्कुल इस

निश्चित सत का हूँ कि संविधान के मौलिक अधिकारों में मज़ाक के साथ परिवर्तन करने का अधिकार संसद को न रहे। मैं यह कहता हूँ कि विधान निर्मात्री परिषद् नई बने और इस संविधान में जहाँ-जहाँ असंगति हो, सामाजिक और आर्थिक विषमता को दूर करने में जहाँ-जहाँ स्कावट हो उस सबको एक साथ बदल दिया जाये।

SHRI HAMID ALI SCHAMNAD (Kerala) : Mr. Vice-Chairman, Sir, I do not want to make a speech as such. But at the same time I may express my humble views on this matter. There are a number of legal giants in this House and they may have their own views. My view is, when a Member of the Cabinet or a Minister ceases to be a Member of this House or the other House, automatically he does not cease to be a Member of the Cabinet. That is the spirit of the Constitution, Sir, according to my humble view. I am of the view that a Minister should submit his resignation to the Prime Minister, the Prime Minister should forward it to the President and it should be accepted; then only he ceases to be a Minister. Then, the Prime Minister can also ask a Minister to continue in office for some time till other arrangements are made. This is not immoral. It is not against the Constitution.

SHRI M. M. DHARIA : Sir,....

SHRI HAMID ALI SCHAMNAD : I am speaking about my views. I have got every liberty to say my views. You may give your views. Let me put forward my views. It may be wrong it may be right.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Mr. Dharia, he is entitled to his views.

SHRI HAMID ALI SCHAMNAD : I do not say my views are dogmatic.

SHRI M. M. DHARIA : The Prime Minister was well aware that these people were not issued tickets and naturally they were not likely to come.

SHRI HAMID ALI SCHAMNAD : Sir, I am not concerned with whether these people were issued Congress tickets or not.

We are not concerned about that. The question is whether these Ministers should continue till their responsibilities are taken over and some other arrangements are made. Is it unconstitutional? Is it immoral? I am of the view, Sir, that it is not immoral and it is not against the Constitution because they will be there till some other arrangements are made. Even when a no-confidence motion is passed against the Government in the Assembly, so many times the Governor asks the Ministry to continue as the care-taker Ministry till other arrangements are made. Why not let them continue for a few days or a few months? This is neither immoral nor against the Constitution. This is my humble view.

SHRI LAL K. ADVANI : Sir, I will just take one minute. I would not like to repeat anything that my friends have just said. I feel that we need not go over much into the legality of the question. (*Interruption*). In the present context of the political situation, I think it is not wise or prudent to be over-legalistic about these matters. Legally it may be quite correct that a Minister is entitled to continue for a period of six months even after ceasing to be a Member of the House. But the point is, when the Constitution-makers framed this article, article 75(5), the idea was to enable the Prime Minister or the Chief Minister in the States to include in their Cabinets persons who are not yet Members of the House but who are likely to be elected within a period of six months. So the moment any one is made a Member of the Council of Ministers, that very moment it becomes incumbent on that particular Member to find out a constituency for himself and get elected within a period of six months. This is the basic assumption on which a Member is introduced into the Council of Ministers even though he is not a Member of the House. In this particular case, no such situation exists. Here we have two Ministers who have not even contested the election and the third Minister has been defeated in the election. Now if these three Ministers continue to be Members of the Council of Ministers, I think it is grossly against the spirit, and perhaps against the letter also, of the Constitution.

SHRI LOKANATH MISRA : Sir, it is a matter of great agony for me to say anything

[Shri Loka Nath Misra]

against Members who have just retired. But all the same, public service, public responsibility, demands that we have to speak the truth, howsoever unpalatable it may be. The argument that was just put forward by Mr. Advani is definitely the correct one. I feel it is extremely immoral for people to continue in the Council of Ministers who could not find a place for themselves anywhere to get returned. As Mr. Advani said, only in search of talent that the Prime Minister or the Chief Minister might take somebody, who is not a Member of the House, into the Council of Ministers with the understanding that within six months, he or she will find for himself or herself a seat in the appropriate legislature. But in the case of those where it has been amply proved that a place could not be found for them in the appropriate legislature, how would it be justified to allow them to continue? The difference is so fundamental between the two situations. In one you might choose very good talent to be included in the Ministry with the understanding that he would get elected to the appropriate legislature within six months. The provision in the Constitution is meant only for that.

SHRI C. D. PANDE (Uttar Pradesh) :
For new-comers.

SHRI LOKANATH MISRA : To find talent for the Ministry. It is not meant for people who have been thrown out because they were not acceptable to the ruling party or because they were not found capable in the positions they are holding; the party and also the head of the Government, the Prime Minister, both found them either unsuitable or incapable or undesirable....

THE VICE-CHAIRMAN (SHRI
AKBAR ALI KHAN) : Let us not go into that.

SHRI LOKANATH MISRA : It means that, if you go into the argument why were not given seats.

THE VICE-CHAIRMAN (SHRI
AKBAR ALI KHAN) : It is a party matter. Let us discuss the Constitution. Let us not reflection them.

SHRI LOKANATH MISRA : That is not the point. If seats were found and they got defeated, I would not go into that aspect—that the Prime Minister or the party did

not find them suitable for the Government and, therefore, did not give them seats. In this case, they knew sufficiently in advance that seats were not going to be provided for them.

[MR. DEPUTY CHAIRMAN in the Chair.]

They have a Parliamentary Board and that decides about a month ahead whether a seat is to be given to them or not. They knew it sufficiently in advance. They must have tendered then their resignation, knowing fully well that there was no opportunity for them to get into the legislature. That would have been most dignified. If somebody does not adhere to certain standards of dignity, this is what happens in the House even in their absence. Nobody can help it and therefore, they have to go.

SHRI C. D. PANDE : Mr. Advani and Mr. Lokanath Misra came nearest to the point. The provision of six months was meant only for the new Ministry. And even in that case the Prime Minister, she or he, must assure the House that the person whom she is including in the Council of Ministers, has a reasonable chance of being elected within six months to either of the Houses not after six months. When we say within six months, it may be within two months or three months or four months. But here is a case which is entirely of a different nature. Actually when this issue was raised I was not here in the House and when I came in and asked my friends as to what was happening, they said these three people are continuing. I tell you nothing can be more unthinkable, more immoral than this. It is not only unconstitutional, but it is immoral. I cannot imagine that such things can happen that they have ceased to be Members of Parliament and yet continue to be in office as Ministers. It is a travesty of the Constitutional spirit. The real spirit of the Constitution is that at the time of the formation of a new Ministry, the Prime Minister can include any person who, she thinks, has a reasonable chance of being elected either to this House or to the other House. But that is not the case here. If they continue to be Members of the Council of Ministers, we should say, they are not working, they are not acting, according to the Constitution. And it is the duty of the House to condemn all such things. They are not Members of the other House and they cannot be Members of this House.....

MR. DEPUTY CHAIRMAN : I think that is enough. Now, we have had enough discussion on this question. . .

