

RAJYA SABHA

Thursday, the 21st December, 1967/the
30th Agrahayana, 1889 (Saka)

The House met at eleven of the clock,
MR. CHAIRMAN, in the Chair.

ORAL ANSWERS TO QUESTIONS

AMENDMENT TO COMPANY LAW REGARDING APPOINTMENT OF DIRECTORS

*677. SHRI R. P. KHAITAN :†

SHRI A. G. KULKARNI :

Will the Minister of INDUSTRIAL
DEVELOPMENT AND COMPANY
AFFAIRS be pleased to state :

(a) whether there is any proposal un-
der the consideration of the Government
to bring an amendment to the Company
Law to the effect that the appointment of
Directors of all the Limited Companies
should be made by proportional represen-
tation by means of the single transferable
vote; and

(b) if so, what are the details thereof?

THE MINISTER OF STATE IN THE
MINISTRY OF INDUSTRIAL DEVELOP-
MENT AND COMPANY AFFAIRS
(SHRI K.V. RAGHUNATHA REDDY) :

(a) No, Sir.

(b) Does not arise.

श्री आर० पी० खैतान : यह जो कंपनीज में
अभी डाइरेक्टर्स को चुनने की जो प्रणाली
है उस में मेजारिटी शेयर जिसके हाथ में होते
हैं उन्हीं की तरफ से सब डाइरेक्टर्स चुने
जाते हैं। ऐसी हालत में जो बाकी शेयर-
होल्डर्स होते हैं उनका कोई रैप्रेजेंटेशन नहीं
होता है। तो मैं जानना चाहता हूँ कि क्यों
सरकार इसके बारे में नहीं सोच रही है कि
इसमें प्रप्रोर्शनल रैप्रेजेंटेशन के हिसाब से
डाइरेक्टर चुने जा सकें जिससे औरों का भी
प्रतिनिधित्व ठीक से कम्पनी के मेनेजमेन्ट में
रहे और वे लोग भी हिस्सा ले सकें ?

SHRI K. V. RAGHUNATHA REDDY :

Sir, the hon. Member has raised a very
complicated question. There are certain
provisions in the Indian Companies Act
which deal with the election of Directors
and the hon. Member is right when he says
that the Directors are elected by the majori-
ty of shareholders and not by propor-
tional representation . . .

SHRI ARJUN ARORA : Not by the
majority, but by the holders of majority
shares. They are not elected by the majori-
ty of shareholders but by the holders of
majority shares.

SHRI K. V. RAGHUNATHA RED-
DY : I am thankful to the hon. Member
for the correction, but in any event legally
it represents the majority of shareholding.
There are certain provisions in the Com-
panies Act starting with section 255 and
the hon. Member is right when he said
that proportional representation is perhaps
necessary in order to safeguard the in-
terests of the minority shareholders, in
case of oppression by the majority share-
holding to a point where the minority
shareholding's interests as well as their
safeguards are in jeopardy. Section 265
of the Companies Act contemplates that
if a company so chooses it can provide in
its articles that two-thirds of the Directors
can be elected by proportional represen-
tation by means of the single transferable
vote or by cumulative votes. Then, there
is another safeguard under section 408
of the Companies Act, according to which
if the Government is satisfied in the public
interest, or under certain contingencies
if ten percent of the shareholding come
before the Government for the purpose
of properly safeguarding their interests,
the Government can appoint two Direc-
tors of their own or under the proviso to
section 408 they can direct the company
to amend their articles of association in
such a manner that two-thirds of the Direc-
tors are elected according to proportional
representation. Therefore, even the Com-
panies Act has recognised this principle
which the hon. Member has suggested
and so it is a question for further examina-
tion in what manner the hon. Member's
suggestion can be implemented.

SHRI A. G. KULKARNI : As the
hon. Minister has rightly pointed out,
there is already a provision in the Com-
panies Act in sections 265 and 408. Also,
in our Constitution the guiding principle
is the attainment of economic equality.
We have umpteen examples in this country
wherein interlocking of bank directorships

†The question was actually asked
on the floor of the House by Shri R. P.
Khaitan.

and industrial empires is taking place. For this purpose the Government is taking up the Monopolies Bill, etc. But here it is a simple suggestion whereby proportional representation by means of the single transferable vote you can break up the interlocking of directorships and also hereditary management. You can thus open up a new vista of opportunities for the minority of the shareholders to take part in the management of the company. May I know from the Government whether he is prepared to consider and make some amendments in the Companies Act itself, in section 265, so that proportional representation, as demanded, will be the only criterion for the election of Directors ?

