

[7 December, 2006]

RAJYA SABHA

When we say that the simplest method to stop terrorism is not to allow weapons to be sold in that country, they say, 'no, no' this is economical. So, these weapons are coming from across the border, from the neighbouring countries and from other countries also.

MR. DEPUTY CHAIRMAN: Now we take up the National Tax Tribunal Bill, 2005, Shri Hansraj Bhardwaj.

### **GOVERNMENT BILLS** *(Cont.)*

#### **The National Tax Tribunal Bill, 2005**

THE MINISTER OF LAW AND JUSTICE (SHRI HANSRAJ BHARDWAJ): Sir, I beg to move:

That the Bill to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323 B of the Constitution and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration."

Sir, the National Tax Tribunal Bill, 2005, aims at establishing National Tax Tribunal which will have jurisdiction to deal with disputes concerning both direct and indirect tax laws as is indicated in the long title of the Bill.

Sir, as you are aware, this Bill was conceived by the earlier Government, that is, the NDA Government, and We are continuing with this. This Bill was passed by the Lok Sabha unanimously.

Sir, the main objective behind setting up of this Tribunal is to speed up disposal of cases relating to direct and indirect tax matters. Apart from achieving the purpose of speedy disposal of tax matter, the setting up of, National Tax Tribunal will introduce an all-India perspective in the matter of interpretation of tax laws, since it will have a nationwide jurisdiction. It may also be noted that there are, at present, 21 High Courts. Many a

times, decisions of the High Courts vary from each other, which create uncertainty, delays and problems in the administration of tax matters. Then, sometimes, there are conflict of decisions also.

Sir, the National Tax Tribunal will hear appeals from order passed by Income-Tax Appellate Tribunal and Customs, Excise and Service Tax Appellate Tribunal on a substantial question of law. Presently, an appeal from these Tribunals on a substantial question of law lies to the High Court. After enactment of National Tax Tribunal Act, all cases pertaining to direct and indirect taxes pending before High Courts shall stand transferred to the National Tax Tribunal from such date as may be notified by the Central Government.

Sir, the Tribunal shall consist of a Chairperson and such number of members as the Central Government deems fit. As mentioned in the financial memorandum, to begin with, it is considered necessary to have at least 15 benches for direct tax matters and 10 benches for indirect tax matters so that cases, which shall stand transferred from the High Courts, may be disposed of quickly.

The Chairperson of the Tribunal shall be a person who has been a Judge of the Supreme Court or the Chief Justice of a High Court. A person to be appointed as a Member should be one who is or has been or is eligible to be a Judge of a High Court or a person who is or has been a Member of the Income-Tax Appellate Tribunal or of the Central Excise, Customs and Service Tax Appellate Tribunal for, at least, seven years. Thus, the Tribunal will have Chairperson and Members having judicial and quasi-judicial experience, and as such it will be a specialist body exclusively devoted to the tax matters.

Sir, the Chairperson and Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of the Chief Justice of India or a Judge of the Supreme Court nominated by Mm, Secretary in the Ministry of Law and Justice and Secretary in the Ministry of Finance, Department of Revenue.

Sir, the litigation arising under the tax laws need a special skill to deal with the same.

Therefore, keeping that necessity in view, the present Bill was introduced in the Lok Sabha, and I hope the Bill, as passed by the Lok Sabha, will receive the wholehearted support of this House also.

*The question was proposed.*

**श्री सुरेन्द्र लाठ (उड़ीसा):** धन्यवाद, उपसभापति महोदय। महोदय, नेशनल टैक्स ट्रिब्यूनल का यह बिल जिसे आज माननीय मंत्री महोदय लेकर आए हैं, यह पिछली एन० डी० ए० की सरकार के समय ऑर्डिनंस के माध्यम से लाया गया था, किन्तु उस समय की लोक सभा भंग होने के कारण संसद में पास नहीं हो सका था। महोदय, आज नयी यू० पी० ए० सरकार आने के बाद फिर से इस बिल को लायी है और आज स्टैंडिंग कमेटी की सिफारिश के बाद हम इस बिल पर विचार कर रहे हैं।

**[उपसभाध्यक्ष (प्रो० पी० जे० कुरियन) पीठासीन हुए।]**

महोदय, नेशनल टैक्स ट्रिब्यूनल के गठन के बाद, जैसाकि अभी कहा गया, हाईकोर्ट में डायरेक्ट टैक्स और इनडायरेक्ट टैक्स से संबंधित जितने भी मामले हैं, वे अब नेशनल टैक्स ट्रिब्यूनल में विचार के लिए चले जाएंगे। महोदय, चौकसी कमेंटी ने 1986 में अपनी 115वीं रिपोर्ट में कहा था कि हाईकोर्ट में बहुत कम जज उपलब्ध हैं, जिन्हें टैक्स मैटर्स में बहुत अच्छा अनुभव है या इन मैटर्स में बहुत अधिक काम कर सकते हैं। इसके लिए इस प्रकार के टैक्स ट्रिब्यूनल का गठन किए जाने के संबंध में उनका सुझाव था। उसी आधार पर इस टैक्स ट्रिब्यूनल का गठन किया जा रहा है जिसके माध्यम से टैक्स मैटर्स के लिए एक्सपर्ट रखे जाएंगे और टैक्स मैटर्स के मामलों को अधिक क्षमता से निपटाया जाएगा।

