[Shri Bhupesh Gupta.] of the House to withdraw my amendment No. 6. I would also like to withdraw amendment No. 7.

♦Amendments Nos. 6 and 7 were, by leave, withdrawn.

MR. CHAIRMAN: The question is:

8. "That at the end of the Motion, the following be added, namely:—

'and having considered the same, this House regrets that Government does not still recognise the need for a second conference of the Asian-African Powers in order to face the aggressive action of the Western Puvvefd in the Afro-Asian region'."

The motion was negatived.

MR. CHAIRMAN: The question is:

9. "That at the end of the Motion, the following be added, namely: —

'and having considered the same, this House regrets that Government does not recognise the need of establishing full diplomatic relations with the German Democratic Republic'."

The motion was negatived.

MR. CHAIRMAN: The question is:

10. "That at the end of the Motion, the following be added, namely: —

'and having considered the same, this House regrets that Government does not express its disapproval of the continued existence of the British armed forces in Malaya and of the attempts to draw the Malayan Federation into the SEATO'."

The motion was negatived.

MR. CHAIRMAN: The question is:

13. "That at the end of the Motion, the following be added, namely:—

'and having considered **the** same, this House regrets that the Government does not declare that the latest resolution of the Security Council on the so-called Kashmir issue can only further complicate the situation and has no validity as far as India is concerned."

The motion was negatived.

MR. CHAIRMAN: The question is:

1. "That at the end of the Motion, the following be added, namely: —

'and having considered the same, this House approves **the** said policy'."

The motion was adopted.

MR. CHAIRMAN: I will put the amended Resolution.

The question is:

"That the present international situation and the policy of the Government of India in relation thereto be taken into consideration and having considered the same, this House approves the said policy."

The motion was adopted.

MR. CHAIRMAN: The Resolution is passed unanimously.

MR. CHAIRMAN: Now we pass on to the consideration of the Indian Railways (Amendment) Bill, 1957.

THE INDIAN RAILWAYS (AMENDMENT) BILL, 1957

DR. P. J. THOMAS (Kerala): Mr. Chairman, the Railways are really public utility No. 1 in the country. A public utility service is primarily intended for the benefit of the public, and of the people generally. The revenue aspect of it is important . .

MR. CHAIRMAN: Please **speak** through **the mike.**

•For text of amendments, ride cols. 2354-2355 of Debate, dated 12th December 1957.

DR. P. J. THOMAS: But that cannot beconme the primary consideration. Secondly the Railways are important economic agency for the development of the country, for commercial and industrial purposes and therefore the people must have, apart from the Parliamentary authority here, a definite say at the various stages in the formulation of Railway policies. These are some of the general propositions that I hold and I think that in some ways the amendment has not sufficiently given weight to those considerations.

As for the Railway Rates Tribunal being reconstituted, I have not got very much to say against that. After all, to have a Railway Rates Tribunal with three Judges is not essentia 1 at all. That Tribunal is now proposed to be reconstituted, by this amendment, with only one Judge and two others with experience of economic and industrial matters in the country. I am not against that because :t is better to have people with wider knowledge than those steeped in the knowledge of law. But on the question of taking away thf> assessors. there can be some difference of opinion. Some hon. Members have been telling us that it should have been maintained. On this I also fe^l that there should be opportunity for the business people as assessors to express their view and to go into the question of rates more fully than it would otherwise be possible.

