

RAJYA SABHA

Friday, 25th March 1955

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

THE INSURANCE (AMENDMENT) BILL, 1955

SHRI B. C. GHOSE (West Bengal): Sir, I beg leave to introduce a Bill further to amend the Insurance Act, 1938.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill further to amend the Insurance Act, 1938."

The motion was adopted.

SHRI B. C. GHOSE: Sir, I introduce the Bill.

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1954

SHRI P. S. RAJAGOPAL NAIDU (Madras): Sir, I move:

"That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration".

Administration of the Representation of the People Act, 1951, the various judgments of the Election Tribunals in the country, the various judgments of the High Courts in our country and also the Supreme Court have brought to light some lacunæ in the Act. It is the duty of Parliament to see that before the next general elections such difficulties are removed by amending the Act suitably.

Sir, the first is about the number of persons who can be employed for payment by a candidate in connection with an election. Section 77 of the Representation of the People Act deals with the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection

with elections. Rule 118 of the rules framed under the Representation of the People Act, read with Schedule VI framed under the said rules, specifies the number of persons that can be employed in connection with elections and their descriptions. Difficulties have arisen in interpreting section 77 of the Representation of the People Act, Rule 118 of the rules framed under the Representation of the People Act and Schedule VI thereto. Schedule VI enumerates the persons who may be employed for payment by candidates or their election agents in connection with elections. For the benefit of the House, Sir, I may read out Schedule VI which gives the description of the persons who can be employed by a candidate:—

"At all elections—

- (1) one election agent,
- (2) one counting agent, and
- (3) one clerk and one messenger:

Provided that in the case of an election in a Parliamentary constituency or an Assembly constituency or a Council of States constituency the number of clerks and messengers who may be employed for payment shall be one clerk and one messenger for every seventy-five thousand electors on the electoral roll of the constituency or portion thereof.

At elections in which the method of voting by ballot boxes is followed the following persons may be employed for payment in connection with each such election in addition to the persons specified in (1), (2) and (3) above, namely:—

(a) one polling agent and two relief agents for each polling station or where a polling station has more than one polling booth, for each polling booth or for the place fixed under sub-section (1) of section 29 for the poll and;

(b) one messenger at each polling station or where a polling station has more than one polling

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booth, at each such polling booth, or at the place fixed under subsection (1) of section 29 for the poll."

Sir, it will thus be seen that leaving out of consideration the personnel that may be employed for purposes of polling, namely, one polling agent and two relief agents for each polling booth and one messenger for each polling booth, Schedule VI permits the employment of one election agent; one counting agent; and one clerk and one messenger. In the case of an election in a Parliamentary constituency or an Assembly constituency or a Council of States constituency, the number of clerks and messengers who may be employed for payment shall be one clerk and one messenger for every 75,000 electors on the electoral roll of the constituency or portion thereof. The object of the framers of the statute in limiting the number to four only viz., one election agent, one counting agent, one clerk and one messenger is to check the election expenses of the candidate. But one has to see how far a candidate to the election restricts his staff to one clerk and one messenger. Even the so called volunteers or workers who are engaged by the candidate to assist him in his election campaign will have to be provided with their out of pocket expenses, viz., transport charges, for their food and refreshments, etc. Some Tribunals have held that such employment of workers on some sort of remuneration would likewise amount to a major corrupt practice entailing the disqualification of the candidate and avoiding the election totally.

It may be useful at this stage for me to refer to the corresponding provisions of the English Acts. Section 17 of the U.K. Corrupt and Illegal Practices Prevention Act of 1883 dealt with this matter. Section 17 of the said English Act reads that no person shall for purposes of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or

promise of payment for any purpose or in any capacity whatever, except as mentioned in the first or second parts of Schedule I to the Act or so far as payment is thereby authorised. Section 17 deals with two aspects: one as to the persons to be employed; and the other as to the expenses to be incurred. Schedule I limits the persons to be employed to (1) one election agent and in counties one deputy election agent; (2) one polling agent in each polling station and in a borough one clerk and one messenger, subject to certain limitations. Some of the expenses enumerated in Part II of the Schedule necessitate the engagement or employment of certain persons and in such cases, unless otherwise illegal, the employment was legally held to be justified. In other words, all the rigours of the 1883 law of England had practically been adopted by the framers of our Representation of the People Act in this regard. Section 17 of the English Act and the Schedules have been the subject matter of consideration in numerous English cases and it has been held that it is illegal to employ for payment canvassers or persons to keep order at meetings.