महोदय, जैसा कि कहा गया है, इस बिल का मुख्य उद्देश्य है, for speedy disposal of tax disputes, the National Tax Tribunals will introduce a national perspective for interpretation of tax law, and a special body dealing with tax litigation round the year will acquire both speed and consistency in its views.

महोदय, अभी जो व्यवस्था है, उसके अधीन अपीलेंट ट्रिब्यूनल के बाद डायरेक्ट टैक्स या इनडायरेक्ट टैक्स से संबंधित ये सारे केसेज अपील के लिए हाईकोर्ट में जाते हैं। महोदय आज भी हाईकोर्ट में टैक्स रिलेटेड लंबित मामलों की संख्या 30 हजार से अधिक है और हाईकोर्ट की क्षमता साल में 6 हजार मामले निपटारे की है। इस तरह अगर हम हिसाब करें तो प्रत्येक मामले को निपटाने के लिये सर्व-निम्न 5 साल का समय लगता है। महोदय, इन मामलों में करीब 1,03,000 करोड़ फंसे हुए हैं। जिनमें 87 हजार करोड़ के मामले डायरेक्ट टैक्स से सम्बन्धित हैं एवं 15 हजार करोड़ के मामले इनडायरेक्ट टैक्स से सम्बन्धित हैं। महोदय, इस टैक्स ट्रिब्यूनल का मुख्य उद्देश्य है, इन लंबित विचाराधीन मामलों में कमी करना तथा मामलों के निपटारे को अधिक त्वरित करना। आज हाई कोर्ट के पास क्रिमिनल, सिविल, कंस्टिट्यूशनल ऐसे बहुत सारे मामले रहते हैं, जिसके कारण हाई कोर्ट को जितना समय टैक्स ट्रिब्यूनल में देना चाहिए उतना शायद नहीं दे पाती है। इसके कारण सरकार को बहुत क्षति होती है और इसके कारण करदाता भी परेशान रहता है।

200 P.M.

महोदय, आज अगर केवल अपेलेट ट्रिब्यूनल की बात करें, जो डायरेक्ट टैक्स और इनडायरेक्ट टैक्स से सम्बन्धित हों, प्रायः 1 लाख 82 हजार मामले लम्बित हैं और एक अपील की सुनवाई और उसका निष्पादन करने से कम-से-कम दो साल से पाँच साल का समय लगता है। इसमें करदाता या सरकार दोनों का बहुत अधिक नुकसान होता है। महोदय, आवश्यकता यह है कि अधिक अपेलेट ट्रिब्यूनल का गठन किया जाय तथा ये जो केसेज इतनी बड़ी संख्या में लम्बित हैं, इनका निपटारा जल्द-से-जल्द किया जाए।

महोदय, इसके लिए आवश्यक है कि जो कानून हैं उनको और अधिक सरल बनाया जाए जिससे कि अधिकांश केसेज का समाधान अपेलेट ट्रिब्यूनल के स्तर पर ही हो जाए। महोदय इसके लिए यह भी आवश्यक है कि अपेलेट ट्रिब्यूनल को और अधिकार दिये जायें, जिससे कि अपेलेट ट्रिब्यूनल, जो डिस्प्यूट्स हैं उनके बारे में आपस में कोई समझौता करके या जिस प्रकार के ओ टी एस वगैरह होते हैं, उसके द्वारा भी समस्याओं का समाधान कर सकें। जिससे हाई कोर्ट में या टैक्स ट्रिब्यूनल में जो केस जाएंगे, उनकी संख्या कम हो सकेगी।

महोदय, अभी अपेलेट ट्रिब्यूनल को जो अधिकार दिए जा रहे हैं, उसमें प्रायः अधिकांश केस हाई कोर्ट में जाते हैं। हाई कोर्ट में बहुत संख्या में केस लम्बित रहते हैं और इसके द्वारा जो एग्रीण्ड पार्टी रहती है, वह चाहे सरकार रहे या करदाता रहे, उसको बहुत समय तक इसके लिए प्रतीक्षा करनी पड़ती है। इस प्रकार आवश्यकता इस बात की है कि जितने भी केसेज हैं, उनका समाधान नीचे के स्तर पर ही हो सके।

