

THE ADVOCATES (SECOND AMENDMENT) BILL, 1968

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND IN THE DEPARTMENT OF SOCIAL WELFARE (SHRI JAGANNATH RAO) : Mr. Deputy Chairman, I beg to move the following motion :—

"That this House concurs in that recommendation of the Lok Sabha that the Rajya Sabha do agree to leave being granted by the Lok Sabha to withdraw the Bill further to amend the Advocates, Act, 1961, which was passed by the Rajya Sabha on the 16th December, 1968 and laid on the Table of the Lok Sabha on the 18th February, 1969."

The question was proposed.

SHRI MULKA GOVINDA REDDY (Mysore) : Sir, before we agree for withdrawal of this Bill, I would like to say that the Government has bungled and Government has wasted the precious time of the House and public money. Whenever they bring forward legislation, they should have thought properly and they should have brought the proper legislation. They make all hasty legislation and then they suffer for that. This is not the way Government should function. We must censure the Government for this lapse.

SHRI GODEY MURAHARI (Uttar Pradesh) : It is not only the Advocates Bill. It is also the Telegraph Bill, the Bill which is supposed to come. It is actually an attack on the fundamental rights of the people. The section should have been omitted altogether, but they are trying to bring a modification of it which is worse than the original section. Therefore, the Government should first think about these Bills and have proper counsel and then come before the House, and not waste the time of the House with such Bills.

SHRI A. D. MANI (Madhya Pradesh) : I would like to make a submission. The hon. Minister has moved the motion. He has not said a word as to why he wants withdrawal of the Bill. He should make a statement. This Bill was considered in this House. Are we a rubber-stamp House? We have got a right to know why that is so.

SHRI JAGANNATH RAO : The statement was distributed last week to hon. Members. There was no bungling or lapse on the part of the Government. The Bill was introduced and passed in this House. Then it went to Lok Sabha. The Lok Sabha referred it to a Select Committee. Then it went to the Select Committee. Before the Select Committee some amendments were suggested which could not strictly fall within the purview of the Amendment Bill. My predecessor, late Govind Menon, made a statement...

SHRI A. D. MANI : we want to know this. This House has passed the Bill. He says some amendments were moved. He is not saying what are those amendments. There are many advocates in this House and they are entitled to know what they are.

SHRI JAGANNATH RAO : Within the rules of procedure those amendments could not be taken up. They do not come within the ambit of the Amendment Bill. Therefore, the late Law Minister, Mr. Govinda Menon, made a commitment that he would withdraw it and bring another Bill. One of the important amendments suggested was by the National Committee on Legal Aid. They proposed an amendment. Therefore, this is necessary.

श्री निरंजन वर्मा (मध्य प्रदेश) : श्रीमान्, मैं इस बात पर माननीय मंत्री जी का ध्यान दिलाना चाहता हूँ कि जिस समय यह बिल पहले पेश हुआ था, तो उस समय आपने यह कहा था कि अभी हमारे पास बहुत से अमेन्डमेंट आ रहे हैं और सम्भवतः आगे चल कर हम एक अच्छा एडवोकेट बिल ले आयें। उस वक्त यह बात आपके ध्यान में थी और यह समझते हुए भी आपने इतना समय सदन का लिया और लेने के बाद फिर उसी स्थान पर जा रहे हैं और फिर नये सिरे से एक बिल लाया जा रहा है। इस तरह से आपने इतना सदन का समय लिया, सदन का धन खर्च किया और किस तरह से इसका क्या उपयोग हुआ? आप को तो पहले ही इसको वापस ले लेना चाहिये था।

SHRI JAGANNATH RAO : All those amendments were in regard to the amending Bill. But still further amendments came. One of the important amendment was legal aid to the poor. That is an important amendment which should be brought, otherwise, it will take some more years. That is why I say this.

SHRI MAHAVIR TYAGI : This Bill was passed in the Rajya Sabha. It was passed because the Government wanted it. So, the Rajya Sabha obliged the Government. And after getting a commitment from the Rajya Sabha, it goes to the Lok Sabha. The Lok Sabha rejects it in a way and asks us to withdraw whatever we have done. Because the Ministers themselves are of the view that it should be withdrawn, it is only the name of the Lok Sabha used. Otherwise, factually speaking, it is the Government itself which wants to withdraw it and it asks us to withdraw from whatever commitment we have made already with regard to this Bill. I think the Government must express their regret or confess the mistake or the plunder which they have committed and the Minister must give some explanation before this House. Otherwise, this House cannot be at the beck and call of the Government—when they ask us to pass a Bill, we pass it and when they ask us to withdraw it, we shall withdraw it. This is not the way to treat the Rajya Sabha. Therefore, the Government must come forward with an apology or express their regrets and adduce the basis on which they want us to withdraw it. They committed a mistake in the beginning with a request to us to pass this Bill.

SHRI JAGANNATH RAO : There was no mistake or bungling, as I said. There is no question of apology.

MR. DEPUTY CHAIRMAN : The question is, how this Bill was allowed to be passed by the Rajya Sabha.

SHRI JAGANNATH RAO : It was passed by this House. When it went to the Lok Sabha it was referred to the Select Committee. Evidence was taken. And some more amendments were suggested. One important amendment was about legal aid to the poor. It was not included in the amending Bill. The difficulty is this. If we do not bring forward a comprehensive amending Bill, we cannot bring forward the other amendments which do not strictly fall

within the purview of the amending Bill. It will take two more years to get rid of this delay. Late Govinda Menon gave an assurance before the Committee that he would introduce a comprehensive Bill. I am introducing a Bill in the next week in the Lok Sabha and we shall refer it to the Joint Select Committee.

MR. DEPUTY CHAIRMAN : The assurance was given to the Select Committee...

SHRI MAHAVIR TYAGI : Government must express regret for the lapse on their part and should bring forward a Bill.

MR. DEPUTY CHAIRMAN : When the Bill has been passed by the Rajya Sabha, the Rajya Sabha expressed that it should have been passed by the Lok Sabha also.

As pointed by the hon. Minister, this Bill was referred to the Select Committee and the Select Committee suggested certain amendments and it was pointed out that it was no desirable...

DR. B. N. ANTANI (Gujarat) : Select of the Lok Sabha, not the Joint Committee.

MR. DEPUTY CHAIRMAN : When I say Select Committee, it means the Select Committee of the Lok Sabha and not the Joint Committee. And it has been mentioned by the hon. Minister that the then Law Minister, Mr. Govinda Menon, had given an assurance to the Committee that he would try to bring forward a comprehensive Bill before Parliament and get it passed. And in view of the assurance given to the Committee, I think now this Bill will have to be withdrawn before a new comprehensive Bill is introduced. And therefore the Government has come before both Houses of Parliament for leave to withdraw this Bill. In view of these facts and developments, let us not proceed with this controversy. Therefore I am putting this question before the House.

SHRI MAHAVIR TYAGI : They should not be given permission to withdraw the Bill because we already stand committed to the Bill. Therefore it is only after the new Bill is brought before us and the Government says to this House that this is to substitute that Bill,....

MR. DEPUTY CHAIRMAN : He has given an assurance that the new Bill will be introduced within a week.

SHRI MAHAVIR TYAGI : What is that Bill? We must know. We cannot act like individuals. We are the representatives of the States in the Rajya Sabha. We are taking a decision now. We cannot act as one single individual person. So, let us see what their new Bill is so that we can judge as to whether really it deserves their request or not.

SHRI JAGANNATH RAO : Unless the Bill is withdrawn, I cannot introduce the new Bill. I will distribute the new Bill and then introduce it.

SHRI MAHAVIR TYAGI : It is a question of the dignity of the House.

SHRI LAL K. ADVANI (Delhi) : It is a procedural point. This House has passed the Bill already. You might give a ruling on this.

MR. DEPUTY CHAIRMAN : What is your point, please?

SHRI LAL K. ADVANI : After having passed the Bill, it is no longer with us. I can understand the Select Committee of the other House submitting a Report which might be circulated here, on the basis of which a formal motion can be made here.

SHRI BHUPESH GUPTA (West Bengal) : Sir, will you kindly listen? It was settled by the Select Committee of one House only. That in itself is not a very encouraging fact apart from the merits of it. You are asking us to undo a thing which rightly or wrongly we passed and which the other House unilaterally, with the help of its own Select Committee, not, the Joint Select Committee, sought to undo. In such a situation what my friend, Mr. Tyagi, said holds substance. That is why I like him. He says that there is no other bill before us and he is asking us to go on the advice of the Select Committee of the other House. It is not fair. First of all, it is a reflection on our House. Secondly, it puts a premium what they unilaterally decided. Therefore, my suggestion is that instead of seeking permission now, let it be kept in abeyance. Let a draft Bill be got ready and brought before

the House. You can introduce it and ask the House to withdraw this Bill with the permission of the House.

THE LEADER OF THE OPPOSITION (SHRI S. N. MISHRA) : Let me make some submission in this regard. Probably the best course in the circumstances would be to come to the House with the recommendations of the Select Committee appointed by the other House.

SHRI A. D. MANI : Exactly. We will consider it.

SHRI S. N. MISHRA : We can then consider the recommendations made by the Select Committee of that House. But there is absolutely no question of withdrawing a Bill which we have passed in this House.