Rogers who is an authority on elections in his eighteenth Edition says:—

"A speaker must not, therefore, for the purpose of promoting or procuring the election of a candidate at an election, be engaged or employed to speak in consideration of a payment or promise of payment, nor such a canvasser be engaged to canvass for such purpose and on such terms."

The rigour of 1883 law has been mitigated in England by the enactment of the Representation of People Act of 1949. Besides setting a limit on total amount of expenditure which may be incurred and prohibiting the employment of paid canvassers, the restrictions on the number of capacities of persons that may be lawfully employed have all been lifted. The limit on the

total expenditure is a sufficient safeguard (though according to me nobody observes that in practice in the elections here) and Schedule V already provides that, viz., Rs. 8,000 in the case of a single-member Assembly constituency—it varies with each State, and with regard to Madras it is Rs. 25,000 in the case of a single-member Parliamentary constituency and Rs. 35,000 in the case of a double-member Parliamentary constituency—Rs. 8,000 in the case of a single-member Assembly constituency and Rs. 12,000 in the case of a double-member Assembly constituency. I have no grievance against that, viz., limiting the expenditure. But the retention of the number of capacities of persons that may be lawfully employed leads to several complications in the practical working of elections. One will find it difficult to follow this to the strict letter of law. While some Tribunals have held that payment of salary to a driver engaged to drive a car for his canvassing would amount to a major corrupt practice, the Supreme Court in an election case had held it would not amount to that. Some Tribunals had held that engaging coolies or workers for the purpose of affixing posters and to do other odd jobs would amount to major corrupt practices and elections have been set aside on that ground. My suggestion is: why should we not fall in line with the law in force now in England especially in view of the difficulties to which the interpretation of section 77, Rule 118 and Schedule VI had given rise? If section 77, Rule 118 and Schedule VI thereto are left to stand on the Statute Book as they are, a strict and narrow construction of them would lead to the conclusion that even the employment of coolies or workers would be opposed to the provisions of Schedule VI. Schedule VI simply enumerates that only four persons can be employed by a candidate for his election. The word 'coolie' does not come within the list of persons given in Schedule VI. Surely, Sir, one cannot conduct an election without employing hired labour day to day for affixing posters,

for distributing election pamphlets and for performing other odd jobs. It is too much for anybody to expect, Sir, that these services can be performed on a voluntary basis, without any remuneration being paid to anybody. One PEPSU Election Tribunal had observed (I am quoting this extract from the judgment of the Tribunal): "Except for the persons specified in Schedule VI, a candidate is not authorised to employ any other person on payment for any kind of work in connection with his election." Then, Sir, one Madras Tribunal had held (I am quoting it from the judgment of the Tribunal): "Employment of propagandists on remuneration in contravention of Rule 118, read with Schedule VI, is a major corrupt practice within the meaning of section 123, sub-section (7) of the Act." Sir that is why I have suggested an amendment to section 77 for the deletion of the words 'the number of persons' Inasmuch as the maximum amount that can be spent by a candidate in an election is fixed, I do not find any reason why the number of persons also should be limited. One can employ any number of persons, not necessarily four persons. It is only a simple amendment that I am suggesting with regard to section 77.