महोदय, चिन्ता का विषय है कि आज टैक्स एरियर हर साल बढ़ता जा रहा है। आज 87 हजार करोड़ डायरेक्ट टैक्स में जिसमें से 17 हजार करोड़ रुपए ऐसे हैं, जिनमें कोई डिस्प्यूट नहीं है तथा इनडायरेक्ट टैक्स में 15 हजार करोड़ बाकी हैं, जिनमें 3 हजार करोड़ ऐसे हैं, जिनमें कोई डिस्प्यूट नहीं है। महोदय, ये जो 20 हजार करोड़ अनडिस्प्यूटेड हैं, इनको क्यों नहीं वसूल किया जा सकता है और ये क्यों लम्बित हैं तथा कब से पड़े हुए हैं, इसको जानने की आवश्यकता है। सरकार इन अनडिस्प्यूटेड एमाउन्ट को किस प्रकार जल्द-से-जल्द वसूल कर सकती है, इसके बारे में भी सरकार को कोई योजना बनानी चाहिए।

महोदय, आज इतनी बड़ी मात्रा में जो टैक्स एरियर बाकी रह रहा है, अगर इन मामलों का निपटारा जल्द किया जाए तो यह धन देश के विकास में काम आ सकेगा और देश में जो आर्थिक असुविधाएं हो रही हैं, उनसे हमको निजात मिल सकेगी।

महोदय, अभी मंत्री महोदय जी ने कहा कि सारे देश में डायरेक्ट टैक्स में 15 बेंचेज और इनडायरेक्ट टैक्स में 10 बेंचेज बनाये जाएंगे। तो ये जो बेंच बनाई जाएंगी, इनके बारे में मैं जानना चाहूंगा कि इनका, अलग-अलग बेंचों का अधिकार क्षेत्र क्या होगा? जैसा कि कानून में कहा गया है कि नेशनल टैक्स ट्रिब्यूनल का अधिकार क्षेत्र सारे देश में होगा, किन्तु जो अलग-अलग बेंच

बनेंगी, वे चाहे राज्य स्तर पर बनें या किसी और क्षेत्र के स्तर पर बनें, उनका स्पेसिफिक अधिकार क्षेत्र क्या होगा? इसके बारे में कोई सूचना इस बिल में नहीं दी गई है।

महोदय, इसमें एक और बात मैं यह जानना चाहूंगा, जैसा इसमें कहा गया है कि इस नेशनल टैक्स ट्रिब्यूनल को हाईकोर्ट का अधिकार मिलेगा, तो इनके निर्णय के बाद क्या एग्रीण्ड पार्टी को हाईकोर्ट में रिट का अधिकार होगा या नहीं? अगर इस प्रकार का कोई अधिकार होगा, तो फिर से नेशनल टैक्स ट्रिब्यूनल से ये सारे मामले रिट के लिए वहां जाएंगे और फिर से हाईकोर्ट का काम आरंभ होगा। इसके कारण जो नेशनल टैक्स ट्रिब्यूनल का प्रमुख उद्देश्य है, वह सफल नहीं हो सकेगा। इसमें आवश्यकता इस बात की है कि ये सारे अधिकार भी नेशनल टैक्स ट्रिब्यूनल को दिए जाएं और इसके बाद केवल अपील का अधिकार सुप्रीम-कोर्ट में ही हो, तभी यह जो नेशनल टैक्स ट्रिब्यूनल बनाया गया है, इसका उद्देश्य सफल हो सकेगा।

महोदय, इसमें मंत्री महोदय ने, सरकार ने एक बात कही है कि इसके माध्यम से सारे देश में यूनिफार्मिटी ओन टैक्स सिस्टम आएगा। अब ये अलग-अलग बैंचें बनेंगी और अलग-अलग बैंचों की जो राय होगी, हो सकता है कि अलग हों, तो क्या स्थिति बनेगी? क्योंकि आज अगर आप अपीलेंट ट्रिब्यूनल के विभिन्न भागों की राय देखेंगे, तो कई बार ऐसे उदाहरण देखने में आए हैं कि अपीलेंट ट्रिब्यूनल के जजमेंट में अलग-अलग राय हुई है। आज हम नेशनल प्रेस्पेक्टिव की बात करते हैं कि सारे देश में यूनिफार्मिटी आ जाएगी, लेकिन अगर इन बैंचों की राय एक विषय पर अलग-अलग आती हैं, तो उसका किस प्रकार से समाधान होगा? क्या उसमें सुप्रीम-कोर्ट में जाकर फिर से समाधान लेना पड़ेगा? मैं यहां यूनिफार्मिटी ओन टैक्स सिस्टम के बारे में एक और उदाहरण देना चाहता हूं। अभी पिछले दिनों सारे देश में वैट लगाया गया और जब वह वैट लगाया गया तो यह कहा गया कि सारे देश में यूनिफार्म टैक्स रेट और यूनिफार्म टैक्स सिस्टम होगा। उस विषय पर सारे प्रदेशों के मुख्य मंत्रियों, वित्त मंत्रियों की बैठक बुलाकर चर्चा की गई, गाइडलाइन्स बनाई गई, किन्तु आज वैट लगने के बाद भी जिस उद्देश्य के लिए उसे बनाया गया था, वह यूनिफार्मिटी ओन टैक्स सिस्टम उसमें देखने को नहीं मिल रहा है। आज भी अलग-अलग प्रदेशों में अलग-अलग टैक्स रेट हैं और इसके अलावा कई जगह कानून भी अलग-अलग बनाए गए हैं। तो इसमें आवश्यक है कि प्रदेशों के स्तर पर अधिक बातचीत की जाए और सारे देश में रेट ऑफ टैक्स से लेकर ओन टैक्स सिस्टम है, उसके लिए कानून में यूनिफार्मिटी लाई जाए, तभी हम इसके उद्देश्य में सफल हो सकेंगे।