My other point is about the amendments made regarding the Railway Rates and classification. On the question of classification, I feel very strongly that the modification mace is rather unfortunate. Hitherto the Tribunal was a mandatory authority in this field. Now it is to become advisory. There may be justification for such action at some times. A Government engaged in war or in some similar emergency certainly must have full power but in ordinary-times, in my opinion, the Railway Tribunal should have full rjowers The existing provisions regarding the powers of the Tribunal should, in my opinion continue. On this point Mr. Kishen Chand made some very pertinent observations. We in this country are now engaged in very important developmental activities and the economic interests of the people should be taken into account, not merely the revenue interests. It is true that we want revenue, but if we merely take into account revenue considerations, the interests of the common people, I am afraid, may be affected. For instance it involves the raising of the railway rates on commodities whose prices are most important for the common people, certainly that is going to injure the people in many ways. We want greater production and supply of foodstuffs, as those are in short supply. There is the danger that if the Railway authorities imnose on certain items of food hi ah rates, that will certainly harm our public interest. The hon. Member from Bombay, Shri Patil, pointed out eprtqin instances of the Government raising the rates unduly. To my mind, that is a very important thing, because today if we want to reduce the pressure *on* the inadequate rice supply, if we want 1o make it urmecesssr'v for us to imnort so much rice as lately and thus reduce the horrid pressure on our foreign exchange, it is necessary that other articles of food, subsidiary foodstuffs, like bananas and so on, should be available in larger quantities and sold at cheaper prices. Therefore if the Railway authorities do not think of such interests, and do not reduce the rates on such articles, it will do much harm, and to my mind it seems we should give sufficient powers in this respect to the Tribunal.

My purpose in speaking on this Bill is to emphasise that since the railways are our public utility number one, the interests of the common man and his economic activities should be given the first place. Of course, it is true we are engaged in planning. But after all for whom are we planning? It is all for the betterment of the common people, to see that their income is raised, to see that their

[Dr. P. J. Thomas.] living standards are raised. At this juncture, to put before ourselves primarily the case of revenue only is not proper. We give too much prominence to governmental activities. It is true the Government is engaged in these activities for the sake of advanc'ng the common interests of the people, but even there there may be differences of opinion. After all we have seen many cases where the Government has not been working in the interest of the community as a whole. Therefore, there should be the opportunity for the people to appeal to the Tribunal. Of course, it is true that Parliament is the ultimate authority, yet the people must have opportunities for intervening and appealing more effectively and to my mind, much more power should be given to the people In a matter like the railway rates, because it affects the activities of the people very greatly. Some of the instances that Mr.. Patil gave are very imDortant. I should like to say **that** some articles of food should be sold cheaper, but particularly articles like vegetable which supplement cereal diet. Those have gone up very much In price latterly and I think in all these matters the railway rates form a very important factor. Government counts on the Railway Board to increase revenue and no doubt that is in the general interest of the country. But in our present situation this has to be subordinated *to* the wider interests of the country—easing foreign exchange difficulties. Therefore, I think there should be a curb imposed upon the Railway Board and other authorities. My contention is **that** the steps taken in this amendment to reduce the powers of the Tribunal must be reconsidered and every effort should be made to see that this Tribunal is able to look after the interests of the common man, especially of the smaller producers, especially agriculturists, the industrialist and so on and enable them to expand production and get their goods transported at low rates so that the price of the goods sold for common consumption may be kept down and prevented from going too high. Therefore, while I agree about the change in the constitution of the Tribunal, its powers should not be too much reduced, I think the matter must be given further consideration by Government. Although the Bill may be passed, I do hope the Government will take into special consideration the interests of the common people and see that these interests are securely safeguarded.

THF, DEPUTY MINISTER OF RAILWAYS (SHRI SHAH NAWAZ KHAN): Mr. Chairman. I am very grateful to the hon. Members who have taken such a lively Interest in this debate and also for the very valuable suggestions that they have made. My hon. friend Shri Kishen Chand with his usual thoroughness, Sir, assailed this amending Bill and he was seeing something very sinister behind this move to amend the Act and he **thought** that the Railways were out to acquire dictatorial powers and there was a danger of those powers being used in favour of certain sections and ruining various industries. My learned friend Dr. Sapru who is an authority on legal matters also thought that the various provisions in clause **27A** offended the Constitution. I am afraid their fears are totally unfounded because all that has been done **in** this particular provision is to remove a lacuna. That is all. Very substantially the provisions in this clause existed already in the Act. All that is being done now is *to* add a new sub-section, sub-section (1) (b) which says:

> "to carry any goods or class of goods by such route or routes and at such rates as may be specified in the order."