SHRI BHUPESH GUPTA : I think he has made a very constructive suggestion. If their Select Committee have made certain recommendations let us discuss those recommendations and on the basis of that decide rather than the Government acting as an Attorney. Therefore, the suggestion which Mr. Mishra has made is a good suggestion. Let the recommendations of that Select Committee be before us before we give permission to withdraw.

SHRI MAHAVIR TYAGI : It is a question of the dignity of the House. The Lok Sabha cannot dictate terms to this House. Only by mutual agreement we can take a decision. We cannot have a mandate from the Lok Sabha and like obedient servants withdraw a Bill which we passed. That is not possible.

MR. DEPUTY CHAIRMAN : Mr. Minister, have you anything to say in view of the points that have been made by the hon'ble Members?

SHRI JAGANNATH RAO : The report of the Select Committee of the Lok Sabha was laid on the Table of the House. I do not know if the report was not circulated.

Secondly, some amendments were suggested. They were outside the purview of this Bill. Hence another Bill is required. Now Unless permission is given to me to withdraw that Bill I cannot introduce a new Bill which is more comprehensive.

SHRI BHUPESH GUPTA : What does he say ? That Bill may be named in a proper way. But what are we asking ? The House should consider exactly why the Lok Sabha came to the conclusion that it should be treated in a manner in which the hon'ble Minister is trying to make out. Today in any case you do not press.

SHRI GODEY MURAHARI : Let the Minister come forward with a statement and also the recommendations of the Select Committee. Let the recommendations of the Select Committee be distributed to all the Members and then let him come forward with his statement as to why he wants the Bill to be withdrawn. Then let him ask for permission to withdraw. We shall then think about it.

SHRI JAGANNATH RAO : We have already circulated it.

SHRI A. D. MANI : On a point of order, Sir. This House is ignorant of what has happened in the other House, what suggestions were made and so on. I do not remember having received a copy of the report of the Select Committee of that House. Let him bring the report and place the difficulties before us. Then there will be a discussion. We spent three days on this Advocates Bill. You do not want us to waste our time in this House by agreeing to this proposal. He has not even made a speech. He wants us to withdraw a Bill that we have passed.

SHRI KRISHAN KANT (Haryana) : Sir, it is a very ridiculous position that this House passes a Bill, sends it to the Lok Sabha, they appoint a Select Committee and say, we do not want it. The Rajya Sabha cannot be taken lightly. We will not let this motion be passed to-day. As Mr. Murahari said, let the Minister come forward with an alternative Bill. Only then we shall allow this Bill to be withdrawn. I do not think non-withdrawal of this Bill prevents him in any way from introducing a new Bill with a different heading.

SHRI JAGANNATH RAO : The Bill is pending before the House and under the rules, I cannot introduce a new Bill. That is the difficulty. Otherwise, I would have done it.

SHRI A. D. MANI : Sir, you also spoke on this Bill when it was moved in this House.

SHRI BHUPESH GUPTA : Whether you have spoken or not, Sir, is immaterial. Now you are in the Chair and in the Chair people are neutral. Therefore, I say, the hon. Minister need not press this thing. Do you want to divide the House on this ?

SHRI JAGANNATH RAO : No, no. There is no question of any division.

MR. DEPUTY CHAIRMAN : The hon. Minister has tried to explain the position. So far as I understand from the Office, the relevant documents have been circulated to the hon. Members. I think they might have gone through the documents. A statement explaining why the hon. Minister wants to withdraw the Bill has also been circulated to the hon. Members. I think they should be satisfied with the explanation given.

SHRI MULKA GOVINDA REDDY : We are not satisfied.

SHRI GODEY MURAHARI : Sir, the Minister himself said that the amendments that he proposes to bring do not come under the purview of this Bill, and that is why he wants to withdraw the Bill. So, I do not understand why he cannot introduce a new Bill.

SHRI JAGANNATH RAO : Unless this is withdrawn, I cannot.

SHRI GODEY MURAHARI : Why not ?

SHRI KRISHAN KANT : The Minister should first bring an alternative Bill. (*Interruptions*)

MR. DEPUTY CHAIRMAN : Do you mean to say that the Minister will not introduce a new Bill after he withdraws this Bill? (*Interruptions*) I think you should not show such lack of faith in the hon. Minister.

SHRI KRISHAN KANT : Sir, that is not the question. He may introduce it after one year.

MR. DEPUTY CHAIRMAN : He says that within a week he is going to introduce it. He has given the assurance.

SHRI M. C. CHAGLA (Maharashtra) : Sir, this is not an ordinary point of order. It involves the dignity

and authority of this House. Now the usual practice is this—that is the constitutional practice—a Bill is passed by this House, it is sent to the other House. The powers of the other House are either to pass the Bill as passed by this House or amend it and send it back. Now they appoint a Select Committee of their own, on which we are not represented, and the Minister in his wisdom comes to the conclusion that the Bill should be withdrawn. We have had no official message from the Lok Sabha at all. As far as we are concerned, the Bill has been passed by us and it is for the Lok Sabha to decide what should happen to it.

MR. DEPUTY CHAIRMAN : May I clarify that point ?

We have received a Message. But we have also got one Rule in our Rules of Procedure. Now, supposing Lok Sabha passes a Bill and sends the Bill to Rajya Sabha and afterwards it is noticed that the Bill should be withdrawn. Then Rajya Sabha makes a motion that leave of the House to withdraw the Bill, be granted. Then we refer this matter to the Lok Sabha to get their concurrence, and if the Lok Sabha concurs with the view of the Rajya Sabha then only the Bill will be withdrawn. So that procedure is here. Similarly, in the Lok Sabha they have passed a motion asking for leave to withdraw the Bill and they have come to Rajya Sabha. They have sent the Message that Rajya Sabha should concur with their view that leave should be granted to the hon. Minister to withdraw the Bill. And once we concur with the recommendation of the Lok Sabha, then only the hon. Minister will be allowed to withdraw the Bill. So, I mean, when we have got that rule in the Rules of Procedure of Rajya Sabha, the Lok Sabha also should have such rule... (*Interruptions*)... It is rule No. 118 in our Rules of Procedure.

SHRI NIRANJAN VARMA : "At any stage of a Bill which is under discussion in the Council a motion that the debate on the Bill be adjourned may be moved with the consent of the Chairman."

MR. DEPUTY CHAIRMAN : Mr. Niranjan Varma, will you please read proviso to Rule 118 ?

SHRI NIRANJAN VARMA : Yes ; that we have.

AN HON. MEMBER : We want to have the Message of the Lok Sabha.

MR. DEPUTY CHAIRMAN : It is already there.

AN HON. MEMBER : We would like to hear that.

SHRI A. G. KULKARNI (Maharashtra) : Let us hear the Message.

MR. DEPUTY CHAIRMAN : I will read it for your information :

"I am directed to inform Rajya Sabha that Lok Sabha, at its sitting held on Tuesday, the 18th August, 1970, adopted the following motion in regard to the Advocates (Second Amendment) Bill, 1968 which was passed by Rajya Sabha on the 16th December, 1968 and laid on the Table of Lok Sabha on the 18th February, 1969 :—

MOTION

"That this House recommends to Rajya Sabha that Rajya Sabha do agree to leave being granted by this House to withdraw the Bill further to amend the Advocates Act, 1961, which was passed by Rajya Sabha on the 16th December, 1968 and laid on the Table of this House on the 18th February, 1969."

The above message was reported to the House on the 19th August, 1970. And apart from that, I think this has been reproduced in our Parliamentary Bulletin—Part I of Wednesday, the 19th August, 1970. It is item No. 5—Message from the Lok Sabha. It reads :

"Secretary reported a message from the Lok Sabha informing the Rajya Sabha..."

SHRI M. C. CHAGLA : Sir, the Bill was introduced here and passed by this House after full discussion. I do not understand why this new Bill should be introduced in the Lok Sabha and not in this House.

MR. DEPUTY CHAIRMAN : It has not been introduced there. The Bill has not been introduced there.

SHRI M. C. CHAGLA : It should be introduced here.

MR. DEPUTY CHAIRMAN : That is a different matter.

SHRI M. C. CHAGLA : What I am saying is it should be introduced here. The hon. Minister said that he will introduce the Bill in the Lok Sabha.

MR. DEPUTY CHAIRMAN : No, no. He has not said that. He said that he will introduce the Bill within a week.

SHRI JAGANNATH RAO : Sir, I have informed that I am going to introduce the Bill next week and refer it to a Joint Committee of the two Houses.

AN HON. MEMBER : If you ask us to withdraw something that we have passed, it is not good. Let us honour the passing of the Bill by this House.

SHRI JAGANNATH RAO : I am always prepared to preserve the honour of the House.

4 P.M.

SHRI A. D. MANI : Sir, on a point of order. Let the Bill be introduced next week and the old Bill be withdrawn.

