

ANNOUNCEMENT *RE* CONVIC- TION OF SHRI K. CHANDRA- SHEKHARAN, M. P.

THE DEPUTY CHAIRMAN : I have to inform Members that I have received the following communication from the Magistrate I Class, New Delhi, dated the 9th August, 1968 :

"I have the honour to inform you that Shri K. Chandrashekharan, Member of the Rajya Sabha was tried at the Parliament Street Courts before me on a charge of U/s 188 I.P.C. for defying the prohibitory orders U/s 144 Cr. P. C. at the junction of Church Road, Brassey Avenue, New Delhi at 11.10 A. M. today.

On 9-8-68 after a trial lasting for to-day, I found him guilty U/s 188 IPC and sentenced him to imprisonment till the rising of the court."

THE INTER-STATE WATER DISPUTES (AMENDMENT) BILL, 1968—*Continued.*

THE DEPUTY CHAIRMAN : We shall now take up the clause by clause consideration of the Bill.

Clause 2 : Amendment of Section 4

SHRI U. N. MAHIDA (Gujarat) :
I move :

"That at page 1, for the existing clause 2, the following be substituted namely :

'2. In section 4 of the Inter-State Water Disputes Act, 1956 (herein-after referred to as the principal Act),—

(i) for sub-section (2), the following sub-section shall be substituted, namely :

(2) The Tribunal shall consist of a Chairman and four other members, two of whom shall be nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court, and the other two shall be nominated by the Government of India from among persons who are or have been Chief Engineers of States or State Electricity Boards.'

(ii) sub-section (3) shall be omitted."

SHRI AKBAR ALI KHAN (Andhra Pradesh) : I move :

"That at page 1, line 11, after the words 'High Court' the words 'for are distinguished lawyers' be inserted."

The questions were proposed.

SHRI U. N. MAHIDA : I have moved the following amendment. . .

THE DEPUTY CHAIRMAN : You need not read it. It has been circulated to Members.

श्री राजनारायण (उत्तर प्रदेश) : यह यहां की एक अजीब प्रैक्टिस है। अगर अमेंडमेंट पढ़ा जाये तो बुरा क्या है यह मैं जानना चाहता हूं।

THE DEPUTY CHAIRMAN : I have requested him not to take the time of the House. The Business Advisory Committee had allotted some time for this. So I am only seeking the cooperation of the House by telling the new Member what is the practice in the House.

श्री नेकीराम (हरियाणा) : उप सभापति जी, मैं आप की इजाजत से अपने साथी राजनारायण जी से जानना चाहता हूं कि क्या उन्होंने ठेका ले रखा है हर बात का !

श्री राजनारायण : हां, हर संमदीय प्रथा के हम ठेकेदार हैं। हम ने ठेका ले रखा है।

SHRI U. N. MAHIDA : The object of my amendment is to have engineers who are conversant with the laws of waters in this Tribunal. I must submit that the Minister has already said earlier that this is not a perfect Bill and that he is going to come for some amendments very soon. So at the moment it is not a perfect law. I am trying to see that some of the imperfection may be removed. In moving this amendment I have the support not only of the engineers—who do not count for the present—but the highest judicial bodies in different parts of the world have supported this idea which I am advocating. I will read three important pronouncements by some of the highest legal Tribunals and the greatest international authority on international water disputes.

[Shri U. N. Mahida]

"Since the proper evaluation of complicated scientific evidence would be beyond the competence of a purely legal tribunal, and would therefore not lead to an acceptable solution of the question at issue. . ."

"Courts : Their first function is to preserve any interests which have been lawfully established. To determine what positive action will be most beneficial in the particular case to the whole community concerned is a function which lies outside both their professional duty and their personal competence."

Another authority States:—

"The duty of making progressive provision for the paramount needs of the wider community is the same in either case, and it is evident that this duty cannot be discharged unless the work of the lawyers is supplemented by that of other experts. . ."

Yet another jurist States :—

"Here again we see the natural limitations upon the competence of purely legal tribunals to solve problems of this kind."