That is all that has been done. **The** other provision, i.e.—

> "The Central Government may, if in its opinion it is necessary In the public interest so to do, by general or special order, direct any railway administration—

(a) to give special facilities for, or preference to, the transport of any such goods or class of goods"

and so on, remains exactly as it was before in the Act and so far this has functioned very well and I am sure my hon. friends will not have any complaints in the future.

The main object of this amendment is to enable the Central Government to give directions to the railway administrations, should the need arise to carry specified items of traffic by nominated routes which may be longer than the normal and the cheapest routes so that the utilisation of available routes may be achieved in the public interest when the cheapest route is congested. That, Sir, is really the reason for this amendment. The direction given to the railway administrations will be general orders in regard to particular areas or particular type of goods according to circumstances and will not t›e in regard to movement for any particular person. The directions will also include the direction to the railway regarding the charges to be levied for the traffic which may be (i) charge of the route by which the traffic is carried, (ii) normal cheapest charge which would have been leviable by the normal route and (iii) charge at an intermediate level, depending upon the merits of each case. I would here like to quote an example. An example of the situation may be givei for transport between Bombay and Delhi. There are two routes, one over the Central Railway which is 957 miles and the other over the Western Railway which is 861 miles.. The normal route for the carriage is the shorter one over the Western Railway but that route is congested and it may become necessary to carry part of the traffic by the longer route. The purpose of this amendment is to vest Government with the power to make such an allocation. That is all that is Implied by this amendment in which so many sinister meanings were seen. I can assure hon. Members that the Act has functioned well and will continue to function well in future.

I would like to thank my hon. friend, Mr. Basu, for clearing up very efficiently and very effectively the point regarding the provisions of the Constitution which Dr. Sapru thought had been offended. This point has been examined on more than one occasion by the Ministry of Law itself and I can assure my respected friend that there is no infringement of the Constitution involved.

SHRI P. N. SAPRU (Uttar Pradesh): May I ask as to what their line of argument is? What is the line that the Ministry of Law has taken? My quarrel was with the drafting of this proposed section. What I said was that the section as drafted at present might lead to controversy in courts of law.

SHRI SHAH NAWAZ KHAN: Unfortunately, my friend was not here when I started replying. These sections already form part of the Act and have been functioning since 1949. There is nothing new that has been done.

SHRI P. N. SAPRU: You say article 13 covers it?

SHRI V. K. DHAGE (Bombay): Even if it be an existing section of the law, does it mean that the existing section of the law is not against the Constitution? It is only that nobody has |£>ne to the court. Now that the amendment is moved to that effect^ one can certainly raise that point.

SHRI SHAH NAWAZ KHAN: My hon.. friend Mr. Kishen Chand, said that the statutory power of this tribunal has been reduced to an absolute farce and, without giving it any mandatory powers it had been reduced in status to that of an advisory body. That was also the opinion of Shri Patil who thought that the public would have no faith left in such a powerless and an

[Shri Shah Nawaz Khan.]

ineffective tribunal. I can assure those hon. Members that their fears are totally unfounded. The tribunal will continue to have mandatory powers under section 41A. I explained the reason why this change has been sought to be made in my opening speech. I would like to repeat it again. "The Railway Freight Structure Enquiry Committee have recommended that in view of the urgent and paramount need for Government to have full freedom and flexibility in fixing the basic freight rates for budgetary reasons, the tribunal should have no mandatory jurisdiction in respect of classification". That is the only reason, Sir, why this change has been made. The changes now sought to be made in this Bill are essential to implement this recommendation. The tribunal will have advisory jurisdiction over classification but it will still have mandatory powers. In cases where there is a complaint regarding the rates between two specific points the tribunal can order the administration to quote new rates, station to station rates, which the administration will have to carry out. Similarly, Sir, the tribunal can order the administration to remove undue preferences or undue prejudice. These are the mandatory powers and I think they are very wide mandatory powers which the tribunal will still continue to exercise and I do not see any reason why my hon. friends should have a feeling that this tribunal has been rendered totally ineffective. The only thing that has been done is to take away the power of classification and for that very good reasons have already been given.