SHRI K. V. RAGHUNATHA REDDY : Sir, this question came up for consideration before the Joint Committee, when it considered the draft Bill in 1953, which subsequently became the 1956 Act. The Joint Committee considered the question from two points of view. While recognising the fact that the minorities must be protected from the oppression of the majority, they also considered whether the principle of proportional representation was made universal, it would not lead to some kind of factionalism inside the company management whereby the company would not run well. Therefore, as a matter of compromise . . .

SHRI A. G. KULKARNI : Instead of creating an empire, it would be better to have factions.

SHRI K. V. RAGHUNATHA REDDY : As a matter of compromise, sections 408 and 265 seem to have been incorporated in the body of the company law. I fully recognise the importance of the various suggestions made by the hon. Member, Shri Kulkarni. It is true that the hon. Member, Mr. Khairan, himself has written to me on 23rd August, 1967, raising all these questions, elaborately arguing the case in favour of proportional representation. I may say, with great respect to him, that while I am thankful for his suggestions enunciating the principle, it has already been recognised by the company law. As regards what Mr. Kulkarni has said, it is no doubt true that under article 39(a), (b) and (c) of the Constitution dealing with the Directive Principles, the Government should follow the policy so that concentration of economic power to the common detriment must be prevented. There is great force in what Mr. Kulkarni has said that the majority shareholding electing Directors is likely to lead to...

SHRI V. M. CHORDIA : Is it a reply or a speech ?

SHRI K. V. RAGHUNATHA REDDY : . . . certain consequences which I have already mentioned. We will have to consider all the aspects before we can do anything in the matter.

(Hon. Members stood up.)

MR. CHAIRMAN : Mr. Das, I note down the names immediately I see and then I call the Members.

SHRI BANKA BEHARY DAS : Under the existing company law one can be a Director in a large number of companies. In the private sector it gives rise to interlocking and also monopoly and in the public sector it creates a condition in which we have more of sleeping Directors or ineffective Directors. May I know from the Minister whether they are considering amending the company law both in regard to the private sector and the public sector, so that a person, either in his *ex-officio* capacity or in his individual capacity, can be Director of a very small number of companies, so that they can be effective in the Board of Directors?

SHRI K. V. RAGHUNATHA REDDY : Already there are certain provisions placing limitations on the number of directorships which a person can hold. In regard to what Shri Banka Behary Das has said in relation to this, I do not know whether he meant public limited companies or the public sector when he mentioned the public sector...

SHRI BANKA BEHARY DAS : The public sector companies. They do not attend even ten to fifteen per cent of the meetings of the Boards of Directors.

SHRI K. V. RAGHUNATHA REDDY : Most of the public sector companies are formed under the Companies Act and they get certain modifications under section 620. These companies themselves come into existence as a result of separate laws passed. Certainly his suggestion will be taken into consideration as to how best the company law can be made use of to achieve the result which Shri Das has suggested.

SHRI ARJUN ARORA : The Minister has given a great deal of information which is available in the Act and the commentaries thereon, but may I know why does he not clearly say that the democratic

and correct practice suggested by Mr. Khaitan and Mr. Kulkarni in their questions is acceptable to the Government? Does he not know that in the economic situation of the country today and the present state of management techniques in the country dividends have become the least part of the benefit from an industry, and that it is the management, those in charge of management, who derive the biggest benefits? By not making proportional representation of shareholders compulsory, the Government is only enabling the rich to become richer and those who have the majority shareholding are in fact deriving all benefits of running the industry. Why does he not say that this correct procedure is acceptable to him and he will bring forward an amendment?

SHRI K. V. RAGHUNATHA REDDY. The question itself is a highly theoretical one. Therefore, Mr. Arora would kindly pardon me if I have to explain certain provisions of the Company Law because the question relates to theory and not a specific problem. There are many aspects of this question. The Company Law itself had gone through various phases of evolution from 1913. While we cannot immediately envisage what form it will take, certainly these are very valuable suggestions which the hon. Members have made, and these matters will be certainly taken into account when the situation arises.

SHRI M. M. DHARJA. There are two aspects of this question. So far as monopolies are concerned, in this House a Bill was introduced and now it has gone to the other House. So far as proportional representation is concerned, it is a material point and even though it is true that the Company Law has been recently amended, it is a question of the rights of the shareholders of these companies and they are the sufferers. From this point of view will the hon. Minister consider to have this amendment as early as possible as suggested by our friend?

SHRI K. V. RAGHUNATHA REDDY. No doubt the suggestion made by the hon. Member, as I had already said, is a very valuable one which needs consideration, and we shall take it into account when the situation arises.

SHRI A. G. KULKARNI : The situation has already arisen.

SHRI K. V. RAGHUNATHA REDDY. I would like to make one humble suggestion for the consideration of the

House and the hon. Member. As far as the role and function of the Company Law is concerned, it is purely regulatory, it is not preventive. As far as the growth of monopolies is concerned, it is a matter of structural content in the economy, and I do not believe that a law like the Company Law would be able to deal with it.