SHRI CHANDRA SHEKHAR (Uttar Pradesh) : Mr. Deputy Chairman, I will not take much time on this. I am very sorry to express my opinion on this issue and as my friend, Mr. Lokanath Misra, has just said, it is very painful to express an opinion about the colleagues who have been with us for such a long time serving the Parliament, the Government and the country in very responsible positions. Whatever the spirit of the Constitution may be, whatever the legality may be, I am inclined to agree with my friend there that constitutionally and legally there is no bar on their being in the Council of Ministers. But politically and from the public point of view and from the point of view of the impression that will be created in the country as a whole, it seems to me quite irrational and we cannot justify it with any logic. There has been an example in this very Parliament and I was trying to bring to your memory, Mr. Deputy Chairman, the instance of Mr. S. K. Dey. When he was not given a ticket in 1967, immediately after that Mr. Dey resigned from the Council of Ministers. . .

SHRI K. CHANDRASEKHARAN : It was very good.

श्री राजनारायण : वह चाहती रही होंगी कि वह न रहें, मगर डे ने अपनी तरफ से इस्तीफा दे दिया।

SHRI CHANDRA SHEKHAR : . . . and it was an example which Mr. Dey set in the Congress Party. I would like to remind my friend, Mr. Rajnarain, that this glorious tradition was set by the Congress Party and even at that time it was Mrs. Indra Gandhi who was the Prime Minister. The constitutional provision is there for bringing anybody who is not a Member of either of the Houses to the Council of Ministers only in case the Prime Minister thinks that a particular person is indispensable for the Council of Ministers. In this case if the Prime Minister was of the view that these three people were indispensable for the Government, she could have brought them to the Council of States. I think it is within the power and right and authority of the Prime Minister that she could have managed

to bring them into Parliament. If they were not elected from any place, it is obvious that they were not indispensable even in the eyes of the Prime Minister. And now they have ceased to be Members of Parliament. I do not know what the position is today. But I hope that the honourable friends who have been our valued colleagues so long, will, after this expression of opinions in this House, not continue even for a day as Members of the Council of Ministers and it will not be advisable for the Prime Minister to keep them in the Council of Ministers. I would also urge upon the Leader of the House that sometimes in order to keep up the public image of the Government and of the leadership, it is necessary that we sacrifice our valued colleagues even if they are indispensable. In this case I do not think that our friends are indispensable and this has been proved by the decision taken by the Congress High Command itself. Under the circumstances, I hope and trust and I am confident that these friends will not continue as Members of the Council of Ministers and the Prime Minister and the Leader of the House will take note of the views expressed in this House so that an unnecessary and unseemly controversy is not raised on this issue.

SHRI MAHAVIR TYAGI : Mr. Deputy Chairman, only one word.

MR. DEPUTY CHAIRMAN : But how long should we continue on this ? It is nearly one hour and fortyfive minutes that we have taken. . .

SHRI MAHAVIR TYAGI : Only one word.

MR. DEPUTY CHAIRMAN : There is no material point that has not been raised in this House on this issue. We have discussed this question for about one hour and forty-five minutes. . .

SOME HON. MEMBERS : Mr. Deputy Chairman, we also want to say something.

MR. DEPUTY CHAIRMAN : But how long should we continue with this discussion now ?

SHRI MAHAVIR TYAGI : I want to say only one word and that is you will please see that it goes down on record that this House has unanimously disapproved the same. Every Member has spoken disapproving it.

SHRI AKBAR ALI KHAN (Andhra Pradesh) : We are not taking a vote on this. We have expressed our opinions and there could be no unanimity.

SHRI RAJNARAIN : No, no.

(Interruptions.)

MR. DEPUTY CHAIRMAN : Order please.

SHRI RAJNARAIN : There must be a Resolution like this.

SHRI S. N. MISHRA : Nobody can say that there will be no formal Motion on this subject. We must decide about it.

SHRI PITAMBER DAS (Uttar Pradesh) : I want to put one simple question. If in spite of the appeals of Mr. Dharia, Mr. Chandra Shekhar and of this House the Ministers concerned do not choose to withdraw themselves or the Prime Minister is not pleased to do away with them, what is this House to do ? That is a straight question and the answer is being provided by Mr. Tyagi and Mr. Mishra. What objection have we to it ?

श्री राजनारायण : मैं यही प्रार्थना कर रहा हूँ कि मनुष्य के दिमाग में जो बात आये उसी के मुताबिक वह काम करे। इसलिए प्रस्ताव नहीं आयेगा तो बोलने का कोई अर्थ नहीं है।

श्री उपसभापति : ठीक है; इस पर बहुत चर्चा हो गई है।

SHRI MAHAVIR TYAGI : Otherwise, let them face the House.

MR. DEPUTY CHAIRMAN : Mr. Law Minister, do you want to say anything ?

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI P. GOVINDA MENON) : Mr. Deputy Chairman, two or three Members here have already entered a caveat that they are not prepared to accept the legal or constitutional position. That is what I understood them to say. I must make myself very clear that I have only the legal and constitutional aspect of this matter to refer to. And *maryada*, convention, etc. are a different matter altogether.

SHRI LOKANATH MISRA : No, no.
(Interruptions.)

MR. DEPUTY CHAIRMAN : Order, order please. Nobody should rise now when the Treasury Benches.

श्री राजनारायण : श्रीमन्, प्वाइंट आफ आर्डर।

श्री उपसभापति : आप बैठें। आपका प्वाइंट आफ आर्डर बाद में होगा। पहले आप बैठें।

The Treasury Benches have heard with great patience all the points raised by the hon. Members in this House. Therefore it would be desirable that the hon. Members also should give a patient hearing to the hon. Minister.

श्री राजनारायण : श्रीमन्, मेरा व्यवस्था का सवाल यह है कि क्या सदन के समय का दुरुपयोग करना सदन के सम्मानित सदस्यों के लिये उचित माना गया है? मैं कहता हूँ कि नहीं। यह सदन यूनानिभस है इस एस्पेक्ट में कि यह अनैतिक है।

श्री उपसभापति : यह आप कई बार कह चुके हैं।

श्री राजनारायण : कांस्टीट्यूशनली बर्ह माना भी जा सकता है और नहीं भी माना जा सकता है। माननीय मंत्री कितनी ही बात कहें, लेकिन बाद में यही कहेंगे कि कांस्टीट्यूशनली यह ठीक है। तो समय नष्ट क्यों हो?

SHRI M. M. DHARIA : Sir, on a point of order. Sir, it is not only the Constitutional aspects that are raised in this House but there are also political issues and issues of morality and propriety. Sir, the hon. Minister said that he had nothing to do with the other issues and he was going to say something only about the constitutional and legal matters. So we want to know from the Government not only the constitutional position but also regarding political and moral propriety in regard to this matter.

(Interruptions.)

MR. DEPUTY CHAIRMAN : There is no point of order. The Law Minister is giving his legal and constitutional opinion. So far as the other aspects are concerned, perhaps others may express their views. There is no point of order.

SHRI M. M. DHARIA : Then let the Leader of the House say something.

THE LEADER OF THE HOUSE (SHRI K. K. SHAH) : Sir, if Mr. Lokanath Misra's point is that the legal position is conceded, then the Law Minister may not be heard, but if the legal position is not conceded, then the Law Minister should be heard. May I take it that the legal position is conceded ?