My hon friend, Shri Kishen Chand, and a number of others thought that it was not fair to bring this new section 41A which was very heavily weighted in favour of the Government. They thought that only Government was being given this privilege and that the private parties were being denied a similar privilege. Sir, this is not the actual position. A lacuna existed in the Act and all that has been done is to remove that lacuna. At present, there is no provision in the Act enabling the railway administrations to apply to the tribunal for the revision of its orders even where there has been a material change in the circumstances in which an order was passed. The result is that an order passed by the tribunal in respect of rates of commodities or any other matter within the jurisdiction of the tribunal remains in force for ever. This is not satisfactory since conditions, particularly in regard to transport costs, state of industry, etc., etc., change from time to time. Hence, the proposed new section to enable applications to be made by the railway administrations. As far as the public are concerned, Sir, they have always had and will have in future necessary powers under section 41.

So that remedy has always been there and is still there.

Then again, Sir, my hon. friends, Dr. Thomas and Mr. Kishen Chand, and I think one or two others thought that it was a wrong step to do away with the assessors. Sir, actually in the other House when this Bill was being debated this idea of doing away with the assessors was universally welcomed, and I would like to read out the opinion of the Railway Freight Structure Enquiry Committee on this particular aspect. It says: "It is true that two panels of assessors, one drawn from trade and commerce and one from the railways assist the Tribunal during the hearing of the complaints. We have had the opportunity of receiving the evidence of some of the gentlemen who have acted as assessors." Again they are giving the opinion of others than the gentlemen who had been acting as assessors and this is what they say: "We have also had the benefit of the views of some of the learned advocates who appeared before the Tribunal and we are satisfied that the system of assessors had failed in its purpose. We were informed that tht

assessors are present during the hearing of the complaint and after having heard the counsel are required to give an agreed opinion if possible, or individual opinions if necessary, and having done so in writing, they disappear from scene." It is not as if the assessors are there the whole time, Sir, taking part in the discussion and all that. They are invited for the hearing. They give their opinion in writing and then they just disappear from the scene. The discussion among the members of the Tribunal takes place without the assessors being present and in vhat critical stage of arrival at a judgement neither the experience of the advisers of the commercial panel nor of the railway panel is available to the Tribunal. These are very weighty reasons for which they recommended that this system of having assessors is to be discontinued.

Shri Kishen Chand said that there were about sixty assessors, 20 from the trade and industry side, 20 representing agricultural interests and some 20 from the railway side. It is not as if the whole sixty are present for a case. Normally only two or four persons are invited, and the practical experience has been lhat even those two or four find it difficult to turn up on the day of hearing and so some other time has to be given to the litigants to enable the assessors to be present. That acted as a deterrent to speedy decisions more than anything else, and it is for these reasons that we have decided to do away with this system of assessors, and I am sure no lion. Member is going to regret this.

[MR. DEPUTY CHAIRMAN in the Chair]

Then, Sir, my hon. friend,—I cannot see him here—Shri Gupte raised the question of pending cases. Sir, there are about four pending esses : before this Tribunal. He did not agree with the provisions in the proposed Bill that the cases which are not decided and which do not come within the jurisdiction of the reconstituted Tribunal should abate. Sir, all I can say is that we hope that before the new Tribunal is constituted these four cases will be decided.