Now coming to clause 3, i.e., the other amendment which I have proposed is to insert a new section as section 140A to the Act. This relates to the removal of disqualifications from standing at an election by the Election Commission. Already, Sir, the Election Commission is given power to remove disqualifications from voting, and in a restricted way, to remove disqualification from standing also. Sir, removal of disqualification from voting is dealt with in sections 141 to 144 of the Representation of the People Act. There is no doubt about the integrity of the Election Commission in discharging its duties. According to the present provision of law, the Election Commission has power to remove disqualification from voting, whether such disqualification from voting has arisen

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out of a conviction under section 171E or 171F of the Indian Penal Code for impersonation etc., and whether such disqualification for voting is the consequence of being found guilty of corrupt or illegal practices, and whether such disqualification from voting is the result of failure to lodge the return of election expenses, or for lodging false return of expenses on a finding by a court of law. Sir, the Election Commission has also power to remove disqualification for holding certain offices as provided in section 146 of the Representation of the People Act, 1951, which reads as follows: —

“146. *Disqualification for holding certain offices*—Any person who—

(a) has been convicted of an offence punishable with imprisonment under section 171E or section 171F of the Indian Penal Code, or

(b) has been disqualified from exercising any electoral right for a period of not less than five years on account of any corrupt practices in connection with an election, shall be disqualified for six years from the date of such conviction or disqualification from—

(i) being appointed to, or acting in, any judicial office;

(ii) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;

(iii) being elected or sitting or voting as a member of any local authority; or

(iv) being appointed or acting as a trustee of a public trust:

Provided that any disqualification under this section may be removed by the Election Commission for reasons to be recorded by it in writing.”

Then, Sir, the Election Commission has power to remove disqualification for membership of a Parliament or a State Legislature in a very limited sphere, in offences involving minor corrupt practices. Sir, as the hon. Members know, the Representation of the People Act provides for two categories of corrupt practices. One is major and the other is minor. In the case of minor corrupt practices, under the provisions of section 7 (b) and 7 (c) of the Representation of the People Act the Election Commission is given power to remove disqualification in the case of offences involving minor corrupt practices, but in the case of offences involving major corrupt practices, which are enumerated in section 7 (a) of the Representation of the People Act, no power is given to the Election Commission. Sir, when once a Tribunal decides that a particular candidate has committed a major corrupt practice, besides setting aside the election, if the Tribunal comes to the conclusion that the candidate will be debarred from standing as a candidate for any election, either for the Assembly constituency or for the Parliament constituency, for a period of five years, there is no other remedy for him. There is no provision for any appeal made. There is no provision for any representation to be made to the Election Commission. Sir, in the case of disqualification from voting, I find that a provision is made in the Representation of the People Act for a candidate to approach the Election Commission, and the Election Commission is invested with power to remove the disqualification from voting. But in the case of major corrupt practices, I find that no provision has been made for a candidate to approach any authority to have the disqualifications from standing removed. For instance, Sir, I know of one particular case in Madras which is reported in S.R.O. 587, dated the 19th March 1953—the Extraordinary Gazette. The only point that came up for consideration in that particular case was that the candidate had submitted the return of election expenses for a sum

of Rs. 7,600 and odd. According to Schedule V, a sum of Rs. 8,000 could be spent, as far as Madras State is concerned. The question that came up for consideration before the Tribunal was that a sum of Rs. 500 had been paid by the candidate, in connection with filing his nomination, to the District Congress Committee. It may be that unless Rs. 500 was paid, he would not have been selected by the Congress Committee to contest the election for that constituency. That is a different matter. It was decided by the Tribunal that that amount was fraudulently withheld from his election return, and therefore his election should be set aside and that he should be debarred from standing for any election for the period of six years. This is, Sir, one of the cases where gross injustice, according to me, has been done to the candidate. It may be that Rs. 500 may amount to an election expense or not. That is quite a different matter. But when he is debarred from contesting any election for a period of six years, and when no provision in the Statute is made for him to approach any particular authority to have that disqualification removed, that only goes to show that it is high time on our part to see that such difficulties are removed, and a clear path is made for the candidates who contest the elections. This is one instance, Sir, which I have quoted. But there are several other instances, and I do not want to tax the House by quoting several other judgments in this regard.

Now, Sir, I only want to compare the law here with that in England. In England, there is the Representation of the People Act of 1949 in this regard. As we all know, Sir, there is no such body as Election Commission in England. Elections are conducted by Parliament in England.