(Interruptions)

MR. DEPUTY CHAIRMAN : The Law Minister.

SHRI S. N. MISHRA : Sir, in regard to the point of order the Leader of the House has said something. I would also like to say something about it. He has tried to misinterpret the position taken by the hon. Members of the House. (Interruptions). The position must be made very clear. Even if it be conceded that on legal and constitutional basis the Government could continue and the Council of Ministers could continue, we say that it is completely untenable on the basis of politicalities and moralities.

(Interruptions.)

SHRI MULKA GOVINDA REDDY : Sir, I was the first person who raised this issue.

MR. DEPUTY CHAIRMAN : Just one minute. I am on my legs. A point of order was raised by Mr. Dharia and the Leader of the House gave his opinion with regard to it. Now as pointed out by the Leader of the Opposition, there are two aspects, one legal and constitutional and the other political morality.

SHRI S. N. MISHRA : Convention also, Sir.

MR. DEPUTY CHAIRMAN : Just do not be impatient. Now we are considering the constitutional and legal aspects. So let us hear the hon. Law Minister on that issue.

(Interruptions.)

SHRI MAHAVIR TYAGI : Sir, I rise on a point of order, another point of order.

श्री उपसभापति :! त्यागी जी, आपने भी प्वाइंट आफ आर्डर रैज करना शुरू कर दिया।

SHRI MAHAVIR TYAGI : My point of order is a very simple one. Sir, the opinions of the Law Minister are all welcome to us but before we hear the Law Minister, we must know from the Government representative what is the actual position, because it is all vague here. So, the actual position must be explained first.

SHRI MULKA GOVINDA REDDY : Mr. Deputy Chairman, you were not here when I raised this constitutional issue. The Law Minister was also not present at that time. I addressed three questions. One was about the constitutional issue. We do not agree with the position taken by the Leader of the House that there is no constitutional deadlock in this. Secondly, I had also asked that the Attorney-General should be summoned to give his opinion. Thirdly, I had also raised the issue that this matter should be referred by the President to the Supreme Court for its opinion. Fourthly, I raised the issue of moral responsibility on the part of the Prime Minister. Therefore the Prime Minister should herself come here and make a statement with regard to all these four points.

श्री नागेश्वर प्रसाद शाही (उत्तर प्रदेश) : श्रीमन्, मैं कुछ कहना चाहता हूँ।

श्री उपसभापति : राजनारायण जी ने आपकी सिफारिश कर दी है, आपको मौका देना ही चाहिये।

श्री नागेश्वर प्रसाद शाही : मेरा निवेदन यह है कि संविधान सभा, लोक सभा, राज्य सभा या विधान सभायें जो कानून बनाती हैं उनके कभी कभी दो या तीन मतलब निकलते हैं लेकिन सुप्रीम कोर्ट और हाई कोर्ट मतलब निकालते समय केवल उस मतलब को पकड़ती हैं जो कि जनता की भलाई का होता है।

श्री उपसभापति : आप इसके बारे में कहिये जो कुछ कहना है। आपको सारा विवरण करने की कोई आवश्यकता नहीं है।

श्री नागेश्वर प्रसाद शाही : मैं इसी के बारे में कह रहा हूँ कि अगर कहीं दो मतलब भी निकले, अगर संविधान की धाराओं का दो मतलब भी निकले तब भी जो मतलब नैतिक हो वही मतलब निकाला जा सकता है, अनैतिक मतलब नहीं निकाला जा सकता है। मैं श्रीमन् आपका ध्यान धारा 75 की ओर दिलाता हूँ।

श्री उपसभापति : धारा 75 इस हाउस में कई बार पढ़ी गई है, अब पढ़ने की जरूरत नहीं है। आपका जो प्वाइंट है वह बतलाइये। इसको पढ़ने की आवश्यकता नहीं है।

श्री नागेश्वर प्रसाद शाही : मैं उसको पढ़ नहीं रहा हूँ। दो बातों को आपके सामने रख रहा हूँ। धारा 75 जो है वह मंत्रियों की नियुक्ति के बारे में है, एग्जामेंट आफ मिनिस्टर्स के बारे में है और उसमें उपधारा 2, 3 और 4 के बाद 5वीं उपधारा जो है उसमें यह क्लोज है कि कोई मंत्री अगर छः महीने तक किसी सदन का सदस्य न हो तो छः महीने तक वह चल सकता है। छः महीने मैक्सिमम टाइम दिया हुआ है लेकिन इसका मतलब यह नहीं हुआ कि हर किसी केस में छः महीने तक वह चले ही। आप देखेंगे...

श्री उपसभापति : वह देख लिया है, आपका जो प्वाइंट है वह बतलाइये। जो कहा जा चुका है उसको रिपीट करने का कोई मतलब नहीं है। आपका जो प्वाइंट है वह बतला दीजिए।

श्री नागेश्वर प्रसाद शाही : जब प्वाइंट आप सुनेंगे तभी तो बतलायेंगे।

श्री उपसभापति : जो कहा जा चुका है उसको दुहराने की कोई जरूरत नहीं है।

श्री राजनारायण : वह बोल रहे हैं मगर आप बीच में इतना टोक रहे हैं।

श्री उपसभापति : दो घंटा हो गया छोटे से सवाल पर। You are repeating the same argument. If it is a new argument, I have no objection to giving you further time.

श्री नागेश्वर प्रसाद शाही : मैं, श्रीमन् केवल एक मिनट लूंगा। तो, श्रीमन्, इसका साफ अर्थ यह हुआ कि एग्जामेंट के समय वह सदन के सदस्य थे, छः महीने तक वह चल सकते हैं और छः महीने बीत जायें, वह किसी सदन के सदस्य नहीं हों, तब वह सीज़ कर जायेंगे। इसका मतलब यह नहीं हुआ कि मंत्री की हैसियत से उनके सदन की सदस्यता का समय समाप्त हो उसके बाद भी वह छः महीने तक चलते रहेंगे।

दूसरी बात जो है वह यह कि वह इस्तीफा दे कर पुनः प्रधान मंत्री की एडवाइस पर राष्ट्रपति द्वारा नियुक्त कर दिये जायें।

श्री उपसभापति : यह प्वाइंट भी हाउस में कहा गया है।

श्री नागेश्वर प्रसाद शाही : मेरा निवेदन है कि वह सांविधानिक हो सकता है लेकिन नैतिक नहीं हो सकता है।

श्री उपसभापति : ठीक है। ला मिनिस्टर।

SHRI P. GOVINDA MENON : Mr. Deputy Chairman, Sir, the question is whether on ceasing to become a Member of the House there is simultaneous ceasing of the office. In this connection, Sir, I will draw your attention to three different articles in Part V of the Constitution dealing with "The Union." I will first take you, Sir, to Article 90 which reads thus :

"A member holding office as Deputy Chairman of the Council of States—

shall vacate his office if he ceases to be a member of the Council;" ****

That is to say, by the very fact that the Deputy Chairman ceases to be a member

of the Council, automatically there is vacation of office. So Article 90 deals with the cesser of office on a member ceasing to be a member of the House.