Then my hon. friend, Shri Muker-jee, with his usual zeal and enthusiasm, Sir, thought that the corrupt railway officials and railway employees would take away the actual effect of the classification from *the* jurisdiction of the Tribunal. He quoted a number of cases where the goods had been booked under a wrong classification. I am very grateful to him, Sir, for drawing our attention to this. We are aware that corruption to some extent does exist and we deal with this very strongly whenever any such case comes to our notice. I can assure him about this. Even now we have certain enquiries going on in Calcutta where we thought there is corruption of this type in booking. But that is quite a separate matter and that will be tackled vigorously and is being tackled vigorously.

Finally, Sir, I would like to come to the question which I thought was pressed very strongly by various hon. Members who spoke, and many of them asked: Why is it that you insist on having a Judge of a High Court or Supreme Court as the Chairman of this Tribunal? Sir, the House is aware that previously we **had** three members on this Tribunal who were either Judges of High Courts or of the Supreme Court or were persons eligible to be Judges of such courts. Now, Sir, there will be only one Judge, who will be an expert in judicial matters. Sir, I agree with the views of the hon. Members who have spoken on this subject that it is perhaps not very desirable to restrict it only to High Court Judges and that eminent lawyers and advocates should also be given the opportunity of serving on these Tribunals. I appreciate their point of view, but I think, Sir, very rightly an impression has been

[Shri Shah Nawaz Khan.] created in favour of judiciary in our country. I am very proud that it is so. The public at large in our country has developed great confidence in the fairness of our judiciary, particularly in our High Court Judges for their absolute fairness and for their absolute unbiassed views. They have become symbols more or less of fairness in this country, and the whole House is aware, Sir, whenever for instance, any serious accident takes place on the railways, or any extraordinary event takes place, there is a cry from all sections of the House, "We want a judicial enquiry by a High Court Judge." That is because the public in our country has such strong and powerful faith in our High Court and Supreme Court Judges, and it was because of this . . .

SHRI AKBAR AL1 KHAN (Andhra Pradesh): But there are lawyers eligible for High Court Judgeships, lawyers as good as Judges.

SHRI SHAH NAWAZ KHAN: There are certain other reasons, Sir, which I would like to place before my hon. friends. The decision to have a Judge of a High Court or the Supreme Court to be the Chairman of this Tribunal was taken after a very mature consideration at various levels. One of the main reasons that weighed in this was that the term of office of the Chairman is going to be five years. Again, after very mature consideration we have decided that this term should not be extended. The idea is that there should be no incentive to anybody to continue. It is a fixed term not exceeding five years. It is very doubtful whether any leading advocate or lawyer of vary high standing would be willing to come forward for this job only for five years and especially when it cannot be extended. There have been cases in the Tribunal as it was constituted where people have been on it since 1949 and some persons who were put on the Tribunal in 1949, are still continuing. And in actual fact, in the actual working of the Tribunal since it was constituted in 1949, we have had a High Court Judge as the Chairman. We have had other members, leading lawyers, some of them promoted to be Judges of High Courts and others, in some cases, are continuing since 1949. Because we have now limited the period of office here to five years, we thought that very top ranking lawyers may not like to come on this and also there is always another danger that when first rate persons are not prepared to come forward, then there may be a chance for the claims of second rate lawyers to be pressed for this. Again, the House is aware that the other two persons we propose to be put on this Tribunal would be persons who would be expert in commercial matters, perhaps some very senior railway official, may be a retired General Manager of a. railway or a Chief Commercial Superintendent, and then some other person who would be an outstanding personality in the country, who would be an expert in economic matters. I am sure the House would appreciate that with such persons they would look forward more to having as their Chairman a person of really a high status, of the status of a High Court or a Supreme Court Judge.

In view of the facts which I have now placed before the House I am sure that all sections of the House will agree with this Railway amending Bill and I commend it to the acceptance of the House.

MR. DEPUTY CHAIRMAN: The question is:

> "That the Bill further to amend the Indian Railways Act, 1890, as passed by the Lok Sabha be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill. Clause 2 stand part of the Bill. There is no amendment.