श्री. निरंजन वर्मा : श्रीमान्, 117 के अन्तर्गत तब ही विद्वाल हो सकता है, जबकि अन्डर डिस्कसन हो । यह अन्डर डिस्कसन नहीं है, पास हो चुका है और इसीलिये 117 लागू नहीं हो सकती है ।

अब 118 जो आपने बतलाया, उसमें भी यह लिखा है "एट एनी स्टेज आफ दि बिल" । यह बात भी कुछ नहीं है और वह स्टेज सी समाप्त हो चुकी है; क्योंकि हमने बिल को पास कर दिया है ।

और इसका जो प्रोवाइजो बतला रहे हैं :

"Provided that where a Bill has been referred to a Select Committee of the Council . . ."

तो यह 'सेलेक्ट कमेटी आफ दि काउंसिल' के रूप में भी नहीं है । हमारी कोई सेलेक्ट कमेटी नहीं बनी ।

"... Joint Committee of the Houses, as the case may be, notice of any motion for the withdrawal of the Bill shall automatically stand referred..."

अब मैं दूसरे प्रोवाइजो की तरफ ध्यान आकषित कराना चाहता हूँ, जिसमें यह दिया हुआ है :

"Provided further that where a Bill has organised in the House and is pending before the Council . . ."

तो यह पैडिंग भी नहीं है और इसलिए विद्वाल करने का कोई अधिकार माननीय मंत्री जी को नहीं है और यह विद्वाल हो ही नहीं सकता है ।

SHRI BHUPESH GUPTA : I have something to say. You are referring to Rule 118. What is the scheme of Rule 118 ? It says—

"The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill, and if such leave is granted, no further motion shall be made with reference to the Bill :"

That applies to a Bill pending before. This question also does not arise here. Then you said the other thing—

"Provided that where a Bill has been referred to a Select Committee of the Council. . ."

This does not arise in this case.

"... or a Joint Committee of the Houses, as the case may be..."

This also does not arise here. Here it does not say, "... or a Select Committee of the other House". It only says, "a Joint Committee of the Houses".

"...notice of any motion for the withdrawal of the Bill shall automatically stand referred to the Committee and after the Committee has expressed its opinion in a Report to the Council, the motion shall be set down in the list of business :"

That also does not apply because it is not coming through any Joint Committee of the two Houses nor, of course, a Committee of this House. Therefore, it is absolutely inapplicable.

"Provided further that where a Bill has originated in the House and is pending before the Council..."

It does not say that "the Bill has been passed in the House and is pending before the Council".

"... the member in charge shall move a motion in the Council recommending to the House that the House do agree to leave being granted by the Council to withdraw the Bill and after the motion is adopted by the Council and concurred in by the House, the member in charge shall move for leave to withdraw the Bill."

That also was not correct and was inappropriate to bring in here—that is, if the House had appointed a Joint Committee and that Committee had recommended that the Bill should be referred for the withdrawal and so on. Therefore, if the Joint Committee had done it, the Minister could have come with that recommendation of the Joint Committee and could have invoked this particular proviso in order to make a recommendation for permission for withdrawal of the Bill. Having ignored the substantive provision under Rule 118, if you take cover under the third proviso, then also, it will be entirely wrong because the Bill is not pending before the House. What did we say? What message did we send to the Lok Sabha? We said the House has passed this Bill. We never said the Bill is pending before the House. A Bill which has been passed by this House can only come back with the recommendations of the other House by way of amendment or rejection or any other thing. But nothing of that kind has come. Therefore, a thing which has been passed in this House cannot for the convenience of the other House, be treated as if it is pending before the House. This must be their interpretation throwing the Rules to the wind. Therefore, I say that the Lok Sabha should be asked to read our Rules carefully and understand things better.

Anyhow, Sir, it is Lok Sabha's business. Here the Minister should not have come with this motion. Surprisingly, you were fascinated by the proviso which in this case does not apply because first of all the Bill has not gone to the Joint Select Committee. It is not pending. Have we got any Bill pending? I think it is entirely

improper and contrary to the rules of the House. Therefore, not only the permission to withdraw should be rejected, but the Government in good grace should accept the position. The matter ends there and we should proceed now. We will not allow the rules of the House to be violated for the convenience of the treasury benches.

SHRI M. RUTHNASWAMY (Tamil Nadu) : So far we have been listening to legal and procedural arguments. May I put forward a political argument? Every request for the withdrawal of a Bill or proposal for which the Government has made itself responsible is a confession of the incompetence of the Government in regard to the drafting of that Bill or that proposal. I should have thought that the Opposition welcomes such confessions of incompetence of the Government and allows such a proposal for withdrawal to be voted upon. After all it lies with the House whether to accept the proposal for withdrawal or to reject it. The proposal for withdrawal should be left to the decision of the House, without any debate.

SHRI JAGANNATH RAO : This Bill was pending in the Lok Sabha. I have made a motion for withdrawal. The rule applicable is rule 110 of the Lok Sabha Rules of Procedure which says that when the leave is given by the House to withdraw the Bill, a message should be communicated to the Rajya Sabha that Rajya Sabha do concur in the withdrawal...

SHRI A. D. MANI : May concur.

SHRI JAGANNATH RAO : That is the message.

AN HON. MEMBER : We will be guided by the Rajya Sabha rules.

SHRI JAGANNATH RAO : Rule 110 of the Lok Sabha Rules of Procedure is the same as rule 118 of the Rajya Sabha rules.

MR. DEPUTY CHAIRMAN : The hon. Minister has referred to Rule 110 of the Lok Sabha Rules of Procedure which is similar to Rule 118 of the Rajya Sabha Rules. What is the motion before the House? If the motion before the House had been that leave be granted to the Minister to withdraw the Bill, it would have been a different

[Mr. Deputy Chairman.]

question. But the motion before the House is one for concurrence with the Lok Sabha's recommendation that leave be granted to withdraw the Bill.

SHRI BHUPESH GUPTA : Under what rule we are asked to concur ?

MR. DEPUTY CHAIRMAN : Whenever a motion is passed by the Lok Sabha, it comes to us for concurrence. Now it is for the House to accept their recommendation or to reject it.

SHRI BHUPESH GUPTA : No recommendation from anywhere can come to this House in contravention or in disregard of our rules. Questions relating to the passage of a Bill in the two Houses of Parliament are settled by rules of both the Houses taken individually and collectively. Here, at the moment, we are concerned with the individual aspect of it, namely, the position of this House. We entertain motions or recommendations from the other House in accordance with the rules of this House. Can we be called upon to take note of their recommendation under their rules? That is what I am trying to impress upon. I am not questioning the Lok Sabha's right to send anything to you. Many people can send anything to you. You have to admit it and put it in the list of business and call upon the House to pronounce upon it according to the rules of this House.

You yourself were good enough to say that. Rule 118—I have read it out to you and I have interpreted the rule very clearly to show to Shri Chagla, the jurist sitting here—Rule 118, in this case, cannot be invoked to endorse this thing or give concurrence to it. Therefore, Sir, the matter has been improperly and wrongly included in the List of Business and the Minister is trying to press something *ultra vires* of the Rules of this House with a view to pressing certain points. Therefore, I say that the matter be kept pending here and in any case, he does not want, he says he does not want, a division.

We have to fight for the vindication of the rights of this House also. Now, it is a strange phenomenon that you are treating it as though it is pending. Concurrence on what? Concurrence with

regard to a pending Bill? No Bill is pending. On a resolution? From where, when they are not authorised to pass a resolution and refer it here? I could have understood if they had made some amendments and asked us to endorse. I could have understood if they had rejected it. All right, it is rejected by the Lok Sabha and so we accept the rejection. They could have brought another Bill. Nothing of this kind. There is an attempt to circumvent the provisions of this House. That we cannot allow. I think in this matter it is good to display a little vigilance. I do not know the merits of the amendments. But, vigilance of the House is necessary. So, I would appeal to the Government again and again not to press it. There is a time for them to get up and say, "Let the matter be held over. We shall think over it". The suggestion has been made by Shri Mishra. We fully endorse the suggestion. You bring the Bill and the other things together and it will be done. You cannot ask us to endorse a motion of the Lok Sabha. The action of the Lok Sabha is *ultra vires* insofar as it referred it to us. We are guided by our Rules and Rule 118 precludes us from even taking any notice of this motion coming to this House. So, Sir, let the matter end.

MR. DEPUTY CHAIRMAN : All right, all right.

SHRIMATI YASHODA REDDY : Sir, I entirely agree with Shri Bhupesh Gupta. We have no quarrel with Lok Sabha and its powers. But, once it tries to impose its authority on our House, I think we will have to counter it. Unless there is a corresponding Rule in our House, we cannot accept. . .

MR. DEPUTY CHAIRMAN : There are uniform rules.

SHRIMATI YASHODA REDDY : In future, Sir, when the Government gets into this embarrassing situation, let them come before our House and let them change the Rules of Procedure of the Rajya Sabha to suit the emergencies. But, under the present circumstances, certainly we shall not allow our authority to be flouted and be dictated to by the Lok Sabha. Let the

Government withdraw the present motion and then suspend the whole thing and I entirely endorse what Shri Bhupesh Gupta has said and we will not allow it.

MR. DEPUTY CHAIRMAN : Mr. Jagannath Rao, you can give your points to the hon. Members.