Then there is Article 94, Sir.

"A member holding office as Speaker or Deputy Speaker of the House of the People—

shall vacate his office if he ceases to be a member of the House of the People;"

(Interruptions)

MR. DEPUTY CHAIRMAN : He has heard you for two hours and you cannot hear him for two minutes. What a strange thing !

(Interruptions.)

MR. DEPUTY CHAIRMAN : Order, order. Give him a patient hearing.

SHRI P. GOVINDA MENON : I am not referring to anything extraneous. We are all concerned with and governed by the provisions of the Constitution and I just drew your attention to Articles 90 and 94 of the Constitution which deal with the cesser of office.

SHRI GODEY MURAHARI (Uttar Pradesh) : Absolutely irrelevant.

MR. DEPUTY CHAIRMAN : Listen to his arguments. Why don't you listen ?

SHRI GODEY MURAHARI : The very argument is irrelevant. We are not discussing the Deputy Chairman or the Speaker or the Deputy Speaker.

MR. DEPUTY CHAIRMAN : Whatever it is, he is coming to the point.

SHRI P. GOVINDA MENON : Then, Sir, the next Article, which I want to refer to, is Article 75(5)

SHRI GODEY MURAHARI : Waste of time.

SHRI P. GOVINDA MENON : I quoted Articles 90 and 94, and I now draw your attention to the provisions of Clause(5) of Article 75, because that also deals with cesser of office not appointment to office.

"A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister."

One of my friends said that reference to Articles 90 and 94 is irrelevant, but I suppose, Sir, in the way in which I presented this case, you will see that I selected these two Articles occurring in Part V of the Constitution which deal with cesser of office. As soon as the Deputy Chairman or the Speaker or the Deputy Speaker ceases to be a member of the House and so ceases to hold office as such, the Constitution positively says that simultaneously his seat shall become vacant. In Article 75(5) the wording used is the same in the matter of cesser of office. This is Article 75(5).

"A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister."

So the three Articles.....

SHRI MULKA GOVINDA REDDY : The entire Article should be read.

SHRI P. GOVINDA MENON : The three Articles are provisions in the Constitution in *pari materia*, that is to say, with respect to the Speaker, the Deputy Speaker and the Deputy Chairman. They are to be Members of the House, and as soon as they cease to be members of the House, automatically they cease to hold office. That is the positive provision of the Constitution. Now the same thing is taken over to Article 75 (5) where it is said—

"A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister."

Now, in order to make matters clear, there is another Article in the Constitution, Article 88, which says—

"Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote."

So, after having provided in Article 75(5) that continuous absence of membership of either House will end in the cesser of office, it is still provided by way of abundant

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caution that they can enter the Houses and address the Houses but not vote. That is the provision. Now, in this case, so far as Dr. Phulrenu Guha is concerned, she is in my Ministry. As soon as her term was over she sent a letter of resignation. I presume that is the case with the others also. Now, on getting the letter of resignation, the Prime Minister wrote back to the Minister saying, "I have received your letter of resignation"... *(Interruptions)* "I have received your resignation letter", this is the Prime Minister's reply,...

SHRI T.V. ANANDAN (Tamil Nadu) : Is it the assumption of the Law Minister, or is it a fact?

SHRI ANANT PRASAD SHARMA (Bihar) : He is stating a fact.

MR. DEPUTY CHAIRMAN : He has said so.

SHRI P. GOVINDA MENON : I have seen the letter from the Prime Minister. We know the Prime Minister has said, "I have got your letter of resignation. Please continue for a few days until I"...

(Interruptions)

MR. DEPUTY CHAIRMAN : Order, order.

SHRI P. GOVINDA MENON : I refer to this because very many of my esteemed friends raised the question of propriety political morality, etc. I thought that what is constitutionally permissible is politically appropriate.

SHRI RAJNARAIN : No, no.

SHRI P. GOVINDA MENON : This is what I feel.

SHRI MAHAVIR TYAGI : In that case may I put one question ? Suppose the Prime Minister and her Cabinet colleagues are all defeated in the General Elections, can they still continue as Members of the Government for six months?

SHRI P. GOVINDA MENON : I am not here to reply to such hypothetical questions.

SHRI AKBAR ALI KHAN : A bad analogy.

(Interruptions)

SHRI NIREN GHOSH : You did it in 1952 when you brought in Mr. Chakravarti Rajagopalachari from somewhere—he was a member of neither House—and appointed him to head the Government. So, Mr. Mahavir Tyagi, your memory seems to have failed you. You seem to have forgotten what you have done.

MR. DEPUTY CHAIRMAN : Order, please.

SHRI P. GOVINDA MENON : What I am submitting is that under Article 75(3) of the Constitution the cesser of office takes place at the end of six months, whereas under the other two Articles, Articles 90 and 94, the cesser of office is simultaneous and automatic. Now, I am not a Member of this House and yet I am addressing this House by virtue of Article 88. Now I do not know why we in this House should raise these questions. I do not think it is advisable either that we should raise these questions. After all there is only one day more left for the Rajya Sabha to sit.

SHRI MAHAVIR TYAGI : Why did you not explain this earlier?

SHRI P. GOVINDA MENON : I cannot get into the gun and shoot; I can do only after your shootings are all over. *(Interruptions)* Now my submission is all that the Prime Minister has done after taking the resignation letters from them is to ask them to continue....

SHRI M. M. DHARIA : The question is only of one day.

SHRI P. GOVINDA MENON : I do not say that. The question of their appearing in the Rajya Sabha arises only for one day.

SHRI KRISHAN KANT : What about the Lok Sabha.

SHRI P. GOVINDA MENON : We will take it up there.

The Prime Minister, after hearing that there is some discontent among certain Members over this matter, got the opinion of the Attorney-General also—I understand that one of you here wanted the Attorney-General's opinion—and the original of the Attorney-General's opinion, I have handed over to the Secretary of the Lok

Sabha. For your reference I will give you a copy of the opinion of the Attorney-General.

SHRI MAHAVIR TYAGI : Does he justify this?

SHRI P. GOVINDA MENON : Yes.

SHRI MULKA GOVINDA REDDY : He has sent it to the Chair without reading it out. We are in the dark. We do not know what the opinion of the Attorney-General is. Let him read it out.

SHRI P. GOVINDA MENON : I will read it out :

"The question which has been asked of me by the Prime Minister is as to whether a person who has been a Minister and at the same time a member of the Rajya Sabha but has ceased to be a member of the Rajya Sabha can continue to be a Minister under the Constitution."

So the Prime Minister wanted to see that she does not do anything which is prohibited by the Constitution.

SHRI S. N. MISHRA : When was the opinion asked, after she heard about the discontent amongst the Members?

SHRI P. GOVINDA MENON : Naturally it is elementary.

श्री राजनारायण : क्या तारीख है इसमें ।

SHRI P. GOVINDA MENON : 3rd April, 1970, the Attorney-General has signed it on 3rd April, 1970.

SHRI RAJNARAIN : At what time ?

SHRI P. GOVINDA MENON : The time is not here. It does not make any difference. The Prime Minister thought that she should get the opinion not only of me, her Law Minister but also of the Attorney-General because this is also a political issue.