महोदय, आज यह चिंता का विषय है, सदन में भी और सदन के बाहर भी बहुत बार इसकी आलोचना हो चुकी है, कि हाईकोर्ट में जजों के पद खाली पड़े हैं। सारे देश में आज कई सौ, कई हजार पद जजों के खाली पड़े हैं। बार-बार सरकार का ध्यान आकृष्ट करने के बावजूद भी इन पदों

पर नियुक्तियां नहीं हो पा रही हैं। जिसके कारण न्यायिक प्रक्रिया में देरी हो रही है। इस बात को हम सब जानते हैं। इस नेशनल टैक्स ट्रिब्यूनल के बारे में भी स्टैंडिंग कमेटी ने अपनी रिपोर्ट में कहा है कि हाईकोर्ट में ही क्यों न एक अलग बेंच बनाई जाए, जिनके जज ऐसे मामलों में निपुण हों, जिनका अनुभव अधिक हो और वे केवल टैक्स रिलेटेड मैटर ही डील करें। अतः जिस सुझाव को स्टैंडिंग कमेटी ने रिकमेंड किया है, हम इस सुझाव के संबंध में भी सोच सकते हैं। इस बारे में सरकार भी विचार करे।

महोदय, अब मैं आपका ध्यान चेयरमैन एवं दूसरे अधिकारियों की एपॉइंटमेंट के ऊपर ले जाना चाहता हूं। नेशनल टैक्स ट्रिब्यूनल में यह व्यवस्था है कि जो भी चेयरमैन होंगे, वे या तो सुप्रीम कोर्ट के जज होंगे अथवा हाईकोर्ट के चीफ जस्टिस के रैंक के होंगे और उन्हें उनकी रिटायरमेंट के बाद भी लिया जा सकता है।

महोदय, उनकी रिटायरमेंट की जो आयु सीमा रखी गई है, वह 68 वर्ष है। हम सभी जानते हैं कि हाईकोर्ट के चीफ जस्टिस एवं सुप्रीम कोर्ट के जज की रिटायरमेंट आयु 65 वर्ष है एवं जो चेयरमैन रहेंगे, उनकी रिटायरमेंट की जो सीमा रखी गई है, वह 68 वर्ष है। किन्तु इस बिल में जो प्रावधान है, वह यह है कि वह चेयरमैन के पद पर पांच वर्ष तक रह सकते हैं। यदि हाईकोर्ट के चीफ जस्टिस अथवा सुप्रीम कोर्ट के जज की एपॉइंटमेंट रिटायरमेंट के बाद होती है, तो उसकी कार्य सीमा केवल तीन वर्ष तक रह सकती है। इसी प्रकार वे ही इन्कम टैक्स एपीलेट ट्रिब्यूनल और कस्टम, एक्साइज एवं सर्विस टैक्स एपीलेट ट्रिब्यूनल के जज अथवा मैम्बर्स रहेंगे, जिन्होंने कम से कम सात वर्ष तक उसमें काम किया होगा, उन्हें ही मैम्बर बनाने का प्रावधान किया गया है, इनकी आयु सीमा भी वही रखी गई है।

महोदय, मैं सरकार से अनुरोध करता हूं कि इस बारे में वह पुनर्विचार करे। आज हम जानते हैं कि हमारे देश में ऐसे बहुत सारे लोग हैं, जो इस विषय में विद्वान एवं अनुभवी हैं और इस क्षेत्र में काम कर रहे हैं। अतः यह एपॉइंटमेंट, एपीलेट ट्रिब्यूनल के जो सरकारी कमिश्नर होते हैं, केवल उन तक ही सीमित न रखा जाए। जिस प्रकार जब हाई कोर्ट में जज की नियुक्ति होती है, उसमें बहुत बार बाहर के सीनियर एडवोकेट्स को भी विचार में लिया जाता है और हाई कोर्ट के बाहर के बहुत से जो सदस्य हैं वे आज हाई कोर्ट के जज भी बने हुए हैं और चीफ जस्टिस तक भी बने हुए हैं। इसलिए जिनका अनुभव टैक्सेशन मैटर्स में है, इन लोगों को भी इस प्रकार के ट्रिब्यूनल्स में सदस्य की हैसियत से रखने पर विचार किया जाए।