SHRI JAGANNATH RAO : To satisfy the Members, I have no objection to give notice of the amendments that are sought to be made in the new Bill which were not originally included in the Bill, which was pending before the Lok Sabha, because these amendments can be brought only by way of a new Bill. That was my anxiety. If the Members want it, certainly I can circulate in advance amendments which are sought to be included in the Bill.

SHRI BHUPESH GUPTA : We are not discussing it. We are discussing a matter of procedure. . .

(Inter-uptions)

SHRI JAGANNATH RAO : Sir, the procedure is, when the Bill is pending in the Lok Sabha, to seek leave for withdrawal and come to this House for concurrence. Now, that procedure has been adopted. I obtained the leave of the Lok Sabha and have come here for concurrence.

श्री निरंजन वर्मा : श्रीमान्, मैं यह निवेदन करूंगा कि कानून के साथ समझौता नहीं हो सकता। अभी मंत्री जी ने बताया कि जो माननीय अगोजीमान के सदस्य चाहेंगे, वह हम कर देंगे। मेरी धारणा यह है कि जब तक रूल्स में कोई इस प्रकार का प्राविधान न हो, जिसके अंतर्गत वह बिल को वापस ले सकते हों, तब तक इस राज्य सभा से पास किये हुए बिल को किसी भी तरह से लोक सभा की रिक्मेन्डेशन के साथ आने पर भी वापस नहीं किया जा सकता।

SHRI ARJUN ARORA (Uttar pradesh) : The legal and constitutional way out for the Minister is to withdraw his present motion first and then bring forward a Bill to repeal the measure already adopted by this House.

MR. DEPUTY CHAIRMAN : There can be repeal of Acts only. Unless a Bill is passed by both the Houses and given assent to by the President, there is no Act.

SHRI ARJUN ARORA : How can he withdraw a measure which has already been passed by this House? Repeal is the only method.

SHRI BHUPESH GUPTA : Therefore I demand a Joint Session of the two Houses. We have passed that measure and how do we withdraw that?

MR. DEPUTY CHAIRMAN : If we reject the motion, it will mean there is difference of opinion between the Rajya Sabha and the Lok Sabha.

SHRI MAHAVIR TYAGI : Before Mr. Chagla speaks I would like to say that according to the old conventions and the procedure, the only method of reviewing the Bill is, if there is some amendment made by the Lok Sabha, then it can be forwarded to us for reconsideration of that amendment. I can at the most accommodate the Minister if this withdrawal proposal is also categorised as a sort of amendment in our Bill. With that amendment you could come to us and we could either agree or disagree. If we disagree, then a Joint Session could be called. That would be better and according to the old convention also. Even the withdrawal might be treated as an amendment in a way but we must know what the exact proposal is but that is the only procedure.

SHRI M. C. CHAGLA : We are faced with a situation which rarely occurs in this House. Here is a Bill which has been passed solemnly by this House and the question is whether there is any provision in the Rules which permits the Government to come forward and say that they want to withdraw the Bill which this House has passed. There is nothing in these Rules so far as I can see which permits the Government to ask the House to withdraw the Bill which has already been passed and which has been sent on to the Lok Sabha. The Lok Sabha has two ways open to it, either to reject the Bill and it comes back to us or to amend the Bill and the amendment will come to us and the third is, as Mr. Bhupesh Gupta pointed out, to deal with it as a case

[Shri M. C. Chagla]

where the Bill has been passed by the House and is pending before us. There is no Bill pending before us. The first proviso does not apply. The second also does not apply and also the third does not apply. Therefore the Minister should study the Rules and satisfy us under which Rule he is asking the House for permission to withdraw a Bill which has been passed by us.

MR. DEPUTY CHAIRMAN : He is asking for permission to agree with the recommendation of the Lok Sabha. The motion is for concurrence with the recommendation of the Lok Sabha.

SHRI M. C. CHAGLA : We cannot concur in that.

SHRI AWADHESHWAR PRASAD SINHA (Bihar) : It is a fact that concurrence has been given by our House in the past.

SHRI BHUPESH GUPTA : You are not even looking at what is included in the List of Business which says :

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do agree to leave being granted by the Lok Sabha to withdraw the Bill . . .".

leave to whom? They may have the leave but we are asked to withdraw the Bill. Why? Here leave is being granted to the Lok Sabha to withdraw the Bill which was passed by the Rajya Sabha. Even that Motion says that we are giving Lok Sabha the permission to withdraw a Bill, which we had passed. Is this the way to deal with this matter? (Interruptions). You are very right. You have to kindly see it clearly. Is there any pending Bill before this House? That you have to see, and if you say there is a pending Bill before us, I can understand your proposition.

MR. DEPUTY CHAIRMAN : I say there is only one Motion pending before the House.

SHRI BHUPESH GUPTA : Therefore the question does not arise. I move my point of order now. There is no such list of business. The listing of this item under 'Legislative Business' in this List of Business is *ultra vires* the rules. This item of business you have included is

ultra vires the rules. (Interruptions). We cannot be asked to do whatever anybody likes. If Lok Sabha says, "Rajya Sabha Members, go on dancing", shall we start dancing here also? If Lok Sabha says, "Rajya Sabha Members, do concur in singing with us, we are singing in the other House", shall we also start singing here? Therefore, Sir, there is no provision for dancing or singing in this House. Even if the message comes from Lok Sabha, there is no provision for withdrawing a Bill in the House which this very House has passed. This is not such a simple thing that you think it is.

SHRI DEV DATT PURI (Haryana) : Sir, I would once again draw attention to Rule 118, to the second proviso thereof, which deals with a situation similar to this one, but in reverse. I shall just read out to you this rule.

MR. DEPUTY CHAIRMAN : It has been read out.

SHRI DEV DATT PURI : In this proviso, the word "House" pertains to Lok Sabha, and the word "Council" pertains to this House. That is why a lot of confusion has arisen. The word "House" in this proviso pertains to Lok Sabha.

"Provided further that where a Bill has originated in the House"—that is to say, in the Lok Sabha—"and is pending before the Council", . . .

What is happening now is that this Bill originated in the Council, and is pending before the House.

AN HON. MEMBER : No, it is not so. You are mistaken.

SHRI DEV DATT PURI : That is the exact situation.

"the member in charge shall move a motion in the Council" . . .

He has moved that motion in the House.

"recommending to the House that the House do agree to leave being granted by the Council to withdraw the Bill and after the motion is adopted by the Council and concurred in by the House, the member in charge shall move for leave to withdraw the Bill."

Now, Sir, what exactly has happened is that the Bill originated in the Council, then it went to the House, and at that stage when the Bill was pending before the House the member in charge of the Bill made a motion in the House that leave be granted to him to withdraw the Bill due to certain circumstances that had arisen in their own Select Committee, etc. etc. But the final act was that the member in charge of the Bill moved a motion in the House for leave to be granted to him to withdraw the Bill. That leave having been granted to him, the only course open to him is to come to this House now and to seek the concurrence of this House to the leave that has been granted by the other House to withdraw the Bill. This really is the working of the second proviso to Rule 118 except that it works in the reverse. It is true that the Proviso is not comprehensive and so is being misunderstood. Now, Sir, if this House does not approve of this motion because the second proviso to Rule 118 is not comprehensive enough to cover both the cases where a Bill has originated in the other House and where a Bill has originated in this House, the hon. Minister who has moved this motion will find himself in a vacuum. Faced with this difficult situation it is now entirely for the House to decide, and the only proper thing for the Chair to do, now that this motion is on the Order Paper, is to put this motion to the House and see whether this House concurs with the other House in granting leave to the member in charge to withdraw this Bill.

MR. DEPUTY CHAIRMAN : All right. Now Mr. Advani.

SHRI LAL K. ADVANI : Sir, I think the point just raised by the hon. Member on the other side has been already discussed threadbare. So far as withdrawal of a Bill from this House is concerned, that is covered only by Rules 117, 118 and 119. There are two provisos to Rule 118, to which reference has been made just now, and it has been suggested that the rules, in reverse, may meet the situation, which is presently before us. I submit that the Rules, as they are, that is to say, Rules 117, 118 and 119, they do not cover this situation because it has very clearly been stated in the second proviso—

“Provided further that where a Bill has originated in the House and is pending before the Council,” . . .

Now this Bill is not pending before the Council. The first proviso reads—

“Provided that where a Bill has been referred to a Select Committee of the Council or a Joint Committee of the Houses,” . . .

Here this Bill has not been referred to a Select Committee of the Council or a Joint Committee of the Houses, so that that Rule also cannot be used to meet this situation. I have a positive suggestion to make to the Minister concerned, to the Government. In the List of Business for today to which reference has been made just now by you saying that the motion that has been moved is not for withdrawal of a Bill, I may point out there is a caption on the top which says clearly ‘Bill for withdrawal’. That is the caption there. So it is not a motion under rule 168.

MR. DEPUTY CHAIRMAN : Any motion that is to be moved has to be under rule 168; it cannot be under any other rule. Any motion to be moved will have to be only under that rule.

SHRI LAL K. ADVANI : The caption says clearly that . . .

MR. DEPUTY CHAIRMAN : The subject-matter of the motion may be anything; it may be permission for withdrawal of the Bill or anything. But any motion that will have to be moved will have to be only under rule 168.