SHRI PITAMBER DAS : Opinion to combat the wishes of the House?

SHRI MAHAVIR TYAGI : It would be better if she could have had the opinion of the House also.

SHRI P. GOVINDA MENON : It says here :

"The only relevant provision in the Constitution in this regard is Article 75(5), which is as follow :"

SHRI N. G. GORAY : (Maharashtra) : May I know what was the question ?

SHRI P. GOVINDA MENON : I read it out. I will read it once again. Let us get conversant with these things.

"The question which has been asked of me by the Prime Minister is as to whether a person who has been a Minister and at the same time a member of the Rajya Sabha but has ceased to be a member of the Rajya Sabha can continue to be a Minister under the Constitution."

Then it says :

"The only relevant provision in the Constitution in this regard is Article 75(5), which is as follows :

I am omitting it because all of you must have looked into it.

"The above provision seems to be clear. The basic idea behind this provision is that a person, who is a Minister, shall cease to be a Minister if he is not a member of either House for a period of six consecutive months. From this it follows that a person who becomes a Minister but at the same time is not a member of either House will cease to be Minister if he does not become a member of either House within six months after he assumes office as Minister. From this it would further follow that if after a period of six months he ceases to be a member of either House, the period of six months will again start from the date when he ceases to be a member of either House and he will only cease to be Minister if he is not a member of either House at the expiration of this period of six consecutive months.

This being the position, a Minister who has ceased to be a member of the Rajya Sabha on 2nd April, 1970 can, in my view, continue to be Minister for a period of six consecutive months but no more without being a member of either House. It would not be necessary for him to resign and then take a fresh oath and thereafter be a Minister."

I would be happy if this House which is referred to often as the House of Elders, Upper House, Rajya Sabha, would catch the spirit of the Constitution underlying

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these three different articles. If something in the Constitution is not to my liking or your liking or a third person's liking, I should have thought when such questions are taken up the matter would be looked into with an amount of seriousness. I pointed out that these three articles deal with the ceasing of office because somebody said that 75(5) is intended only to enable the Prime Minister to appoint somebody who is not a member of the House, but if you read article 75(5) you will see that this is not the way in which it is put. It is put in this way that for six months he or she can continue in office and on the expiry of the period of six months...

AN HON. MEMBER : Despite their defeat?

SHRI MAHAVIR TYAGI : Then would it be legal if the whole Government gets defeated in the general election and they continue for six months?

(Interruptions)

SHRI C. D. PANDE : Have you got any single case within the last twenty years when such a thing has happened where an unseated member remains as Minister? Is there a single case?

SHRI P. GOVINDA MENON : Yes, there is. I will enlighten Mr. Pande on this matter. When the Upper House in West Bengal was abolished...

SHRI C. D. PANDE : That is Bengal.

SHRI P. GOVINDA MENON : I am in India. When Parliament by legislation abolished the Upper House in West Bengal there were at least three or four Ministers who were members of the Upper House there.

SHRI LOKANATH MISRA : At this rate some day we will not be surprised if he quotes the example of the Trivandrum Municipality to us.

SHRI P. GOVINDA MENON : If my hon. friend Mr. Misra compares the West Bengal Assembly...

SHRI LOKANATH MISRA : I do not compare.

SHRI P. GOVINDA MENON : Then please don't refer to it.

MR. DEPUTY CHAIRMAN: The West Bengal legislature is also governed by the Constitution.

SHRI KRISHAN KANT : Are we to follow what West Bengal has done or are they to follow us.

SHRI P. GOVINDA MENON : What I am referring to is this.

SHRI MAHAVIR TYAGI : Could you not convey to the Prime Minister the feeling of this House in this respect? Will you please convey to the Prime Minister the feelings of this House on this matter?

SHRI P. GOVINDA MENON: Certainly, I will. The elucidation which Mr. Pande wanted was this. On the recommendation of the Government of West Bengal I moved a Bill by which the Upper House in West Bengal was abolished. At that time there were in the Government of West Bengal three or four Ministers who were members of the Upper House and they did not immediately cease to hold office. Because the West Bengal Government was a UF Government it does not follow that the analogy there will not be applicable to us. I would therefore...

SHRI M. M. DHARIA : Mr. Deputy Chairman, Sir, the hon. Minister is evading the issue. And in this matter...

(Interruptions)

SHRI B. V. ABDULLAH KOYA (Kerala) : Unless Mr. Dharia is on a point of order we are not going to hear him.

SHRI M.M. DHARIA : Sir, I am on a point of order.

MR. DEPUTY CHAIRMAN : No point of order now; let him finish.

SHRI P. GOVINDA MENON : Sir, I have not much more to add. I pointed out that so far as the Central Government and the Central Parliament is concerned there are three Articles, 90, 94 and 75(5). Whereas in the case of the Speaker, Deputy Speaker and the Deputy Chairman, they cease to hold office immediately with respect to Minister it is said he will cease to hold office after the expiry of six months. Please note that these three different articles are what lawyers would say are articles in *pari materia*, that is, more or less the same. We have our own notions that article 75(5) is intended to enable the Prime Minister to appoint somebody who is not a member of the House as Minister on the understanding that he or she would get elected within six months but that is not the way in which the article has been couched.

SHRI C. D. PANDE : What is the spirit?

SHRI P. GOVINDA MENON : The provision in article 75(5) is a Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

This being so, I would very respectfully request my friends in this House to drop this matter. After all so far as this House is concerned, whether he or she can come to the House, it is only for a day and from the letter of the Prime Minister to Dr. Phulrenu Guha I was able to gather that she is going to appoint another Minister and wants some time for it.

SHRI K. K. SHAH : I want to beg of the House...

SHRI PITAMBER DAS : I would like to be enlightened by the hon. Law Minister...

SHRI K. K. SHAH : I am also a lawyer, if you will permit me.

SHRI M. M. DHARIA : The Law Minister said something and I had to rise on a point of order. My question is, what has the hon. Minister to say regarding the decorum of democracy and what has he to say regarding conventions in democracy? It is nowhere stated in the Constitution that the hon. Minister should resign.

MR. DEPUTY CHAIRMAN : I think the Leader of the House will enlighten you on the point.

SHRI M. M. DHARIA : He has only mentioned the legal and constitutional aspects of the question involved.

MR. DEPUTY CHAIRMAN : If you want elucidation on that point, the Leader of the House will give it.

SHRI PITAMBER DAS : I seek clarification from the Law Minister. The hon. Law Minister has used the word 'assumes'. He says that he or she can continue in office till six months after he or she assumes office. The word 'assumes' is very significant. I want to know how does he explain this word 'assumes' because 'assumes' presupposes a beginning of the tenure of Ministership and not the continuance of it.

SHRI P. GOVINDA MENON : With respect to article 75(5) I did not use the word 'assumes'. If I have, it is a mistake.

SHRI PITAMBER DAS : We can look into the record. Truth has inadvertently come out. The word 'assumes' has been used not once, but thrice.

SHRI P. GOVINDA MENON : As regards that word, I said that I have seen the letter addressed by the Prime Minister to Dr. Phulrenu Guha. With respect to the other two, I have not seen the letter and I said that I assume that that is the way in which their case has been dealt with.