Clause 2 was added to the Bill

Clause 3—*Amendment of section 11A*

MR. DEPUTY CHAIRMAN: There is one amendment.

SHRI V. K. DHAGE: Sir, I move:

1. "That at page 1, line 18, for the words 'give special facilities for, or preference to' the words give facilities for, or determine priorities for' be substituted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are before the House.

SHRI V. K. DHAGE: Sir, I have just now listened to a part of the reply given by the Deputy Minister and I must say that he has evaded really to meet the point that was made out by Shri Sapru the other day. He relied upon the fact that the existing Act contains a similiar provision in section 27A and, therefore, he felt that the objection that has been taken to the new amendment does not hold good I think that is a fallacious argument. The fact that there has been no justiciable case with regard to this matter, does not mean that this provision is consistent with the provision of the Constitution itself. It will be noticed that in the very Act :tself, which the hon. Deputy Minister seemed to rely upon, the basis is that there should be no preference between two persons. I will out to him section 27, and the basis of that section is that at no time will any preference be shown or advantange be given to any person who makes use of the railways. I will read it:

"Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality—(1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and developing of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock."

That is a positive provision. Subclause (2) seems to have been omitted some time before. But subclause 3 is worded in a negative manner and it says as to what the railways shall not do, and it reads:

"(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station . . . without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage.... etc."

Now, this is the basis of the provision in the Railway Act itself. Not only this, but in the very section, to which the Deputy Minister referred just now, this provision occurs. And that which has been existing before reads as follows: —

"The Central Government may, if in its opinion it is necessary in the public interest so as to do, by general or special order, direct any railway administration to give special facilities for, or preference to, the transport of any such goods or class of goods consigned to the Central Government or to the Government of any State or of such other goods or class of goods as may be specified in the order."

This is reproduced in the new amendment word for word and in section 28 this provision has been qualified. As I stated before, in the chapter with regard to Traffic Facilities, the basis is that there shall be no preference shown to any person using the railway. The same has been the case also in section 28 pertaining to the facility to be given to the Government. It reads:

"Prohibition of undue preference.— A railway administration shall not make . . .—"

Please mark the words 'shall not make'—

"... give any undue or unreasonable preference or advan-

[Shri V. K. Dhage.] tage to, or in favour of, any particular person or railway administration . . . etc."

Now, the point is whether the Government that uses the railway for itself can make any discrimination between one that uses the railway and the Government itself. The word 'preference' seems really to smack of some arbitrariness and it merely means that it can take advantage which is not available to it otherwise under the general principle of that chapter. Whereas my amendment merely speaks of priority. The implication of priorities is that, if the Government decides upon giving a priority, it is for the benefit of the general public. Also, it might mean that it is for the benefit of the persons over whom the priority is given.

There has been a judicial pronouncement on this matter whether the Government can take any preference •r any exemption over the other people. I am not going into the controversy as to what is a person, etc., and what are the Articles of the Constitution which pertain to a thing like that. I will, time permitting, come to these later. There was the U.P. Motor Vehicles Act and in it, the provision was, while everybody else would have to ask for a permit, the Government need not ask for it. This kind of a discrimination which was made in that Act has been held to be invalid by the Allahabad High Court in a full Bench case. I shall read it out to you as to what this judgment is. Section 42(1) of the Motor Vehicles Act provides that no owner of a transport vehicle shall . . .

SHRI H. N. KUNZRU (Uttar Pradesh): But Government subsequently changed the Constitution in order to justify this.

SHRI V. K. DHAGE: I do not think the Constitution has been changed in order to justify this because, what are objected to, in this very Act, still continue to be the Articles in the Constitution itself. They have not been amended. I do not know to what Dr. Kunzru is referring.

SHRI H. N. KUNZRU: Article 19.

SHRI V. K. DHAGE: But Article 19 is not applicable to this, Sir. I will read out as to what the judgment is.

"The Motor Vehicles Act provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority."