SHRI LAL K. ADVANI : If it were motion under rule 168 it should have a different caption as motion under rule 168 and not as Bill for withdrawal. If it were a Bill for withdrawal it can have relevance only to rules 117, 118 and 119; it cannot have any relevance to rule 168. Therefore my submission, as Mr. Misra has stated, is this. The Lok Sabha in its wisdom decided that this Bill might be withdrawn. But we should have the full background of it. The Select Committee submitted its report to the Lok Sabha. That report should have been circulated here and Members should have been duly informed of the compulsions under which and the reasons why that House felt it proper that this should be withdrawn. Once

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that has been done, a motion under rule 168, not described as Bill for withdrawal, should have been brought here.

MR. DEPUTY CHAIRMAN : I think we have had enough discussion now.

THE LEADER OF THE OPPOSITION (SHRI S. N. MISHRA) : Sir, as has been pointed out by many hon. Members there are points of substance and points of procedure involved in this. The points of procedure have already been briefly mentioned. There does not seem to be any provision in the Rules of Procedure to meet this situation. Though we have tried to find out something very frantically, we have been disappointed that there is no provision in the Rules of Procedure.

MR. DEPUTY CHAIRMAN : Is there any provision for a motion being tabled before this House to refer a Bill to a Joint Select Committee?

SHRI S. N. MISHRA : I am coming to that.

श्री निरंजन वर्मा : 168 के अन्दर कोई मोशन आ सकता है। लेकिन स्पेशली अगर कोई मोशन आयेगा तो वह 118 और 119 के अन्तर्गत ही आयेगा।

SHRI S. N. MISHRA : Sir, please bear with me for one minute. I do not want to go on for long. Now, it does seem to me that there is no provision in the Rules of Procedure to permit the Government to withdraw this Bill. The point is this. Withdrawal relates to a thing which is in our possession. What is in our possession? We have passed it out of this House and now we are not seized of that except as citizens. We are seized of only in that sense. But as Members of this House we are not seized of it. Let it be clearly understood that we are not seized of this; this is not in our possession. Only in our capacity as citizens of this country can we be said to be seized of this. Otherwise . . .

SHRI AWADHESHWAR PRASAD SINHA : Kindly read the motion.

SHRI S. N. MISHRA : I am reading. It says that we agree to leave being granted by the Lok Sabha to withdraw this Bill. Now, whether Lok Sabha can

withdraw this Bill is another point to be considered—whether they can withdraw a thing which has been passed by the other House. Whether the Lok Sabha has got the authority, I am not going into that. That is another point for consideration. The other thing, Mr. Deputy Chairman, is about the point of substance. It would become obvious to us when we go into the career of the Bill a little more carefully than we have done so far. Now, Sir, what has happened? What the Lok Sabha, in effect, asks us to do is to give unto ourselves a certificate of incompetence. That is what the Lok Sabha, in effect, asks us to do. We had passed that measure in our judgment and we thought that it was going to be a good law. That was our judgment. Now, the Lok Sabha thinks that it cannot be amended; the Bill is beyond redemption, it cannot be corrected, it cannot be amended to make it acceptable. So, there is a clash of judgments and the judgments very so strongly. The judgments differ so violently that we in our wisdom thought that it could be a good law, while the other House thinks that this cannot even be amended, cannot even be corrected and, therefore, cannot be made acceptable. Now, I ask you : Are we expected to agree with the view of the Lok Sabha.

MR. DEPUTY CHAIRMAN : You reject the recommendation.

SHRI S. N. MISHRA : No, I am coming to that. Now, what I am saying is this . . .

SHRI A. G. KULKARNI : Come to the point.

SHRI S. N. MISHRA : You must have some grains to understand this . . .

SHRI A. G. KULKARNI : What do you mean?

SHRI S. N. MISHRA : Why do you interrupt me?

SHRI A. G. KULKARNI : I am not interrupting. I am not asking anything.

(Interruptions)

SHRI S. N. MISHRA : A person who never makes sense . . .

SHRI A. G. KULKARNI : You said that you are coming to the point . . .

MR. DEPUTY CHAIRMAN : Order, order, please. (*Interruptions*)

SHRI S. N. MISHRA : They must understand their limitations.

SHRI A. G. KULKARNI : I know that.

SHRI S. N. MISHRA : Now, the Lok Sabha had appointed a Select Committee and it thinks that it cannot be amended to make it acceptable.

(*Interruptions*)

MR. DEPUTY CHAIRMAN : Order, order.

SHRI S. N. MISHRA : What can we do? What we can do in the circumstances is that we can consider the recommendations of the Lok Sabha and do nothing further. The Lok Sabha has no right absolutely to withdraw a Bill which we have passed. This is my contention. Secondly, this House has, again, not got the authority to pass a certificate of incompetence about itself. This House cannot do that. After having passed it, we cannot do that. Therefore, my submission would be to again commit this to the care of a Joint Select Committee or something of that kind. Let a Joint Session take place. In the circumstances, a Joint Session could be convened and that Joint Session could appoint a Joint Select Committee to amend the Bill in the manner in which it thinks fit.

MR. DEPUTY CHAIRMAN : Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA : I would invite your attention to article 108. Our Constitution has a scheme with regard to the passage of a Bill in the two Houses and article 108 is very relevant in this context. We are acting against the Constitution also. In fact, you are asking us to act against the Constitution. Rules are not to be interpreted contrary to the Constitution. They should not be made contrary to the Constitution. Article 108 (1) says :—

“If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House;

or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill;

or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting . . .”

Now, Sir, what I am pointing out is this. The provision of the Constitution lays down the broad scheme of passage of the Bill in the two Houses. No article of the Constitution covers the procedure which is now suggested. Therefore, are you asking us to disregard the provisions of the Constitution and then to interpret a particular rule in a different manner? Read this rule :—

“118. The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill . . .”

Withdraw the Bill from where? Now, it can come only in these three forms. Therefore, do not ask us to do an unconstitutional thing. Now I find it is not merely a question of the Rules of Procedure of the House. Show me from the Constitution how this is covered by the provisions of the Constitution. Show me an article in the Constitution where this procedure suggested by the hon. Minister is supported. Nothing. Therefore, the whole thing is unconstitutional. Let the Lok Sabha discuss it. You do not ask us to violate the Constitution. I was a little surprised and pained that you were pressing a point all the time perhaps in order to get to the other business in which we are all interested. Here in Chapter V the whole provisions are there as to how a Bill should be tackled in the two Houses up to the point of assent by the President. There is no such provision as to justify the kind of action that is sought to be taken, that we are called

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upon to accept. "Provided further where a Bill has originated in the House and is pending before the Council" etc. It is conjunctive—"originated in the House and is pending in the Council." Why do you make it disjunctive? Therefore, on this ground also they are wrong. The Bill originated in this House but is not pending before this House. Had it been pending before this House, it could not have gone to the other House. It is against the Rules of Procedure of this House read with the article of the Constitution, namely 108. Therefore, the whole thing suggested by the hon. Minister is *ultra vires* not only the Rules but the provisions and the scheme of the Constitution. Hence I request you to reflect over this. Overnight thinking is required also by you as well as by us. Therefore, I think in grace let us beat a retreat now. I would advise my friend to beat a graceful retreat. He will not retreat. How can he retreat? I know you are for the Constitution. You ask him under which article this is to be supported. I have given article 108, you go through it, where an elaborate scheme is there : either amend, reject, or joint session, or lapse after six months. These are the three things. Our constitutional methods did not envisage this situation, certainly did not provide for this kind of spurious method of withdrawal through an indirect method. Therefore, it is entirely wrong. I would like to hear him on the subject.

SHRI M. C. CHAGLA : May I give a fair suggestion? It is only a reasonable suggestion. Let this item be adjourned. Let the hon. Minister consult his law officers. Let him look into the Rules and the Constitution. Let him find out whether there are precedents for this in the past and come back afterwards. This is a serious matter.

MR. DEPUTY CHAIRMAN : May I ask you one question? Would you like to follow the precedents established in this House only?

SHRI MULKA GOVINDA REDDY : Not illegal precedents.

श्री निरंजन वर्मा : कोई प्रेसीडेंस भी हो तो पहले उसको देखा जायेगा कि वह मेरिट्स पर है या किस तरह से है। अगर केवल प्रेसीडेंस की बात करेंगे तो नहीं चलेगा।

SHRI M. C. CHAGLA : I think I am making a very reasonable suggestion to the hon. Minister in asking an adjournment of this item for a week. Let him consult his law officers.

श्री उपसभापति : जितने प्वाइंट्स रज किये गये हैं वे समझ में आ गये हैं।

SHRI JAGANNATH RAO : Sir, article 108 of the Constitution is not attracted. It is not a case where a Bill has lapsed, nor is it for a joint session, in which case I would not come to the House for permission for leave to withdraw. This Bill was passed by this House. It went to the other House. It is open to me to withdraw the Bill there, but the Bill having been passed by this House I have got to come here and take the concurrence of this House. When it comes to this House, it must be deemed to be pending. Supposing amendments are made in the Lok Sabha, then I have to come to this House for approval of the amendments. Otherwise the amendments cannot go into the Bill. In the Lok Sabha I did not include any new amendments. I only sought leave to withdraw. With that leave I have come to this House for concurrence, the reason being I want to introduce a more comprehensive Bill. The late Law Minister, Shri Govinda Menon, said that those amendments could not be brought forward in the present Bill. The ambit of the present Bill is very limited and those amendments are outside the scope of the Bill.