SHRI PITAMBER DAS : Six months have to be counted from the day he or she assumes office.

SHRI P. GOVINDA MENON : No, no.

श्री राजनारायण : श्रीमन्, एक स्पष्टीकरण मैं भी चाहता हूँ। मैं कानून मंत्री जी से यह जानना चाहता हूँ कि क्या इस संविधान के अन्दर यह बात भी सन्निहित है कि कोई भी व्यक्ति बिना किसी सदन का सदस्य रहते हुए यदि चाहे तो जीवन-पर्यन्त कैबिनेट का मेम्बर रह सकता है? यह प्रश्न बड़ा वेलिड है।

श्री उपसभापति : ठीक है, वे जवाब दे देंगे।

श्री राजनारायण : धबड़ाइए मत। यह ला पाइन्ट है, इस पर कानून के पंडितों को विचार करना पड़ेगा, जैसा कि बिहार में विचार हुआ। श्री बिन्देश्वरी प्रसाद मंडल 6 महीने तक कैबिनेट में रहे। जब हमने टिकट नहीं दिया तो कांग्रेस के लोग उनको प्रलोभन देने लगे कि हम तुम को ही चीफ मिनिस्टर मान लेंगे। तब बड़ा भारी कांस्टीट्यूशनल पाइन्ट उठ गया कि क्या यही मंत्री अब मुख्य मंत्री हो सकता है बिना किसी सदन का सदस्य हुए। एटार्नी जनरल का इन्होंने नाम लिया। हमने श्री सीतलवाड साहब की ओपीनियन ली। सीतलवाड साहब की लिखित ओपीनियन हमारे पास है। उन्होंने

[श्री राजनारायण]

कहा हरगिज नहीं और उसको हमने अखबारों में छपवा दिया। तो एटार्नी जनरल की इस समय जो ओपीनियन है मैं समझता हूँ कि सीतलवाड की ओपीनियन उसकी उलटी है। अगर हम इनकी बात मान लें, जो इन्होंने अभी कही है तो एक मंत्री मान लीजिए हट गया, एक दिन के बाद फिर एपाइन्ट हो गया, 6 महीने रहा फिर हट गया एक दिन के लिए, फिर एपाइन्ट हो गया, यह बराबर चलता चला जायगा। इसलिए माननीय कानून मंत्री जी संविधान का जो अर्थ लगा रहे हैं केवल वही अर्थ नहीं है, इसको अच्छी तरह से विचार करें। कानून के पंडितों की दो राय हो सकती हैं। मिश्र जी का पाइन्ट अपनी जगह पर था

श्री उपसभापति : आपको क्लेरीफिकेशन चाहिए, क्लेरीफिकेशन पूछ लीजिए।

श्री राजनारायण : हमारा क्लेरीफिकेशन यही था कि क्या सरकार इस बात को मानती है कि संविधान यह अधिकृत करता है कि कोई व्यक्ति एक-एक, दो-दो दिन के लिए हट कर 6-6 महीने की अवधि लगाता हुआ जीवन-पर्यन्त मंत्रिमंडल का सदस्य रह सकता है ? अगर माननीय मंत्री जी का दिमाग साफ नहीं हुआ तो काहे को बहस कर रहे हैं, सीधे इस सदन की ओपीनियन को प्रधान मंत्री को जाकर दें कि फोरन उनको अविलम्ब ...

श्री उपसभापति : पहले ही कह दिया है कि सदन की राय प्राइम मिनिस्टर को बतला देंगे।

श्री महावीर त्यागी : देखिए, हमारा सदन इसको एप्रूव नहीं करता, यह बात कनवे कर दी जायगी ?

SHRI K. K. SHAH : Sir, I am beholden to this House. Even on inconvenient occasions this House has been patient enough to listen to inconvenient arguments. Even if my argument is inconvenient I

hope the House, in their wisdom, will be good enough to listen. Article 75(5) says :—

“A Minister who for any period of six consecutive months is not a member....”

The word is ‘Minister’. The word is not ‘Member’. The word is ‘Minister’. That means, the man who is already a Minister, if he does not become a Member of either House. Then, it says :—

“....who for any period of six consecutive months is not a member of either House of Parliament....”

This applies to a man who is already not a member. (Interruptions). I request you and Lokanathji to listen. Even inconvenient arguments have to be heard. I request also the Leader of the Opposition. It may be my turn today. It may be somebody else's turn tomorrow. This would last not only for our life, but it would last for generations. It may be inconvenient for you today and it may be inconvenient tomorrow for somebody else. It may be inconvenient to this Government, but it may be convenient to some other State Government. So, it applies to all and in your wisdom I would request you....

SHRI NIREN GHOSH : He speaks on the legal position of all Governments in India, but he should speak on the subject.

MR. DEPUTY CHAIRMAN : Order, order.

SHRI K. K. SHAH : Now, the wording is:—

“A Minister who for any period of six months....”

Therefore, he is already a Minister. The man who is already a Minister will cease to be after six months. That means, he is not obliged to resign. In their wisdom the Constitution-makers have made a provision saying ‘a Minister’. It does not apply to anybody else.

The wording starts with the word “Minister”. How is it a question of presumption? I would appeal....

SHRI RAJNARAIN : Tell me how he becomes a Minister.

SHRI K. K. SHAH : I will point out. That is why I appeal to the House that there are two points. Firstly, there is the legal point. On the legal point what is the opinion of the House? Suppose a Minister ceases to be a Minister and he does not resign, what can you do? I am posing questions to you and this will be for all time to come.

SHRI M. M. DHARIA : If a Minister is defeated, he could be dismissed.

SHRI K. K. SHAH : As a lawyer, Mr. Dharia, I think, would extend courtesy to the other lawyer, you have appeared in court. Therefore, it raises a number of questions. Once the wording starts like "a Minister shall cease to be", what would you do if he does not resign? Can he continue for six months or not? He can, certainly. The important point is that a Minister legally can continue for six months. Are we discussing the discretion of the President or the discretion given in the Constitution? Can we take it as a moral issue and say that on moral grounds the constitutional provision should not be implemented? Just as a right is given to a Member or a right is given to an ordinary person, a right is given to a Minister; are you taking away that right given under the Constitution?

SHRI T. CHENGALVAROYAN : May I ask you one question?

SHRI K. K. SHAH : Just wait. A right is given under the Constitution, and can you on moral basis say that this is not moral and take away the right which is given under the Constitution? Of course as I have said, the purport of the discussion I am going to convey to the Prime Minister. That apart, the most important point is, I would beg of the House, when you have argued a point, after hearing the other side you always rethink, and I would beg of the Members of the House to take this question in the light of the points that I have presented. I am sure they will go home and reconsider.

SHRI T. CHENGALVAROYAN : I want a clarification. Accepting the learned argument of the Leader of the House that article 75(5) relates to cessation of office of a Minister, may I most respectfully ask him when a person becomes a Minister? Is it not after appointment by the President under article 75(1)? Article

75(5) applies to a case of a Minister duly appointed under 75(1). There is no appointment here. He can continue for six months only after his appointment.