महोदय, आपने जो नियम रखा है, इससे यह संदेश जाता है और कहीं न कहीं ऐसा लगता है कि जो ऑफिसर रिटायर हो रहे हैं, उन्हें रीहैबिलिटेड करने के लिए यह योजना बनाई गई है। अतः इसे ठीक करने के लिए आवश्यक है कि हम इसे और खुला रखें और जो भी जज अथवा अनुभवी

लोग हैं, उन्हें भी इसमें रखे जाने की आवश्यकता है।

महोदय, हम सब जानते हैं कि कानून भी बनाए जा रहे हैं और टैक्स ट्रिब्यूनल्स भी बनाए जा रहे हैं। इनका उद्देश्य निश्चित रूप से सराहनीय है, किन्तु कानून का क्रियान्वयन यदि ठीक से नहीं होगा, तो उसका उद्देश्य कभी-भी सफल नहीं हो सकता है। पिछले दिनों इस तर्ज पर हमने सेन्ट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल्स भी बनाया है, किन्तु आज हम उनकी स्थिति केस बारे में जानते हैं कि उनमें हजारों की संख्या में केस लम्बित पड़े हुए हैं और जिस उद्देश्य से इन्हें बनाया गया था, वह सफल नहीं हो पाया। इसका एक मात्र कारण यह है कि इनका सही ढंग से क्रियान्वयन हम नहीं कर पाते हैं। महोदय, अतः मैं मंत्री महोदय से अनुरोध करता हूँ कि वे इस कानून का, इस ट्रिब्यूनल का सही ढंग से क्रियान्वयन करवाएं, तभी इसके उद्देश्य में सफलता मिल सकती है तथा देश की न्यायिक व्यवस्था में, देश के लोगों का और अधिक विश्वास उत्पन्न होगा एवं लोगों की आस्था भी बढ़ेगी। इन्हीं शब्दों के साथ, इस बिल का समर्थन करते हुए, मैं अपनी बात को समाप्त करता हूँ। धन्यवाद।

SHRI E.M. SUDARSANANA TCHIAPPAN (Tamil Nadu). Thank you, Mr. Vice-Chairman, Sir. I rise to support this Bill because it is in the interest of the noble situation regarding the speedy justice for the taxpayers. Many of the countries and companies are thinking that India is having a well-structured judicial system. When, it is compared with China, we have got more than 2,000 years of judicial system which has got a very strong foundation. But, now, a new thinking of bringing back the quasi-judicial jurisdiction is creating doubts in certain minds. As my friend, hon. Member, Mr. Surendraji, has said, already the quasi-judicial system, regarding the administrative tribunal and others, has entered in failure. Many of the State Governments are now coming forward, and the Parliament has also amended the law, enabling them to dismantle the administrative tribunal that is the quasi-judicial system. Now, we are embarking again on the same system, but with two or three new innovations which are there. For example, I can straight away mention that the Clause 10 gives an opportunity for a person, if he is an expert in this field, he can come up directly as a Member of the Chairman of the National Tax Tribunal. He will get the same perquisites as a sitting Judge of the Supreme Court is getting. He is going to get all those perquisites and all other available things. This will bring new force inside the tax administration. It is purely on the basis that a lot of funds are locked up in these disputes and the Government of India could not bring back the amount for the expenditure of the Government. Therefore, we

need a quick justice and disposal of the cases so that the money can be ploughed back into the Government programmes. That was the well intention on which this BUI is floated. But, Sir, this should not be giving opportunity for the retired persons alone. When we are giving the same salary, allowances and all perquisites, which normally a retired Judge cannot have, he will try to land safely upon this post and he will get continuance till he gets superannuation at the age of 68 years. But a provision is also given that he is eligible for reappointment. I hope this reappointment is for the people who are coming from the Bar or the professional groups, who are ready to come and occupy that place,. They may get that. If they come within the age of 50 years or so, they can become a Member, and afterwards, after completing five-year term, they can go further for five years. But, we are putting the age limit of 68 and, at the same time giving them reappointment, that means similarity is not given. There is no correlation in it, if a retired person is to come forward to occupy this chair because the age of retirement for a Supreme Court Judge is 65 years. He can be a Chairman of this National Tax Tribunal only for three years. Therefore, the opportunity for coming forward with the good decisions and other things may be curtailed.