But sub-section 3(a) of this section exempts from the application of sub-section (1). That sub-section is:

"Any transport vehicle owned by or on behalf of the Central Government or a provincial Government other than a vehicle used in connection with the business of an Indian State Railway . . ."

SHRI H. D. RAJAH (Madras): When was this judgment issued?

SHRI V. K. DHAGE: This judgment is in the year 1951. Do you mean to say that there was no Constitution existing then?

SHRI H. D. RAJAH: Amendment after that.

SHRI V. K. DHAGE: I do not know what Dr. Kunzru is referring to.

SHRI H. N. KUNZRU: I shall point out what I mean after the hon. Member has finished.

SHRI V. K. DHAGE: The judgment reads:

"This provision, in our opinion, so far as it purports to exempt from the application of sub-section (1) of that section transport vehicles owned by or on behalf of the

State Government, is in conflict with article 14 of the Constitution which declares that the State shall not deny to any person equality before the law or the equal protection of the law within the territory of India."

I do not want to read that portion of it which compares with the Constitution in America. The judges have gone on to quote that, but the substantial portion of the judgment which affects this runs as folows: —

"It appears to us that, when the State engages in business or commerce such as is carried on by a private individual or corporal ion, it must subject itself to the same obligations as are imposed on and place itself in the same position as a private individual or a corporation except in the matter of taxation. In our opinion, the S.ate cannot, when it engages in business or commerce, deny equality beiore the law or the equal protection of the law to other persons as against itself."

This is very material to the case that the "State cannot when it engages in business or commerce dtny equality before the law or the equal protection of the law to other pur-sons as against itself':

"Section 42(3) (a), Motor Vehicles Act, clearly places the State Government in a privileged position and to the extent that it does so, it is, in our opinion, repugnant to article 14 and, therefore, void under article 13 of the Constituticn. The State, if it wants -to put transport vehicles on the road must first
apply for and obtain permits ----------" etc.

This judgment has been followed in various other cases as we'.l. These I need not quote.

SHRI SANTOSH KUMAR BASU (West Bengal): What is the reference?

SHRI V. K. DHAGE: A.I.B. 1951— U.P. Page from which I am quoting this very long judgment is 282.

It will, therefore, be seen that unless the word 'preference* is changed, preference will be given in a manner which will be beneficial to the person in whose favour it is given and it may be disadvantageous to a person against whom it has been given. But article 14 requires not only equal protection of the law to be given to all the persons but also that before the law, every one is equal. Therefore, I have used the word 'priorities'. That makes the Government realise as to whether the priority **that** is given is for the general benefit **anf** is for the benefit also of the other persons over whom the priority is given. I, think that in that case there will be nothing wrong. In fact, it will probably save the Government from going into litigation, if they were to accept this amendment of mine and it will save all sorts of confusion that will arise. Thank you.

SHRI H. N. KUNZRU: I pointed out that the judgment of the High Court of Allahabad to which the hon. Shri Dhage^ has referred was no longer applicable, because the Constitution was changed.

SHRI H. D. RAJAH: In what?

SHRI H. N. KUNZRU: I will just explain. Will you just hear me?

The Constitution was changed in order to enable the Government to act in a way that the High Court of Allahabad regarded it objectionable. This is. the thing.

Clause (1) of article 19 of the Constitution gives all Indian citizens the right to do certain things. Now, sub-clause (g) of this clause enables all Indian citizens to practice any profession, or to carry on any occupation, trade or business. Clause (6) of this article says:

[Shri H. N. Kunzru.]

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said 'sub-clause . . ."

SHRI P. N. SAPRU: 'Reasonable restrictions' is not . . .

SHRI H. N. KUNZRU: Please let me finish what I am going to say. Have your commentary afterwards.

"and, in particular . . . "Now, I ask the House to note the words that follow the words 'in particular'. These words we,re substituted for words in the previous provision by the Constitution (First Amendment) Act, 1951. The words that followed the words 'in particular' before the amendment of the Constitution were as follows:

"Nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes, or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualification's necessary for practising any profession or carrying on any occupation, trade or business."