SHRI S. N. MISRA : After two months you might come.

SHRI JAGANNATH RAO : Government also has to be responsive to public criticism. There is the Bar Council; there is the National Committee on Legal Aid. They suggested very salutary provisions. We wanted to introduce a provision in this Bill. That is why the late Law Minister agreed to this procedure. Only in deference to that commitment I have come forward. It is for the House to accept it. If the House does not give its concurrence Government does not lose anything. The pending Bill will be proceeded with.

(Interruptions)

SHRI MAHAVIR TYAGI : I appreciate the position. It is a technical matter. I think perhaps that is also according to the rules. If the hon. Member comes forward, posts all the Members with what are the grounds on which he has asked the Lok Sabha to agree to it, my friend . . .

MR. DEPUTY CHAIRMAN : That is entirely a different question.

SHRI MAHAVIR TYAGI : If the Lok Sabha was convinced with his argument and had allowed him to withdraw it and if it also had requested us to give him permission to withdraw it, I do not think there will be anything wrong, if we consider it. But that can be done only when the Minister tries to convince this House with his argument and we are convinced as to what are actually the main points on which this consideration was made. All that can be done after giving due notice.

SHRI TRILOKI SINGH (Uttar Pradesh) : The question is whether a motion for withdrawing the Bill can be brought at this stage, namely, when it had been passed by this House, referred to the other House and the other House did not consider it, after leave for introduction had been granted by the other House. My difficulty is this. I have carefully gone through the provisions of the Constitution referred to by the learned leader of the Communist Party of India. Rule 118 of the Rules of Procedure lays down the method by which a Bill which had been introduced and which is pending can be withdrawn. And there are two provisos to it. This withdrawal is subject only to the two provisos given in the rule itself. Those provisos do not apply to a case which is before this House. The parent clause is—

“The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill, and if such leave is granted, no further motion shall be made with reference to the Bill :”

It is perfectly in order for the member in charge of the Bill at any stage to do it. The Bill has not taken the shape of an Act. It is still a Bill. Even if it had been passed by this House, it retains the character of a Bill, it has

not become an Act unless concurred to by the other House and also assented to by the President.

There are three ingredients for a Bill to become law. In the absence of any of those ingredients, the Bill does not become law, and remains a Bill. I am told that this Bill originated in this House, not in the other House. It is always open to the member in charge to come forward with a motion for permission to withdraw the Bill. It is perfectly in order, in consonance with the provisions of the Constitution.

SHRI BHUPESH GUPTA : You said ‘117’—“At any stage of a Bill which is under discussion”. That is how it starts. Then comes Rule 118. It says—

“The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill, and if such leave is granted, no further motion shall be made with reference to the Bill :”

If you invoke these things, then you cannot go through the Lok Sabha again. Here it is not under discussion. Therefore, the overall power does not apply here. The Deputy Chairman was saying, proviso. Therefore, we say, the provisos do not apply. The other thing goes with rule 117. How do you say that? Then anything can be interpreted in any way you like.

SHRI TRILOKI SINGH : May I just make a submission? I did not refer to Rule 117. I referred to Rule 118 which says “at any stage of the Bill”. Rule 117 refers to the stage when it is under discussion. Even if it is passed by both the Houses it cannot take the form of law unless it is assented to by the President.

SHRI BHUPESH GUPTA : You say the Bill is not passed . . .

MR. DEPUTY CHAIRMAN : The points are being repeated again and again. Why do you want to repeat the same arguments?

SHRI BHUPESH GUPTA : Because he has confused the House. The Constitution says :

“If after a Bill has been passed by one House . . .”

[Shri Bhupesh Gupta]

The word "passed" in this respect refers to one House also. Therefore, when we say that the Bill has been passed, we are speaking in terms of the Constitution; it is not a Bill under discussion. If the Bill had been passed even by both the Houses it would not become an Act unless it receives the President's assent. Therefore, it is absolutely irrelevant and absolutely an uncalled for interpretation that you have given. We are concerned with whether the Bill was passed in this House or not, and that fact has been established according to the Constitution, according to our Rules and in points of fact. Sir, the only ruling you can give now is the ruling under the Constitution. That is all. I am surprised that even after the ruling of Mr. Justice Chagla you are pursuing it, Mr. Chagla who has prosecuted me. All the same he knows law better than I do.

SHRI S. N. MISHRA : In how many cases has he prosecuted you ?

SHRI BHUPESH GUPTA : One at least.

श्री निरंजन वर्मा : श्रीमन्, हमारे योग्य मित्र ने जो अभी बताया कि :

"The member in charge of a Bill may at any stage of the Bill . . ."

तो उन्होंने बताया कि यह ऐक्ट तो अभी बना नहीं है, इसलिये बिल की सूरत में मैं उनको निवेदन करूंगा कि यहां "any stage" है और यह कोई यहां स्टेज में नहीं है, यहां पर तो यह समाप्त हो चुका है, पास हो चुका है, यह स्टेज वहां लोक सभा में हो सकता है। और इसके लिये भी आगे चल कर पहले प्राविजो में लिखा हुआ है :

" . . . notice of any motion for the withdrawal of the Bill . . ."

यह विद्वान् आफ दि बिल के लिये है, इसलिये यह स्टेज यहां बिलकुल है ही नहीं।

श्री उपसभापति : आपने क्या पढ़ा ? 118 के बारे में कहा।

श्री निरंजन वर्मा : जी हां। अभी हमारे मित्र श्री त्रिलोकी सिंह ने बताया कि 117 को लागू करना चाहिये और 118 को लागू करना चाहिये और उन्होंने पढ़ने के बाद यह बताया है :

"The member in charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill . . ."

उनका मतलब यह है कि आज भी यह बिल की सूरत में है, अभी यह दोनों हाउसेज से पास नहीं हुआ, इसलिये ऐक्ट नहीं बना और जब तक ऐक्ट नहीं बने तब तक बिल ही रहेगा, इसलिये 117 के अन्तर्गत आया हुआ है, ऐसा उनका खयाल है। तो इसमें मेरा ऐसा निवेदन है कि हमारे मित्र को थोड़ी इसमें भूल हुई है। इसमें है : "at any stage of the Bill". लेकिन यहां कोई उसकी स्टेज नहीं है, यहां तो स्टेज समाप्त हो गई जब कि वह पास हो गया।

श्री उपसभापति : अच्छा ठीक है, आपकी बात समझ गई।

श्री निरंजन वर्मा : दूसरी बात यह है कि खास तौर से यह प्राविजो उसमें है, पहले मे है :

"for the withdrawal of the Bill"

इसलिये यह भी लागू नहीं होता, क्योंकि यह विद्वान् के लिये आया है।

MR. DEPUTY CHAIRMAN : We have had enough discussion now.

SHRI MULKA GOVINDA REDDY : Mr. Deputy Chairman, why do you not postpone your ruling ? Please do not further complicate it. You give your ruling tomorrow; otherwise you will take the responsibility upon yourself. Why do you give an *ultra vires* ruling?

MR. DEPUTY CHAIRMAN : The point is clear. I have gone into it. I have studied the procedure and I have tried to understand the points raised by the hon'ble Members.

SHRI S. N. MISHRA : What is the hurry now? My submission to you is : Is there any hurry about it?

MR. DEPUTY CHAIRMAN : This is not a question of being in a hurry.

SHRI BHUPESH GUPTA : You will give your ruling tomorrow morning because we would like all the Members of the House to be present. Your opinion will be taken tomorrow. Otherwise, it will be unfair. At the fag end of the day . . .

MR. DEPUTY CHAIRMAN : A motion can be put before the House at any time.

SOME HON. MEMBERS : No, no.

SHRI A. G. KULKARNI : When a motion has been moved, it has to be disposed of.

SHRI BHUPESH GUPTA : Then we shall discuss it. Sir, after you give your ruling, I reserve my right to ask you to reconsider your ruling and should be allowed to speak. Filibustering we can also do.

SHRI A. D. MANI : On a point of order.

MR. DEPUTY CHAIRMAN : Please sit down, Mr. Mani. Mr. Bhupesh Gupta's suggestion is that there is no harm in giving permission to the hon. Minister to move the motion.

SHRI BHUPESH GUPTA : No, no. You cannot give permission. (*Interruptions*) I made it clear that there should not be any division now. (*Interruption*) Please do not put words into my mouth.

MR. DEPUTY CHAIRMAN : Supposing the motion is moved, Mr. Bhupesh Gupta wants that motion to be voted on tomorrow and not to-day. Am I right now?

SHRI S. N. MISHRA : No, no.

SHRI BHUPESH GUPTA : If a motion is moved, under the rules, it has to be discussed in the House. Therefore, let the motion be moved. There will be a debate on the motion. Now you cannot escape.

MR. DEPUTY CHAIRMAN : When a motion is before the House, there can be a discussion on the motion.

SHRI S. N. MISHRA : We shall give amendments. We shall certainly exercise all our rights.