SHRI SUNDAR SINGH BHANDARI (Rajasthan) : All appointments cease after he ceases to be a Member.

SHRI S. N. MISHRA : Mr. Deputy Chairman, may I sum up the position as it has emerged after the interventions of the two hon. Ministers? I must first refer to the hon. Leader of the House who had elevated it to the status of a right of a Minister to continue, although he or she had been defeated or rejected. This is most preposterous, and I must say that it does not behove the hon. Leader of the House to take a position of that kind.

SHRI K. K. SHAH : It does not behove you to say that I stick to my position. You stick to your position.

SHRI S. N. MISHRA : May I submit—the hon. Home Minister unfortunately has gone away from the House—that in the case of Shri B. P. Mandal in Bihar the hon. Home Minister is on record that he disapproved of his being appointed as the Chief Minister of Bihar? He is on record. I really do not know whether Government can take up contradictory positions of that kind and yet try to carry the House with them. They simply cannot do that. I know that many hon. Members would find it difficult to take as strong a line as we do in this matter when it comes to the final showdown. I know that, but even so may I say that the hon. Law Minister, I am constrained to remark this, must not show the kind of obsequiousness and servility even to the Government in the matter of interpretation of the Constitution and the law? Mr. Deputy Chairman, my throat is a little bad today, but I must say the hon. Law Minister has been brought up in the same tradition in which we have been brought up, and yet I find him a completely transformed person. He does not have any concern for values and I am reminded of what Mr. Wilson said....

SHRI ANANT PRASAD SHARMA : Sir, I am rising on a point of order. My point of order is, are the proceedings of the House and the governance of the country

[Shri Anant Prasad Sharma]

governed according to the Constitution and the laws laid down by Parliament or not? I want an answer on this question of morality. What is morality? Morality has not been defined. Morality is something for some and something else for others. When that is so, I do not understand how they want to try to justify some morals for themselves and different morals for others.

SHRI S. N. MISHRA : I was submitting that everything in the world to my mind exists on the basis of a moral law. That system which lacks moral law is bound to collapse, is bound to disappear. About that there will be no doubt. I was referring to what Mr. Wilson, when he happened to be the Leader of the Opposition in the House of Commons, said about Mr. Macmillan's Government : "This Government does not have any concern for moral values. The only thing that weighs with the Government is whether they can get away with whatever they are doing, the most atrocious things they are doing". This is a matter on which I would like the attention of the House to be concentrated. What the hon. Law Minister was pleased to say astonished me completely. He was trying to make, as they say in England, the cow and the cucumber. When he referred to articles 90 and 94, they refer to elective posts. Even if it is not mentioned in the Constitution, nobody in the world can give them the right when it comes to an elective post, because it is only by virtue of being a Member that he or she is elected to that post. This is one of the shining examples of the brilliance and intelligence of the Law Minister that he has tried to mix two things which do not mix. This is a shining example of his legal acumen. Now, Sir, it has fallen from the lips of the hon. Law Minister that the Prime Minister took up the position that I have mentioned earlier in my observations, and it is the Prime Minister who is primarily responsible for the serious violation of the Constitution. And the hon. Law Minister has confirmed it that the Prime Minister has asked them to continue. Now, this Prime Minister, to my mind, is bound to go in the history of India as the executioner of parliamentary democracy and this is

something of which the Government must not be proud.

Now, Sir, I must say that whatever they have said has not improved the position that the Government has taken. We cannot take any favourable view of that. And now I am constrained to remark that. I will have to come forward with a formal motion unless we get an assurance here and now.

AN HON. MEMBER : No, no.

SHRI S. N. MISHRA : ...that their Ministership is terminated—and it is at the instance of the Prime Minister that somebody comes here and tells the House—otherwise we will come forward with a formal motion. Whatever be the motion, that motion we will have to give. That is the principle on which we are bound to take the decision.

MR. DEPUTY CHAIRMAN : I think...

SHRI S. N. MISHRA : Otherwise, I will seek your permission to move the motion. You can rule it out. But then I make a motion.

MR. DEPUTY CHAIRMAN : I am not giving you any permission for any motion.

SHRI S. N. MISHRA : This is my right.

MR. DEPUTY CHAIRMAN : I am not giving any permission to move it. If he wants to move it, he can do so according to the Rules of Procedure. Today he cannot move; he can do so tomorrow; but under the Rules of Procedure, I am not giving any permission for any kind of motion at present.

SHRI S. N. MISHRA : Firstly, please hear me. Now, my motion would be something like this.

MR. DEPUTY CHAIRMAN : I am not allowing any motion.

SHRI S. N. MISHRA : The other day, the hon. Mr. Rajnarain had moved a motion which ultimately was adopted by the House. I will defend with the skin of my teeth the right of a Member to move a motion during the proceedings of the House, when the House is sitting, at any time.

MR. DEPUTY CHAIRMAN : With the permission of the Chair you can do. We allowed Mr. Rajnarain to move the motion....

(Interruptions)

SHRI MAHAVIR TYAGI : Suppose the majority of the Members are adamant and they want to have the motion, how can you stop them?

MR. DEPUTY CHAIRMAN : Not today, but after adopting the proper Rules of procedure.

श्री राजनारायण : यह तो ठीक है मगर श्रीमन्, एक मोशन होता है और चेयर कहता है कि हम इसको एलाऊ नहीं करेंगे और फिर भी सदन कहता है कि मोशन हो तो वह चेयर में अविश्वास का प्रस्ताव है।

श्री उपसभापति : नहीं।

श्री राजनारायण : बिल्कुल सही है, यही कांस्टीट्यूशन है, यह बिल्कुल कांस्टीट्यूशनल है। मोशन को आप इन्कार नहीं कर सकते।

श्री उपसभापति : रूल के मुताबिक मोशन दीजिए, मोशन का नोटिस दीजिए तब उसके बाद होगा।

श्री राजनारायण : आप उसको रोक नहीं सकते।

SHRI MULKA GOVINDA REDDY : Sir, may I say in regard to this....

SHRI S. N. MISHRA : Half a second.

That would solve the problem. If you rule out the motion, as I said, the other day....

MR. DEPUTY CHAIRMAN : No question of it. I am not giving permission. The question of giving permission does not arise; I am not giving permission.

SHRI MULKA GOVINDA REDDY : Sir, the Leader of the House has assured us that he is going to convey the consensus....

MR. DEPUTY CHAIRMAN : He has already said that.

SHRI MULKA GOVINDA

....and we hope that the Prime Minister will act on that advice and she will see that all these three Ministers are relieved of their positions today. And if she does not, then we will move a proper motion.

MR. DEPUTY CHAIRMAN : You are at liberty to do anything tomorrow if you want. There are the Rules of Procedure and you may take any action under the Rules of Procedure...(Interruptions) Order, please.

श्री राजनारायण : श्रीमन्, हमारा एक व्यवस्था का सवाल है। जरा आप इस पर अपनी व्यवस्था देते समय सोचें। मान लीजिए कि इस सदन के सम्मानित सदस्य समझते हैं, बहुमत से चाहते हैं कि एक मोशन हो और चेयर पर जो व्यक्ति बैठा है वह कह कि मैं एलाऊ करूंगा तो होगा क्या?