Therefore, I request that the Government should review this and find out if there is necessity for it. They can increase the age limit of retirement or they can take away the age limit totally, so that any person who is coming forward may stay there at least for five years. And if they are ready to go further, they can have reappointment. But, at the same time, I request that the Government should see in some other way also. One of the sitting judges should be made Chairman or they should be made Members. The basic thing in execution is: Why there is accumulation of the revenue in the disputes? Because the taxpayer, who wants to evade it, simply goes before the Income Tax Appellate Tribunal. Then he gets a stay. If he goes against him, then he will go to the National Tax Tribunal and can get the stay. There is no provision to say that you have to pay 75 per cent of the total claim for which you are coming up. There is no provision like that. Therefore, he can very well come and get the stay. That means he can continuously evade the taxes and can keep the Government at the low. The person who is a sitting judge will have the command over officials and command over the orders that can be very easily executed. The execution of the orders is one of the main deficiencies on the part of the tax collection,



when it goes to the Tax Appellate Tribunal or any other forum, which is a quasi-judicial forum. Therefore, I request that some consideration should be given to it, and the sitting judges should be there.

After assuming the office, the UPA Government has done a wonderful job. It has appointed more than 150 High Court Judges. Vacancies were there. Even now there are some vacancies left. Vacancies in the Supreme Court were also filled immediately. That is an appreciable work. But, at the same time, we feel that there should be more number of judges; there should be some constitutional amendment or amendments for that particular statute; more High Court and Supreme Court judges also should be appointed; more benches should be created, so that a specialised group of people, who have got the Knowledge on taxation, environment, health issues and also in other municipal issues be there. Even the sewage system is now being questioned in the Supreme Court. And on the direction of it only, the problem of sewage system is properly managed. In the same way, we see very well that the transport system is controlled in Delhi only by the direction of the Supreme Court. Pollution is also properly controlled only by the direction of the Supreme Court. Everything now is being controlled by the judicial system. The more, we need more judges to be appointed, and the number of judges should be increased, so that quick justice is given to the common man.

Sir, another important aspect is: Who can appear before the Tribunal, that is, the National Tax Appellate Tribunal? The provision is given for Chartered Accountants or legal practitioners or any person duly authorised by him or to represent his or its case before the National Tax Tribunal. Sir, in clause 15, we find that an appeal can be made only on the substantial question of law. If that is so, then a person, who is well-versed in law, alone should be allowed to appear before the court. There should not be any provision for any person duly authorised by him. That means any person, any tout can appear by getting a power of attorney. They can just say that they want to appear before this National Tax Appellate Tribunal. That means a question of law is to be argued by him.

Sir, I am supporting his case also. Chartered Accountants also can appear. My request is that when the rulemaking is there, if this interpretation can be made, they should be professionally qualified. The person should have some qualifications just like Company Secretary or

Cost Accountant. This type of professionally qualified person could be duly authorised by him. This type of qualification should be there.

Sir, for the first time. I find that a clear estimate is given regarding the financial memorandum. A financial memorandum normally says that a very small amount is going to be spent. There will not be any figures. But, for the first time, it has been mentioned clearly that for the creation of infrastructure, Rs. 6.80 crores have been allocated, and the recurring expenses will be Rs. 7.88 crores. This type of giving the clear picture, anticipating the likely expenditure when the piece of legislation is coming before the Parliament, is very good. They should be in a position to say that this much money is going to be spent for this purpose, and finally, there should also be a statement before the Parliament what judicial impact it has created. How will this piece of legislation be useful for the nation? How many cases have been disposed of? How many cases are pending? Why are they pending? Why could they not be disposed of? This type of reasoning should also be appended with the Bill and placed before the Parliament so that the Judiciary comes up to the expectations of the people in a globalized economy. Thank you very much.

SHRI PRASANTA CHATTERJEE (West Bengal): Sir, I am placing my views in brief. Sir, we know that due to pendency of a large number of cases in the High Courts, this Bill has been thought of, has been prepared, and we all agree that huge revenue is blocked due to the pendency of a number of cases. Some estimate appeared in the newspaper that about 1,03,000 crores of rupees tax arrears are on account of this pendency, and we all agree that urgent measures will have to be taken to clear the backlog in the overall interest of the national economy. But how will you achieve that? And for that, in our opinion, we do not think that establishment of a separate Tribunal is necessary. This point had even been raised in the Standing Committee that even if a separate Tribunal is set up, the party which is aggrieved by an order of the Tribunal, can invoke the writ jurisdiction, can again go to the court. We have 21 High Courts in the country. So, our opinion is that if separate Benches can be set up in the High Courts, and if the vacancies of huge backlog of cases can be sorted out. Sir, if not, huge expenditure will be incurred in terms of salaries, infrastructure and \* for setting up this Tribunal, and our opinion is that no useful purpose will be served after setting up the Tribunal. There is a chance for the entry of the bureaucrats, who are on the verge of retirement, to enter the process

as other Members of the Tribunal, as has been mentioned in the Bill. So, I have placed our opinion on this Bill before the House. Thank you.