SHRI BHUPESH GUPTA : Under the rules, we can give amendments.

MR. DEPUTY CHAIRMAN : Mr. Bhupesh Gupta, I have understood your points. Please sit down.

SHRI MAHAVIR TYAGI : Sir, please ask the Minister to circulate the recommendations of the Select Committee so that we can study the matter and then he can move the motion.

MR. DEPUTY CHAIRMAN : The Select Committee's report has already been circulated to hon. Members.

SHRI S. N. MISHRA : Sir, my only submission is—although this motion is *ab initio* void—if in your judgment you allow the hon. Minister to move it, then we will exercise our right of moving amendments to it.

MR. DEPUTY CHAIRMAN : Definitely every Member is entitled to do that when the motion is before the House. Now, Mr. Bhupesh Gupta had referred to article 108 of the Constitution. It only refers to three conditions; first, when the Bill is rejected by the other House, secondly, when the Houses have finally disagreed regarding the amendments and thirdly, when more than six months elapse from the date of the reception of the Bill by the other House. But there is no reference in the Constitution to this position regarding leave being granted by one House and the Minister going to the other House for concurrence and acceptance of that recommendation. Therefore, the Constitutional provision does not come in our way. Secondly, as I said, there are two different motions. This motion is not regarding leave for withdrawal of the Bill. It is regarding concurrence of this House with the recommendation of the other House. Mr. Niranjana Varma referred to rule 117.

SHRI NIRANJANA VARMA : No, no.

MR. DEPUTY CHAIRMAN : Please listen. Rule 117 refers only to adjournment of the debate on a Bill. Rule 118 is regarding withdrawal of a Bill. And if such leave is to be granted, the question is how that leave is to be granted, how we have to concur with each other. Rule 110 of the Lok Sabha Rules of Procedure says that supposing

[Mr. Deputy Chairman]

a Bill originated there is passed and if the recommendation of the Rajya Sabha is that the Bill be withdrawn, then it is referred back to the Lok Sabha and we request them that they concur with our recommendation.

श्री निरंजन वर्मा : मेरी प्रार्थना सुनिए, कानूनी प्रश्न पर आपको सुनना चाहिए ।

MR. DEPUTY CHAIRMAN : Mr. Niranjana Varma, I have heard you for long. How long should I hear you ?

श्री निरंजन वर्मा : आप मेरी प्रार्थना सुनिए । कानूनी प्रश्न पर आपको जज की तरह से निर्णय देना चाहिए ।

MR. DEPUTY CHAIRMAN : You have already referred to that point. I am coming to that. Please listen to me. We have got an equivalent Rule 118 in our Rules. As I have already said, our motion is to concur with the recommendation of the Lok Sabha. If the House concurs with the recommendation of the Lok Sabha . . .

श्री निरंजन वर्मा : अभी आपने रूल 110 का जिक्र किया । आप बताइए लोक सभा के इस नियम के समानान्तर हमारे यहां कौन सा नियम है ?

THE DEPUTY CHAIRMAN : Please listen to me. If the House concurs with their recommendation, the honourable Minister will go to the other House and say, "The Rajya Sabha has concurred," and if he asks for leave to withdraw the Bill, he will be allowed to withdraw the Bill.

श्री निरंजन वर्मा : शाह साहब वकील हैं, उनसे पूछिए ।

श्री उपसभापति : आप बैठिए, आपकी जरूरत नहीं है । If this House rejects the recommendation of the Lok Sabha, then perhaps we may have to think about a Joint Session of both Houses. If this House accepts the recommendation and accepts the motion, then there is no question. The motion before the House is for concurrence and it is not a motion for leave to withdraw the Bill.

SHRI S. N. MISHRA : My point is this. Have they got the authority to withdraw a thing which we have passed ? I do not think they have. No.

MR. DEPUTY CHAIRMAN : The Rules of both the Rajya Sabha and the Lok Sabha are here . . . (*Interruptions by Shri Niranjana Varma*) Mr. Niranjana Varma, please listen to me first. I have heard your point of view.

श्री निरंजन वर्मा : आप जो कुछ कहेंगे वह हमें स्वीकार होगा, गलत निर्णयों को भी हम स्वीकार करते हैं । अदालतों में रहने के कारण जब गलत निर्णय देते हैं, तो उन्हें भी हम स्वीकार करते हैं ।

MR. DEPUTY CHAIRMAN : Mr. Niranjana Varma, how long do you want me to hear your arguments. Is there any new argument that you want to put forward ?

श्री निरंजन वर्मा : मैं आपसे निवेदन करता हूँ कि जो आप गलत ढंग से दोनों इश्यूज को मिला रहे हैं, वह सही नहीं है । 117 के अन्तर्गत आप मोशन ला सकते हैं, लेकिन विशेष तौर से कोई मोशन विदवावल के लिए हो तो वह 168 में नहीं होगा, वह कवर होगा 118 और 119 में ।

MR. DEPUTY CHAIRMAN : Do you want to continue with your arguments endlessly ? No more arguments now please. (*Interruptions*) I have heard all the arguments and I have given the ruling. .

श्री महावीर त्यागी : मैं कोई कानूनी बात नहीं कहना चाहता, लेकिन एक बात मैं आपसे इसलिए कहता हूँ, क्यों हमारे अधिकारों की रक्षा करना आपका फर्ज है । लोक सभा ने कोई न कोई आर्गुमेंट सुना होगा, सेलेक्ट कमेटी की रिपोर्ट सुनी होगी, उसके बाद तय किया होगा कि राज्य सभा से कहा जाय कि विदवा करने की इजाजत दें । वह फैक्ट्स हमको भी मालूम होने चाहिए ।

SHRI S. N. MISHRA : We want the Chair to make this point clear . . .

(*Interruptions*)

श्री उपसभापति : त्यागी जी, उसके बारे में आपको बताता हूँ। मोशन मूव होने के बाद आप कह सकते हैं कि कौन से प्राउन्ड्स पर लोक सभा ने किया हमको मालूम नहीं, हर रिजेक्ट कर देते हैं or you can ask the honourable Minister to postpone the consideration of the motion till all honourable Members get the information that they want from the honourable Minister. We are only concerned with permission to move the motion at this juncture. When the motion is moved, then it will be for the House to reject it or to say . . . (Interruptions). Please listen to me now. Order, order please.

SHRI S. N. MISHRA : Mr. Deputy Chairman, are we not entitled to get satisfaction from you on certain points? The point that I have raised for your consideration is that, to my mind, they can amend a Bill which was passed, but they cannot withdraw the Bill which we have passed. Please give a ruling on this. They can amend it, but they cannot withdraw it.

MR. DEPUTY CHAIRMAN : I have already said that. Rules 110 and 118 refer to that. Apart from that I said that this is a motion of concurrence and not a motion for withdrawal of the Bill . . . (Interruptions). I have heard the arguments of all honourable Members for two hours. Please listen to me now.

5 P.M.

श्री निरंजन वर्मा : आप संरक्षण करने वाले हैं सबका, कानून के मामले में . . .

MR. DEPUTY CHAIRMAN : I have heard that argument umpteen times. Please sit down. I have heard the same argument many times. Do not try to repeat the same arguments.

SHRI MULKA GOVINDA REDDY : It is 5 o'clock. You may adjourn the House. Do not give him leave to withdraw the Bill. It will be *ultra vires*. The Chair must function within the four corners of the Rules of Procedure and the Constitution.

MR. DEPUTY CHAIRMAN : Do you mean to say that I am trying to give my decision on the point of order raised without referring to the rules and the Constitution? I am trying to give my ruling only after understanding the rules and the Constitutional provisions. Therefore, please listen. I have said that this is a motion for concurrence with the recommendation of the Lok Sabha. Apart from that, there is already one precedent. Unfortunately it also refers to the Advocates Bill. I do not know how our Law Ministry functions. They had brought forward one Advocates Bill which was defective. Now this is the second time they are bringing forward a defective Bill on the same subject. I shall refer to the Parliamentary Bulletin dated 27, July, 1966. Item No. 7 is about "Government Bill—Motion for withdrawal". I will read it :

"The Advocates (Amendment) Bill, 1965.

Shri C. R. Pattabhi Raman moved the following motion :—

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do agree to leave being granted by the Lok Sabha to withdraw the Bill further to amend the Advocates Act, 1961, which was passed by the Rajya Sabha on the 3rd November, 1965 and laid on the Table of the Lok Sabha on the 10th November, 1965."

The following members took part in the discussion :—

1. Shri Vimalkumar M. Chordia.
2. Shri Arun Prakash Chatterjee.
3. Shri Mulka Govinda Reddy.

Shri C. R. Pattabhi Raman replied.

The motion was thereafter adopted."

I am giving permission to the hon. Minister to move the motion. I will say that the motion is moved. The motion is now before the House. You may adopt the motion without any debate or with debate. The question is before the House. Do you want any debate?

SHRI BHUPESH GUPTA : You say that you have allowed him to move the motion. I do not know. Let us hear what he moves. The motion has not been moved.

SHRI JAGANNATH RAO : The motion reads thus :

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do agree to leave being granted by the Lok Sabha to withdraw the Bill further to amend the Advocates Act, 1961, which was passed by the Rajya Sabha on the 16th December, 1968 and laid on the Table of the Lok Sabha on the 18th February, 1969."