श्री उपसभापति : इसमें हाऊस की मेजरिटी का सवाल नहीं होता है, जहां पर यह होता है वहां वह चेयर की परमिशन से होता है।

श्री राजनारायण : देखिये यह सदन अपना स्वयं मास्टर है, यह सदन आपको चुनता है।

श्री उपसभापति : सदन रूल के मुताबिक चलता है।

श्री राजनारायण : देखिये जहां कांस्टीट्यूशन और सांविधानिक व्यवस्था का सवाल है उसके लिए मैं नहीं कहता।

श्री उपसभापति : आर्डर, आर्डर। इसमें कोई पवाइंट आफ आर्डर नहीं है।

श्री राजनारायण : जरा सुनिये। मैं चाहता हूँ कि जरा साधु बुद्धि से हमारी बात को सुनें। कोई ऐसी स्थिति किसी समय में आ जाये जब कि यह सदन चाहे कि इस ढंग का प्रस्ताव हो और चेयर यह कह कि मैं इसकी इजाजत नहीं दूंगा तो उस समय क्या स्थिति उत्पन्न होगी, जरा इसको सोचें।

[श्री राजनारायण]

इसलिए अनावश्यक ढंग पर यह कहना कि हम इसको एलाऊ नहीं करेंगे, इजाजत नहीं देंगे, यह उचित नहीं है।

अब सीधी सी बात यह है जैसा कि हमारे मित्र मुल्क गोविन्द रेड्डी ने कहा, अगर नेता सदन इस बात को कहते हैं, सरकार की ओर से यह आश्वासन होता है, कि सदन की भावना को प्रधान मंत्री साहिबा के पास ले जायेंगे और वह सदस्य जो कि आज मंत्रिमंडल में हैं हमारे सदन में कल से नहीं आयेंगे तो हम मामला टाल सकते हैं, आज नहीं कल इसको कर सकते हैं, वह माना जा सकता है लेकिन चेयर के इस अधिकार को मैं मानने को तैयार नहीं हूँ कि अगर सदन चाहे तो भी चेयर कहे कि हम इस मोशन को नहीं आने देंगे। यह असंगत बात है।

SHRI M. M. DHARIA : Mr. Deputy Chairman, Sir, the hon. Leader of the House has assured that he would convey the feelings of the House to the Government. I am sorry to say that both the Law Minister and the hon. Leader of the House have bypassed conveniently the decorum that is required for democracy. It is not only a question of the Constitution....

MR. DEPUTY CHAIRMAN : You have raised all this.

SHRI M. M. DHARIA : It is also a question of convention, and in this country we shall have to establish good conventions, healthy conventions. The Government is failing in this, in establishing them. That I shall have to say. I am sure the hon. Leader of the House will convey this, and the Government will rectify its own mistakes.

MR. DEPUTY CHAIRMAN : All right. Very good....

SHRI S. N. MISHRA : Sir, I was on my legs and in the meantime I was interrupted.

SHRI PITAMBER DAS : After hearing Mr. Mulka Govinda Reddy and Mr. Rajnarain I also feel that when the House has expressed itself, these feelings should

be conveyed to the Prime Minister. We should give her an opportunity to respond to these feelings. So far as the question of moving the motion is concerned, it can be done tomorrow or even the day after. I think, let us give her a reasonable opportunity to respond to the feelings of the Members of the House. I would appeal to Mr. Mishra not to press moving of his motion today.

SHRI S. N. MISHRA : Then, if the understanding of some of my honourable colleagues here is that the opinion of the House has been almost of a unanimous nature.... (Interruptions) There has not been any division.

SOME HON. MEMBERS : No, no.

SHRI S. N. MISHRA : Please, please. It had been almost of a unanimous nature....

SOME HON. MEMBERS : No, no.

AN HON. MEMBER : Why do you say so?

SHRI PITAMBER DAS : Why don't you see the light of the day ?

श्री राजनारायण : वह लोग कभी उजाला नहीं देखेंगे।

MR. DEPUTY CHAIRMAN : Order, order. Please keep quite. Order, please.

SHRI S. N. MISHRA : The tremendous opinion expressed in this House is bound to have its impact on the Government, and the membership of the three honourable Ministers in the Council of Ministers should be terminated. They continue to be honourable, although they have been made dishonourable by the Prime Minister; they have been made dishonourable by the Prime Minister, not on their own. They are honourable persons because they submitted their resignations. But here is a Prime Minister, the leader of the team, who has made them dishonourable. Therefore, these three honourable Ministers, Dr. Chandrasekhar, Dr. Shrimati Phulrenu Guha and Shrimati Jahanara Jaipal Singh—their membership of the Council of Ministers should be terminated forthwith in consonance with the wishes expressed in this House. Then in deference

to the advice given by the hon. Shri Pitamber Das and Shri Mulka Govinda Reddy and also implied by the hon. friend, Shri Rajnarain, I would not move this just now, but I would keep this sword dangling. Otherwise, tomorrow I shall have to come forward with a formal motion. Let there be no doubt about it.

MR. DEPUTY CHAIRMAN : There are three aspects involved : One is factual, the other is constitutional and the third one is regarding political morality....

SHRI K. S. CHAVDA (Gujarat) : What about healthy conventions?

MR. DEPUTY CHAIRMAN : Please let me continue. Do not interrupt me. So far as the factual aspect is concerned, the three hon'ble Ministers cease to be Members of either House on the 2nd midnight. As mentioned by the hon'ble Minister, the hon'ble Ministers have tendered their resignation and their resignations have been forwarded to the hon'ble Prime Minister. It means that they have vindicated their position.

SHRI N. G. GORAY : He talked of only one Minister having tendered his resignation.

MR. DEPUTY CHAIRMAN : Perhaps he had personal information about only one Minister. But he has received the information that all the three have tendered their resignation. Only the hon'ble Prime Minister has asked them to continue in office for some more period. These are the facts.

So far as the Constitutional position is concerned, contradictory views have been expressed, and I think this is not the forum to discuss and decide the Constitutional aspects. There is another forum where you can decide the Constitutional matters.

So far as the political morality is concerned, I think that is a matter for the consideration of the Government. It has been pointed out by the hon'ble Law Minister and the Leader of the House that both of them will convey the feelings and the sentiments of the hon'ble Members....

SHRI MAHAVIR TYAGI : What are the feelings? Why do you not interpret?

MR. DEPUTY CHAIRMAN : That is on record. It is not a question of my interpretation. There is the whole proceedings of the House and the two hon'ble Ministers will bring these proceedings to the notice of the Prime Minister. I need not give my interpretation. Whatever has been said by the hon'ble Members, it is all on record, and I think the hon'ble Ministers will bring the record to the notice of the hon'ble Prime Minister. Therefore, the sentiments and feelings, or whatever the views expressed by the hon'ble Members, will be taken into consideration by the hon'ble Prime Minister. I have nothing more to add. It is already 5-23. The House stands adjourned till 11 A. M. tomorrow.

The House then adjourned at twenty-three minutes past five of the clock till 11 A. M. on Saturday, the 4th April, 1970.