The Judges themselves have declared—and university professors of international law, both in the continental and the English universities, have concurred with this :

"We cannot expect any body of lawyers, however eminent and impartial to solve all the complex problems of river development, and the worst service that we can render to the cause of arbitration is to impose upon arbitral tribunals burdens which they are not qualified to bear."

Now in making these few observations I have support from other prominent Members of the House. Not only that, I am also authorised and permitted to express the views of the hon. Mr. Chagla once the chief Justice of Bombay High Court with whom I had a talk on two separate occasions, once before moving the amendment, and a second time yesterday, after the discussions in the House were reported to him, that he completely supports the principle of my amendment. Therefore I request the hon. Minister to look into it again and accept my amendment.

THE DEPUTY CHAIRMAN : Mr. Akbar Ali. Very briefly, please.

SHRI AKBAR ALI KHAN : May I speak on my amendment or on the amendment of Mr. Mahida?

THE DEPUTY CHAIRMAN : On both : on Mr. Mahida's amendment only unless you are not pressing your amendment.

SHRI AKBAR ALI KHAN : I am pressing my amendment.

THE DEPUTY CHAIRMAN : Then speak on both.

SHRI AKBAR ALI KHAN : My amendment is very simple and reasonable and I do hope the hon. Minister will accept it. My amendment, Madam, is that when we have given the choice to the Chief Justice of India to select the members of this Tribunal—there we have said "Judges of the Supreme Court or of a High Court"—I want that in his discretion he may nominate also any distinguished lawyer who is qualified to become a High Court Judge or a Supreme Court Judge, so that the Chief Justice may have the option—I need not stress this point. In our House there are people like Mr. Setalvad who has refused to become a Judge. Can anybody say that he is in any way less qualified to be a Judge of this Tribunal? There may be many others. So what I want is that the choice should be open to the Chief Justice of India either to have a High Court Judge, or to have any lawyer who is qualified to become a Judge of a High Court or of the Supreme Court as a member of this Tribunal.

Now as regards Mr. Mahida's amendment, Madam, I do feel that this is a Tribunal constituted not purely on legal matters. The matters there are technical, geographical, and quite a lot engineering. So, if out of the three one engineer of integrity and of repute is also included, it will certainly help the Tribunal to come to the right conclusions. So I fully support Mr. Mahida's amendment to this extent that one engineer will be one of the three as further suggested by Mr. Jain's amendment.

THE MINISTER OF IRRIGATION AND POWER (DR. K. L. RAO) : Madam Deputy Chairman, I am very sorry that I am not able to accept either of these two amendments. The engineers are intimately associated with and are very active participants in the various projects in different States. They may

belong to one State but may be serving in the other State and it will be very difficult to discriminate about these engineers. And therefore it is not so much a technical problem. The Act already provides that engineers may be taken as assessors; there is ample provision already. They can give their advice to the Tribunal and the Tribunal will decide thereon.

And as regards appointment of lawyers as members of the Tribunal, that is a thing which cannot be accepted.

SHRI AKBAR ALI KHAN : Why ?

DR. K. L. RAO : It is because, in fact, we are not allowing the Chief Justice to nominate even retired Judges. So how can we allow lawyers to be nominated as members of the Tribunal? We want not only Judges, but completely serving Judges, so that it is not merely a question of capability we must see that in these matters the public shall have complete confidence and shall not begin to impute motives this way and that way. And therefore it is and I am sorry I will not be able to accept any of these two amendments.

THE DEPUTY CHAIRMAN : Are you pressing your amendment, Mr. Mahida?

SHRI U. N. MAHIDA : Yes.

THE DEPUTY CHAIRMAN : The question is :

That at page 1, for the existing clause , the following be substituted, namely—

“2. In section 4 of the Inter-State Water Disputes Act, 1956 (hereinafter referred to as the principal Act),—

(i) for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) The Tribunal shall consist of a Chairman and four other members, two of whom shall be nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court, and the other two shall be nominated by the Government of India from among persons who are or have been Chief Engineers of States or State Electricity Boards;”

(ii) sub-section (3) shall be omitted.”