MR. DEPUTY CHAIRMAN : Do you want to debate the motion ?

SHRI BHUPESH GUPTA : I want a discussion. I have given two amendments to the motion. I should like to speak on these.

MR. DEPUTY CHAIRMAN : The motion is before the House. The ordinary rules regarding motions will follow. If hon. Members want to give amendments, the office will receive them.

SHRI AWADHESHWAR PRASAD SINHA : The motion has been on the Order Paper since this morning. Amendments could have been moved earlier. No amendments can be moved now.

MR. DEPUTY CHAIRMAN : Amendments can be moved at any time. So far as I remember, it can be moved at any time. . . (Interruptions). Now, please listen. Let me make an announcement. . . Please listen now. The amendments can be moved. . . (Interruptions). Please listen now. And, as the hon. Members want to have a debate on this and express their views, I think I will allow the hon. Members to express their views. Let us now proceed with the matter now if the time permits. . . (Interruptions). Not tomorrow, but next week. The motion is before the House. The motion will be considered by the House next week.

SHRI MAHAVIR TYAGI : Sir, the literature ?

MR. DEPUTY CHAIRMAN : The literature has already been circulated, Mr. Tyagi.

SHRI MAHAVIR TYAGI : No, no. . . .

(Interruptions)

SHRI BHUPESH GUPTA : Many Members have expressed their views in the House . . . (Interruptions). They are not aware of this. Sir, we have not seen it. May be we have missed it . . .

(Interruptions)

THE DEPUTY CHAIRMAN : What I mean is that it has been already circulated. There cannot be a second circulation. But, if some hon. Members want copies, they can ask the office and they will get the copies . . . (Interruptions). Should we proceed with her matter ? . . .

(Interruptions)

SOME HON. MEMBERS : No . . .

(Interruptions)

SHRI AWADHESHWAR PRASAD SINHA : Sir, on a point of order.

MR. DEPUTY CHAIRMAN : Mr. Advani.

SHRI AWADHESHWAR PRASAD SINHA : Sir, he has spoken five or six times.

MR. DEPUTY CHAIRMAN : But he is on a point of order.

SHRI AWADHESHWAR PRASAD SINHA : Sir, this paper, this order paper, has been with us since this morning. The hon. Members are trying to send the amendments now. The time is gone. You cannot postpone. It is not time for the amendments. It will be against the rules. The motion should be passed here and now, Sir.

(Interruptions)

Can you listen to me, Sir ? The motion should be passed here and now. The time for moving amendment is gone.

(Interruptions)

MR. DEPUTY CHAIRMAN : Just a minute. Please listen now . . . (Interruptions). I think the hon. Member is not correct. There is Rule 232 : "Notice of an amendment to a motion shall be given at least one day before the day on which the motion is to be considered, unless the Chairman allows the amendment to be moved without such notice." . . . Please listen now. . . (Interruptions). Please listen now. I have allowed the hon. Member to

move the amendment and it will be moved. . . (Interruptions). Mr. Advani,

SHRI LAL K ADVANI : Sir, when we looked up the List of Business, my presumption was that the withdrawal of the Bill is to be under Rule 118. But, now that you have ruled, in your decision that this is under Rule 168, I would like to draw attention to a lapse. I do not know who has committed the lapse. But this motion very specifically requires that if the Chairman admits notice of a motion and no date is fixed for the discussion of such a motion, it shall be immediately notified in the Bulletin with the heading "No-Day-Yet-Named Motion". I have not come across any Bulletin as yet. This motion for concurrence with the recommendations of the Lok Sabha has not been circulated as a "No-Day-Yet-Named-Motion". I am sure in my mind that it was admitted simply as a motion for withdrawal of the Bill. . . (Interruptions). It has been admitted as such in order to. . . (Interruptions). If you come to the conclusion that this is a motion under Rule 168, I am really surprised over it. Otherwise, if it has been a motion under Rule 118, then there could have been no debate over it whatsoever. This is for the first time that a debate is being allowed. A new precedent has been created. . . (Interruptions).

MR. DEPUTY CHAIRMAN : No, no. No new precedent. Do not raise that question now.

SHRI LAL K. ADVANI : I would like to have a clarification.

MR. DEPUTY CHAIRMAN : No question of clarification, Mr. Advani.

SHRI LAL K ADVANI : Sir, this is a point of order which relates to the Chair. For the future also, if a motion is admitted, it has to be circulated as a "No-Day-Yet-Named Motion" which has not been done this time. I would like to know why.

MR. DEPUTY CHAIRMAN : Please sit down. Mr. Mishra, do you want to move your motion ?

SHRI S. N. MISHRA : My submission is, since you have been kind enough to grant us permission to move amendments, we will request you to be further kind enough to allow us to study what has been said in the other House and in the Select Committee, in all fairness to us.

MR. DEPUTY CHAIRMAN : Not this. Do you want to move your motion on the AIR ?

SHRI S. N. MISHRA : Do you think that at this fag end of the day we can have a very good debate ? Let it be postponed to some other day.

MR. DEPUTY CHAIRMAN : Let us hear the Government spokesman.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA) : It may not be possible to provide time in the next week. We cannot promise but we will try before this session ends and the Members finish Government business.

SHRI S. N. MISHRA : It is already put for to-day. Some unfortunate things happened to-day.

MR. DEPUTY CHAIRMAN : The Government has also some important business. They are hardpressed for time. You have to consider their position also.

SHRI MULKA GOVINDA REDDY : At 3 I suggested that it should be taken up.

SHRI S. N. MISHRA : It was a day of unexpected developments. I would request the Minister for Parliamentary Affairs that in view of very unexpected developments that took place in the House to-day, he should be good enough to find time during the next week for this very important discussion.

MR. DEPUTY CHAIRMAN : Mr. Mehta says that he would try to accommodate but he cannot promise.

I have a message to report.

SHRI BHUPESH GUPTA : You fix up the time-limit. Exactly we should have an idea as to when the voting will take place.

ANNOUNCEMENT RE ARREST OF SHRI RAJNARAIN

MR. DEPUTY CHAIRMAN : I have to inform hon. Members that I have received a telegram from the District Magistrate, Lucknow. It says :

“Shri Rajnarain Member Rajya Sabha arrested today under section 107/117 Cr. P. C. and detained in Lucknow Jail.”

SHRI BHUPESH GUPTA (West Bengal) : What about Mr. Charan Singh?

SHRI GODEY MURAHARI (Uttar Pradesh) : I would like to know whether it is mentioned as a Member of the Lok Sabha or Rajya Sabha?

MR. DEPUTY CHAIRMAN : Were you not attentive? I have read the telegram.

SHRI GODEY MURAHARI : Now that we have received the message, I would like to say a few things. The UP Government, in its wisdom, has been arresting people without any reason whatsoever. They have detained people under Section 107 which is used for goondas to bind them over for 9 months for good behaviour. This is the way the Charan Singh Government has been functioning. Actually the Charan Singh Government has been trying to protect the landlords in UP and this Government has been a party to this kind of nonsense because the land movement, which has been going on in this country is only actually carrying out of what Gandhi had actually said in the Congress and for which the Congress for the last 22 years has been shedding tears. Today when the people are on the march and are occupying the land which is lying waste, which has been grabbed by the landlords, the UP Government comes and tries to put it down by oppression and by arresting people under sections 107 and 117. I would like to draw your attention to this and I want you to take note that this Government which professes socialism, which professes to speak for the

people is acting like this. This morning the Prime Minister said : “We do not care what the Member shouts about and the people will not care” but it is the people who are occupying the land. The landless people of this country, the landless peasants and the poor people of this country are occupying the big farms of the big landlords and the wastelands of the Government and the Government, instead of supporting the movement and legalising the occupation, has come to arrest people and put them in detention. As far as Shri Rajnarain’s arrest is concerned, he has been arrested not for occupying land. He got down from the train and he was arrested. Not only Shri Rajnarain but Mr. Dange, Mr. Madhu Limaye and other Members of both the Houses have been arrested.

SHRI BHUPESH GUPTA : I would request you, Sir, to give directions to the Government, to the Home Minister in particular, to find out in the case of the arrest of Mr. Rajnarain, the circumstances under which and the manner in which the arrest was effected. According to what you have read out, there is no indication of any offence having been committed by him. He has been taken into custody in a situation where there was no offence whatsoever involved. It is obvious, therefore, that the Government has acted absolutely in bad faith and applied certain law in a very wrong manner. Therefore, in this House we should like to have a proper report on this because Mr. Rajnarain now under custody is a Member of this House. Others have been under custody also. So we would like the matter to be discussed on a substantive motion. And the motion, we have given.

MR. DEPUTY CHAIRMAN : You have already made the point.

SHRI BHUPESH GUPTA : Therefore please help us in this matter. We will cooperate with you but you should also help us in this matter. We have asked for the statement of the Government and we should like to have the statement of the Government, and we would like to discuss the matter on a motion so that the House can express its opinion as to what the House thinks about this kind of arrests ordered by Chief Minister Charan Singh and others, specially Mr. Charan Singh. Now, Sir, I think