DR. K. MALAISAMY (Tamil Nadu): Thank you very much, Mr. Vice-Chairman, Sir, for calling me to speak on the Bill on behalf of the AIADMK party. Sir, I find a very nice situation of cordiality and consensus, much in contrast to the earlier days when heated exchanges were there, body language was there and shoutings were there between the two rival groups. Today, I could find, from this end to the other, they are seeing eye to eye. Probably, the Bill was, first, initiated by the NDA Government during the year 2003. And they could not pass the Bill for premature dissolution of the Lok Sabha with the result that this Bill is now being rightly followed by the UPA Government. So far as the Bill is concerned, both the then NDA Government and the UPA Government wanted to pass the Bill. That is why, the consensus is there; the cordiality is there. As far as the party like Ours, AIADMK, which is neither here nor there, but, we are in-between, still, we want to support the Bill for the simple reason that it has got very laudable objective. As has been rightly explained in the Bill itself, it has got a very good background of the various aspects concerning quick disposal, speedy disposal, with the result that a lot of arrears pending before the various judicial forums can be collected, and the national economy of the Government also can be improved. It is a very laudable objective indeed! They have got another nice objective, namely uniformity, in making a decision. Earlier, the decisions were upheld by various High Courts. The differences of opinion among High Courts were there. But now by establishing a National Tax Tribunal like this, they are going to have uniformity. Thirdly, they have also got the reform process initiated here and there. So, with these laudable objective the Bill has come, Sir.

As far as I am concerned, I would like to remind the House that the Indian democracy stands on three pillars; the Executive, the Legislature and the Judiciary, operating through the bureaucracy and assisted by the Fourth Estate. Out of the five limbs of democracy, the three pillars, namely, the Executive, the Legislature and the Judiciary are the most important, out of which, we are more concerned today with only one of the limbs, *i.e.*, the Judiciary. I am again making a particular reference to the National Tax Tribunal. Sir, when I start reading the Bill in-between lines. I am reminded of a famous sentence which I read as a student of law: "Those who defy law go scot free. Those who go by law or seek the protection of law lose

faith." Unfortunately, most of the tight-minded citizens of the day lose faith and confidence in the Judiciary for certain reasons, namely, the huge pendency, the inordinate delay, the unaccountability on the part of the Judiciary, the cumbersome procedures and practices, which make the citizens realise that the practice and the precept of the Judiciary are not to the taste, are not to the convenience of the right-minded citizens.

Sir, I am coming to the Bill proper. It is a Tribunal constituted at the national level to take care of the pending cases on an all-India basis. Earlier, different High Courts were there. Now, all the cases pending before the High Courts in various States will be automatically transferred, as per the Bill, to the National Tax Tribunal, and they will be dealt with. That is okay, Sir. Now, the other point is this. After reading the Bill, I have got my own reservation, whether the real purpose will be served. It has got a lot of objectives. But any objective should have some details to it. When an objective is there, there should be an organization to execute the objective. Now, they have created an all India machinery, namely, the National Tax Tribunal. The point is whether this Tribunal, as per the Bill, would serve the purpose or not. I will take a few minutes to explain my important points on this Bill and I will try to complete before you give the ring.

Firstly, as far as this Bill is concerned, they say that it relates to both direct and indirect taxes. According to them, there are as many as 28,000 cases pending. On an average, they are able to dispose of 6,000 cases per year. Now, the total arrears, in these 28,000 cases, may run into more than Rs. 1 lakh crores. It is a very huge amount. Indeed that is why they want to collect the money, to, improve the exchequer and improve the national economy. That objective is okay.

As far as direct taxes and indirect taxes are concerned, in the case of Customs. Excise and Service Tax Tribunals, as the Chair knows very well, there can be an appeal from the Commissioner's order, etc. After that level, it goes to the Supreme Court. It never goes to the High Court. So, the cases which are pending with the High Courts alone will come to the National Tax Tribunal. As far as indirect taxes are concerned, the National Tax Tribunal has no relevance. That is my point.

Secondly, as the Chair- knows very well, whatever may be their effort. High Courts are taking a lot of time, they are overworked; as far as these cases are concerned, they give the least priority. That is why a separate

authority is rightly being constituted. But still the writ jurisdiction lies with the High Court. The aggrieved party will go to a court of law; under article 226 to the High Court and under article 32 to the Supreme Court. Above the High Court, they will go to the Supreme Court. So, whatever issues they could not rake up before the National Tax Tribunal, they may rake up before the High Court by a writ. There are intelligent lawyers. They know how to prepare the plaint, the writ petition. Once they go to the High Court and even if they fail, they will go to writ appeal. The writ jurisdiction is still available for the aggrieved party, with the result whatever the purpose that you want to serve, that is, all the cases should be disposed of as quickly as possible by the Tribunal, may not be served. That is my point.