SHRI A. D. MANI. May I ask the Minister whether in the United Kingdom and the United States the principle of proportional representation in the Company Law has been accepted? Because in both countries it has been held that a company is not a legislative chamber like the Rajya Sabha where proportional representation can be attempted and that proportional representation will destroy the unity of direction in the affairs of the company.

SHRI K. V. RAGHUNATHA REDDY. The Member is right in the first part and not right in the second part of the question. As far as the practice in the U.K. is concerned there is nothing like proportional representation. To that extent the recognition of proportional representation by Company Law is a very progressive step.

SHRI BHUPESH GUPTA. We need not go to the U.K. Let us come to the Birla House and find out something. May I know whether the Government has considered the advisability of declaring some people, eminent businessmen, it is better to say notorious businessmen, disqualified for being in the Board of Directors? Why is this not being done? We have got a fairly good picture of the people and their numbers are there. I should also like to know what happens in such cases, for example, in Bennett Coleman and Company the Government have their directors Shanti Prasad Jain is the Chairman. Now it happens that the officers who gave information to the Government and helped the Government in starting proceedings against Bennett Coleman and Company and taking it under its management, they are being prosecuted by the Board of Directors nominated by Shanti Prasad Jain, and proceedings are being started against them. It is so reported. I should like to know how the Government is going to tackle such a situation where the same people are the Board of Directors and the Government go there and do nothing and allow them to continue in the same old way including persecution of the officials who furnished information to the Government in order to detect corruption, malpractice, black-marketing, etc.

SHRI K. V. RAGHUNATHA REDDY : There are certain provisions of the Company Law which the hon. Member knows, which deal with the question of appointment and also removal of directors when they are found to be undesirable. As far as the process of removal is concerned, we will have to go through the due process of law before a man is condemned.

SHRI BHUPESH GUPTA : What is the due process ?

SHRI BABUBHAI M. CHINAI : Laid down by law.

SHRI K. V. RAGHUNATHA REDDY : Due process recognised by Company Law in relation to facts and certain statements which will have to be made before the court and proceedings will have to take place.

SHRI BHUPESH GUPTA : By the time we go through the due process nothing is left to us.

SHRI K. V. RAGHUNATHA REDDY : As far as the rest of the question that has been raised by the hon. Member is concerned, as the matters are pending before the Bombay High Court, he will not expect me to deal with that question. It is *sub judice*.

SHRI BHUPESH GUPTA : Protection. He should say. I specifically mentioned the case of Bennett Coleman and Company. Is it not a fact that Shri Jawaharlal Nehru gave an assurance to these people who furnished information that they would be protected and that Shanti Prasad Jain started these things against them and Shanti Prasad Jain got strictures given against him by the Court and the prosecution did not succeed ? The officers were acquitted and again they have started this kind of proceedings against the same people. I would like to know. . .

SHRI BABUBHAI M. CHINAI : On a point of order. I do not understand how this question of Shanti Prasad Jain and Bennett Coleman and Company arises out of a question put by Mr. Khaitan and Mr. Kulkarni whether there should not be proportional voting system. I fail to understand his question. Sir, I seek your guidance whether the question put by Mr. Bhupesh Gupta is in order.

SHRI BHUPESH GUPTA : I will tell you, Sir, how it is in order.

श्री राजनारायण : श्रीमन् मैं बाबूभाई चिनाई जी के प्वाइन्ट आफ आर्डर का विरोध करता हूँ जो उन्होंने अभी उठाया। उनका कोई प्वाइन्ट आफ आर्डर नहीं है और प्रश्न की तह में शान्ति प्रसाद जैन और बिड़ला का नाम लिया जा सकता है क्योंकि ये उद्योगपति हैं और लिमिटेड कन्सर्स के जरिये इस देश की जनता की कमाई का शोषण कर रहे हैं। इसलिए उनका नाम लिया जाना कोई अवैधानिक नहीं है और इसमें कोई व्यवस्था का प्रश्न नहीं उठता है।

SHRI BHUPESH GUPTA : I still seek your protection, Sir. I do not know why Mr. Chinai. . .

SHRI A. M. TARIQ : Every word used here, Shanti Prasad Jain, Dalmia, etc. is always proper whether in the House or outside the House.

SHRI BABUBHAI M. CHINAI : It is all right for a Member to say anything he likes but those who are not in a position to protect themselves—to say something against them in season and out of season—is it really proper, Sir ? Something should be done by Members to control themselves.