The motion was negatived.

THE DEPUTY CHAIRMAN : What about your amendment, Mr. Akbar Ali Khan?

SHRI AKBAR ALI KHAN : I beg leave to withdraw my amendment.

Amendment No. 2 was, by leave, withdrawn.

THE DEPUTY CHAIRMAN : The question is :

“That clause 2 stand part of the Bill.”

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 to 6 were added to the Bill.”

Clause 7—Amendment of section 13

SHRI K. P. MALLIKARJUNUDU (Andhra Pradesh) : Madam, I move:

“That at page 3, line 5, for the words ‘so, however’ the word ‘provided’ be substituted.”

The question was proposed.

SHRI K. P. MALLIKARJUNUDU : Madam, my amendment relates only to the language in clause 7, to the words “so, however”, occurring in the passage “so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

I am doubtful about the accuracy of the words “so, however”. So I propose that instead of the words “so, however,” the word “provided” may be more suitable and may be more accurate and may be more precise so that the meaning intended should be conveyed properly. I will just explain myself in this manner. “so that” will be used in cases where the subsequent clause will be a consequence of an earlier clause. Let me illustrate the point. The Government is having a planned economy so that the economy may improve. The doctor is giving the medicine to the patient so that he may recover from the illness. The words “so that” imply that what follows is the consequence of the earlier position. Here if the modification or annulment, if any such thing is made after the laying of the rules before Parliament, then certain consequences will follow. Here what is intended is this. If a rule is modified

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by Parliament, then anything done in pursuance of the rule before Parliament modifies it, should be kept inviolate, should not be prejudiced; that is the meaning of the clause there. Here the prejudice will not occur as a consequence of the amendment made; when an amendment is made, the consequence intended does not follow. So I would submit that the word "provided" better suits the clause and it may be adopted in place of "so, however,".

DR. K. L. RAO : The hon. Member is also a distinguished lawyer and so this amendment of his, I thought, should be very carefully considered. I referred the hon. Member's amendment to the Law Ministry. Now I have been told that the words "so, however," mean the same thing as "provided" and were conveyed more legalistic meaning. They say that it is the pattern followed in all the legislations. So I would request the hon. Member to withdraw his amendment.

SHRI K. P. MALLIKARJUNUDU : Madam, I beg leave to withdraw my amendment.

Amendment No. 2 was, by leave, withdrawn.

THE DEPUTY CHAIRMAN : The question is :

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

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

DR. K. L. RAO : Madam, I move :

"That the Bill be passed".

The question was proposed.

SHRI M. RUTHNASWAMY (Madras): I just want to make a very few observations, Madam Deputy Chairman and they are these. The Government seems to have a touching faith in the capability of Judges on any and every question. They want to man every tribunal, administrative tribunals even, with Judges or former Judges of High Courts. I think it is putting a great strain upon our Judges and upon the judiciary to invite them to become members of administrative bodies like the Tribunal that the Government contemplates in this Bill. Merely calling it a tribunal does not make it a judicial today. It has to decide on administrative

matters, on practical matters like the flow of a river, the course of a river, the behaviour of a river as it flows from source to the mouth. So you want the people who are acquainted with the rivers and their behaviour and their course in order to give

wise decisions on the matter. You I P. M. want a body of engineers, economists, men versed in public affairs, to constitute such tribunals. There is the practice of the United States of America where similar questions are decided not by being referred to judicial tribunals but to bodies of experts. In connection with this very matter of water disputes there is the Federal Water Commission in the United States of America composed not of Judges but of former engineers, administrators and men versed in public affairs. It is such a body that we want for the determination of such questions. I think this touching faith in the capacity of our Judges on any and every matter should be given up by the Government and as I said it is a great strain on our judiciary. These are supposed to be serving Judges who are to be appointed to this Tribunal and to take away the Judges when the work in the courts is so congested. I think is fair neither to the judiciary nor to the general public.

SHRI K. CHANDRASEKHARAN (Kerala) : Madam May I say a few words?