SHRI S. N. DWIVEDY (Orissa): Is it necessary to compare our law with that of England because we are a Member of the Commonwealth?

SHRI P. S. RAJAGOPAL NAIDU: My friend need not worry about that. I

must make the point clear to my learned friend. The Representation of the People Act of India, of the year 1950, and the later Act of 1951, are merely a copy of the Representation of the People Act of 1949 of England. With regard to the conduct of elections we are simply following the election rules of England in several matters and if my learned friend takes the trouble of reading our Representation of the People Act and also the Act of England, he will find that in several sections word for word, we have adopted only the language of the English Act.

In this connection, Sir, I would like to read what section 145 of the Representation of the People Act, 1949, of England says. That section reads as follows:—

"145. Power to except innocent act from being illegal practice, payment, employment or hiring.—An application for relief under this section may be made to the High Court or an election court or else, if in respect of a payment made in contravention of sub-section (1) or (2) of section sixty-six of, or of paragraph 1 of the Sixth Schedule to, this Act, to the county court."

Why I am citing this section 145 is that there is no provision made under our Representation of the People's Act for the person who has been disqualified from standing as a candidate when once a Tribunal decides that he is disqualified, to go to a court of law and have his grievance redressed. For instance, in the case which I have cited before from Madras, it is only out of sheer ignorance he did not include that amount in the election expenses. I am not questioning the legality of the whole thing, but even assuming for the purpose of argument that he has not included it in the list of election expenses, it is only out of sheer ignorance or innocence that he did not include it, and if any provision had been made in our statute for the courts to consider the matter, and if the courts were to come to the conclusion that it was only out of sheer ignorance or innocence he had not

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I feel I have sufficiently explained the reasons why I am bringing in this amending Bill and I shall leave it to the Government to accept my Bill. With these words, Sir, I move.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration."

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Sir, I would like at this stage to intervene and tell the hon. Member that, as he probably knows, there was already one Bill introduced last year for amending the Representation of the People Act, but it was found that it did not go far enough and that some comprehensive amendments would be necessary in the light of the experience which we have had of the working of the Act over the last five years, because there have been so many Tribunals, so many decisions and so many matters which have been raised. I think it was only last month or so that I replied to a question in this or the other House saying that the Government are as a matter of fact thinking of introducing a comprehensive measure taking into consideration all these factors and amending the law. I may assure the hon. Member that at that time all the questions raised by the hon. Member will be taken into account. He would recall that the other Bill was referred to a Select Committee, their report even had been submitted but we could not proceed with it because we felt that it was not going far enough and

that something more was necessary. I would therefore appeal to the hon. Member not to press this at this moment. It would be better if we deal with all these things at the time we introduce a new Bill either in this House or the other.

SHRI S. N. DWIVEDY: Can the hon. Minister assure us that the comprehensive amending Bill to which he has referred will be brought forward in this session?

SHRI H. V. PATASKAR: Before the end of this session we propose to introduce it.

SHRI P. S. RAJAGOPAL NAIDU: Sir, in view of the assurance given by the hon. Minister, I have nothing more to say except that I hope that the promise that he is making now will be an accomplished fact before the end of this session. Sir, I withdraw the motion.

The motion was, by leave, withdrawn.

THE ORPHANAGES AND WIDOWS' HOMES BILL, 1955

SHRI KAILASH BIHARI LALL (Bihar): Sir, I move:

"That the Bill to provide for the better control and supervision of orphanages and widows' homes in India be referred to a Select Committee consisting of the following Members:

1. Dr. Shrimati Seeta Parmanand
2. Shri Mahesh Saran
3. Shri R. C. Gupta
4. Shri H. C. Dasappa
5. Shri P. T. Leuva
6. Shrimati K. Bharathi
7. Shri D. Narayan
8. Shri B. M. Gupte
9. Shrimati Parvathi Krishnan
10. Shri R. U. Agnibhoj, and
11. The mover."