This clause, as it was, laid down two things—one that the restriction that was imposed on the exercise of the right conferred by sub-clause (g) of clause (1) should be reasonable, and the second was that the professional or technical qualifications required for practising any profession or carrying on any occupation, trade or business could be prescribed. Now, let us note the words that follow the words in particular":

"nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or . . .".

"(ii)"—*this is new*—"the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

On account of these amendments the U.P. Government was free to carry on in accordance with the Motor Vehicles Act. That had been criticised by the Allahabad High Court and some provisions of it had been declared to be illegal. This change in the Constitution made it unnecessary for the U.P. Government to carry out the judgment of the Allahabad High Court.

1 p. M.

SHRI H. D. RAJAH: But the Allahabad High Court judgment is based on article 14.

SHRI P. N. SAPRU: Sir, may I just explain the position? There seems to be so much confusion about it.

MR. DEPUTY CHAIRMAN: Let him finish.

SHRI H. N. KUNZRU: Sir, I was a Member of the Provisional Parliament.

SHRI P. N. SAPRU: Perhaps a sleeping Member.

SHRI H. N. KUNZRU: Well, not sleeping like the hon. Member himself. Sir, I drew attention to the judgment of the Allahabad High Court and pointed out that this provision would prevent the people already running motor vehicles on hire from getting any compensation from the State in defiance of the judgment of the Allahabad High

Court. No reply was given to it. But Government obstinately clung to this amendment. Everyone knows what its effect has been. This thing was changed in order to enable State Governments to exercise any tradj or **any** service without giving any iom-pensation to those "who would be displaced.

SHRI P. N. SAPRU: Sir, may I just clarify the position?

MR. DEPUTY CHAIRMAN: After lunch, Mr. Sapru.

The House stands adjourned till 2-30 P.M.

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

The House re-assembled titer lunch at half-past two of the clock, THE VICE-CHAIRMAN (SHRI M. B. JOSHI) in the Chair.

MESSAGE FROM THE LOK SABHA

THE PAYMENT OF WAGES (AMENDMENT) BILL, 1957

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

"In accordance with the provisions of Rule 96 of the Rule: of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Payment of Wages (Amendment) Bill, 1957, as passed by Lok Sfbha at its sitting held on the 11th December, 1957."

I lay the Bill on the Table.

THE INDIAN RAILWAYS (AMEND-MENT) BILL, 1957—*continued.*

SHRI P. N. SAPRU: I would like to generally support the amendment of Mr. Dhage, and I think there are very good reasons why the Government should prefer that amendment to the clause as it is worded here. Dr. Kunzru has somewhat confused the issue. He is not here . . .

SHRI H. D. RAJAH: He is outside.

SHRI P. N. SAPRU: He has relied upon the recent amendment to the Constitution in support of the proposition that the clause as it is worded is valid. The argument that Mr. Dhage has advanced is of a different character. It relates to what can be done and what cannot be done under article 14 of the Constitution. Article 14 comes before article 19. Article 14 relates to equality. It is what is generally known as the equality clause. It provides for two things— equality before the law; we are not concerned with that, and equal protection of the laws. It provides that there shall be impartial administration of the laws and that there shall be no discrimination by the State between person and person falling within the same category and that there shall be no arbitrariness in this. That is the meaning of article 14. Article 14 has not been touched in this sense by the new amendment of the Constitution. I would read out from Basu's Commentary on the Constitution:

> *"Class* legislation discriminating against some and favouring, others is prohibited, but legislation which, in carrying out a public purpose, is *limited* in its application, is not prohibited, if within the sphere of its operations it affects alike all persons *similarly* situated."

Then it goes on:

> "Equal protection thus means, in short—
>
> "that no impediment should be interposed to the pursuits by any one except as applied to the same pursuits by others under like circumstances; that no greater