श्री राजनारायण : श्री बाबूभाई चिनाई को समझना चाहिये कि वे लोग इंडिविजुअल नहीं हैं क्योंकि उनका नाम कंपनी के संबंध में आता है। मेरा प्रश्न यह है कि क्या सरकार इस देश के विकास को समुचित ढंग से चलाने के लिए और धन का समुचित वितरण होने देने के लिये मनेजमेंट एजेन्सी को खत्म करने की सोच रही है ? इसके साथ ही साथ कंपनियों की जो बैलेन्सशीट होती है, उसके संबंध में मजदूर संगठनों की ओर से लगातार कई वर्षों से मांग हो रही है कि कम से कम उनके भी एक चार्टर्ड एकाउन्टेन्ट को एकाउन्टेन्ट की जांच करने का अधिकार दिया जाय। तो मैं यह जानना चाहता हूँ कि क्या सरकार उनके प्रतिनिधियों को रखने का विचार कर रही या नहीं ? अगर नहीं तो क्यों नहीं ? इन दो प्रश्नों का जवाब दिया जाना चाहिये।

SHRI BHUPESH GUPTA : Sir, my question has not been answered. I yielded

to Mr. Rajnarain. The Minister, I know, is in possession of facts. Why is he not giving answer to my question that two officers, who helped the Government in detecting malpractices by the Bennett Coleman management of Shanti Prasad Jain, and who had been earlier got prosecuted by Shanti Prasad Jain, are again sought to be prosecuted despite the assurance of Pt. Jawaharlal Nehru, that they would be protected against such prosecutions? Let him get up and say that they would be protected. Is it not proper that the management of the Board of Directors should be changed so that even when the company gets a director from the Government, the Government Director is helpless as in the case of Bennett Coleman & Co.?

MR. CHAIRMAN : Mr. Bhupesh Gupta, you should put a separate question.

SHRI DAHYABHAI V. PATEL : These are extraneous matters which hardly arise out of this question, both what Mr. Bhupesh Gupta or Mr. Rajnarain said.

श्री राजनारायण : श्रीमन्, हमारे सवाल के जवाब का क्या हुआ।

SHRI K. V. RAGHUNATHA REDDY : Though the question raised by honourable Mr. Bhupesh Gupta does not arise out of this question, I do not want the hon. Member to go away with the impression that we are trying to hide something. We may be receiving a number of representations on various matters, but since the cases are *sub judice* it is not proper for us to say anything. I am only inviting the hon. Member's attention to section 635(b) of the provisions of the Company Law which deals with this matter. Any person who is aggrieved can certainly resort to the protection granted by the Company Law.

MR. CHAIRMAN : Next question.

श्री राजनारायण : श्रीमन्, हमारे सवाल का जवाब ही नहीं हुआ।

SEPARATE BOARDS OF MANAGEMENT FOR PUBLIC SECTOR STEEL PLANTS

*678. SHRI NIREN GHOSH :†

SHRI A. P. CHATTERJEE :

Will the Minister of STEEL, MINES AND METALS be pleased to state :

†The question was actually asked on the floor of the House by Shri Niren Ghosh.

(a) whether it is a fact that Government have finalised a scheme to constitute separate and independent boards of management for each steel plant in the public sector; and

(b) if so, the details thereof?

THE DEPUTY MINISTER IN THE MINISTRY OF STEEL, MINES AND METALS (SHRI CHOWDHARY RAM SEVAK) : (a) and (b) No, Sir. The whole question of the re-organisation of the Steel Industry in the Public Sector is still under the consideration of the Government.

SHRI NIREN GHOSH : May I know, Sir, whether Mr. Mulgaokar has been appointed as the Chairman of the Board of Directors of the Hindustan Steel Plant. The other day the Minister said that he had no information. But the next day we found in the papers that such a thing had been done. I consider it almost a breach of privilege of this House. When the House is in session, without giving the information first to the House, he gave it to the press. Who is this Mulgaokar? A Tata man. Do they intend to hand over the public sector to the private sector in this way?

DR. M. CHANNA REDDY : The question raised by the hon. Member has nothing to do with the present question. And there is no question of privilege because there is nothing that I have not said or I have hidden.

SHRI ARJUN ARORA : The question of privilege does arise if Mr. Mulgaokar has been appointed the Chairman of the Hindustan Steel Plant. Day before yesterday when the Minister made a statement on the Calling Attention motion, he said he was going to appoint...

DR. M. CHANNA REDDY : The question does not arise here. The hon. Member is on the wrong premises. No appointment has been made.

MR. CHAIRMAN : Next question.

SHRI NIREN GHOSH : I have a second question to put. The second question is this. On what basis this Mulgaokar has been appointed?

SHRI ARJUN ARORA : He has not been appointed, he says.

SHRI NIREN GHOSH : Then who has been appointed? How can it be given in the press. Would the Minister give an