THE DEPUTY CHAIRMAN : You want to say something. All right; very briefly. We must finish this before we rise for lunch.

SHRI K. CHANDRASEKHARAN : Madam Deputy Chairman, I would only appeal to the hon. Government. . .

SHRI M. N. KAUL (Nominated) : Why hon. Government?

SHRI K. CHANDRASEKHARAN : . . that the purpose with which the Lok Sabha amended clause 2 of this Bill—I appeal to the Government because the implementation is with the Government and not with Parliament—should be kept in mind and Judges who are on the verge of retirement should not be appointed to this Tribunal. Taking into consideration the possible time that a particular work referred to the tribunal may take Judges who would be in service during the period in which they are working as members of the tribunal should be appointed. If the Judges who are about to retire are appointed the very purpose

with which the Lok Sabha made this amendment and we in this House are agreeing to this clause would be defeated.

Madam, another aspect I would like to stress is that we should resort to the provisions of this legislation as little as possible. This legislation is not intended to be resorted to in a routine manner; just because there is this legislation on the statute book efforts at the political and administrative level to resolve the inter-State water disputes should not be weakened in any manner and I for one feel that inter-State water disputes in this country should be resolved and ought to be resolved only and solely at the political level. It may be that in particular cases, as the hon. Minister himself has said, there may be failure, there may be an impossible situation, and in cases of that character it may be that we have to resort to the provisions of this Bill. Doubts have been expressed by the hon. Member who moved that amendment and by the hon. Member who just spoke before me as to why Judges should be appointed. In the situation in which this country finds itself today I have absolutely no doubt in commending to this House that any serious problem or dispute could be resolved apparently only by the Judges of this country because everywhere we are imputing motives and we are finding doubts. If justice has got not only to be done but appear to be done, I have no doubt that the Judges of this country who are invested with powers of various and varied nature under articles 226 and 227 of the Constitution and article 32 of the Constitution so far as Supreme Court Judges are concerned, would be competent enough to resolve these inter-State water disputes which could not be resolved earlier by any other method. In this regard I am happy over the fact that Lok Sabha has suggested that it should be serving Judges and I am also happy over the fact that the hon. Minister has indicated that even distinguished lawyers could not be preferred to serving Judges in the implementation of this Bill. Therefore I submit that care is necessary in the appointment of Judges and care is necessary, a certain discernment is necessary, in the matter of referring matters of dispute to the tribunals.

SHRI U. N. MAHIDA : Madam, . .

THE DEPUTY CHAIRMAN : You have spoken on the consideration motion; you have spoken on the amendment and still you want to speak now?

SHRI U. N. MAHIDA : This is an important Bill. Just one clarification I want. The hon. Minister wants this Bill to solve disputes. Now these disputes involve questions of servitude. I am only asking a single question and that may be answered by the hon. Minister. Will this tribunal be able to solve or impose questions of servitude? This is a very simple question.

THE DEPUTY CHAIRMAN : It is a very hypothetical question.

DR. K. L. RAO : Madam Deputy Chairman, I am thankful to the House for supporting and passing this Bill. I agree with the hon. Mr. Chandrasekharan and my earnest wish is—and I am sure it is also the wish of the House—that this Inter-State Water Disputes Bill should be used as little as possible and that we shall be able to solve our problems with amity, with give and take and with accommodation.

Thank you.

THE DEPUTY CHAIRMAN : The question is—

“That the Bill be passed.”

The motion was adopted.

THE DEPUTY CHAIRMAN : The House stands adjourned till 2.00 P.M.

The House then adjourned for lunch at eight minutes past one of the clock.

The House reassembled after lunch at two of the clock, THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair.

RESOLUTION RE CONTINUANCE OF PRESIDENT'S PROCLAMATION IN RELATION TO THE STATE OF WEST BENGAL

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA) : Mr. Mice-Chairman, I beg to move the following Resolution :—

“That this House approves the continuance in force of the Proclamation issued by the President on the 20th February, 1968, under article 356 of the Constitution, in relation to the State of West Bengal, for a further period of six months with effect from the 22nd September, 1968.”