Thirdly, the National Tax Tribunal concerns with cases of rates and values. Other than rates and values, there are umpteen number of issues which are still pending before the High Courts and therefore. What are you going to do with them?

Fourthly, coming to the composition of the Tribunal, they have mentioned about the Chairperson, Members, and the Chairperson will be of the rank of a Supreme Court Judge. As far as the selection of the Chairperson and the Members are concerned, they have said that the Chief Justice of India or his nominee will be a Member of the Selection Committee. That is well taken. Then, there are two Members, one is the Secretary to the Government of India (Department of Laws and Justice) and the other is Secretary (Finance). Two Secretaries and one nominee of the Chief Justice of India or the Chief Justice of India win from the Selection Committee. What I am trying to say is that the Chairperson of the Tribunal will be a highly weighted person equal to the cadre of the Supreme Court Judge and the two Members are high rank Judicial officers, whereas the Secretary cadre, are lower in rank. I would like to know whether a junior officer could afford to be a Member of the Selection Committee to select a senior officer. That is my point.

Sir, Shri Sudarsana Natchiappan also raised this point that the Tribunal can entertain an issue, only on the question of law. When it is going to be a question of law, to be dealt with by out-and-out a judicial forum. If that be the case, then, why there is a need for a technical member? Do you want to oblige anybody? You take a person with a judicial background. Why is there a need for a technical person, particularly, when the forum is

going to decide only the question of law? So, there is no need for a technical member.

Also, appointment or inclusion of a technical member is against the law, and against the very purpose of it. That is my point.

One more point, Sir. When the Bill states about the Chairperson and members, nothing has been mentioned about the umpteen numbers of officers and staff to be appointed in the NTT. What is going to be the selection process? How are they going to do? Nothing has been spelt out. The Law Minister, who is quite competent, might say, "We will do it as per the rules to be framed" But when you are able to say so many things in the main Act, why have you failed to mention that also? That is my point.

Sir, just two more points and then I will conclude.

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): You are making good points. Please proceed.

DR. K. MALAISAMY: Sir, the way you were looking at me, I thought I was exceeding my time.

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): No, no; I am listening to you very carefully.

DR. K. MALAISAMY: Mr. Jairam Ramesh and Mr. Narayanasamy are two people who cull out what I speak and they mock at me when I go out. That is why, in their presence, I am not speaking in my usual style.

THE VICE-CHAIRMAN (PROF. P. J. KURIAN): They are encouraging you.

DR. K. MALAISAMY: Coming to appeals, the Bill says that the appeal can be entertained within 120 days from the receipt of the order. But there is a provision which says that on certain cases, the delay can be excused for another 60 days. Now, you either say that it is 120 days and stop it that, or, if you want to be liberal, you say it can be entertained up to 180 days. Now, how are you going to decide on which cases the delay can be excused? If Shri Ramachandraiah files a case, and I happen to be a Judge, I will, certainly, oblige him. But, supposing, some 'X' is going to file a case, I will not oblige him for any delay, even though his case is meritorious enough. So, what is the yardstick in deciding that? You are trying to show

that the judiciary should have the discretion. But, would the discretion of the judiciary be judicious enough? So, what I wish to say here is, you be specific as to whether it is 120 days or 180 days; don't keep it vague" That is my point.

Another very important point which I wanted to say is that I was also under the impression that cases could be entertained only on a question of law. But when we look at clause 15, where it talks about admitting an appeal, etc., it further says, "...shall formulate the question of law for hearing the appeal; may also determine any relevant issue in connection with the question so formulated." So, apart from the question of law, it can also formulate other relevant issues. When they say, "question of law", what are the needs for other relevant issues? Why should there be flexibility in that? The law should be very specific and strict. When you say, 'question of law', you stop at that. When you say, 'other relevant issues', you bring in the question of facts as well. At one place, you are trying to be strict. But in the next line, you water it down. Also, in clause 15 (4), they say, "One cannot be allowed to prefer an appeal unless he deposits at least 25 per cent of tax or duty payable." But in the very next proviso, they have watered it down saying that this can be dispensed with subject to certain conditions. So, you are saying one thing but you dilute it in the very next line. You might say that this is applicable only in the case of extraneous circumstances resulting mis-application of Law.

Sir, these are the things I wanted to say. At the end, I will sum up my points. The arrears are there; the delay is there, for which you have thought of creating machinery. Your object is very-good. You have tried to give a curative solution. You want to cure the problem. But you have not taken into account the preventive side of this. Can you think of some legislation which takes care of the preventive as well as the curative side as well?

With these words, I conclude, Sir.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Sir, I support this Bill. In fact, this should have been passed a long time back because in view of the large pendency of cases pertaining to taxation- and not only pendency, this has got an adverse impact on the economy - huge amounts of taxes have been locked up in litigation. It is good for the Government; it is good for the tax payer. I wholeheartedly welcome this Bill. It will reduce the litigation that is being adjudicated by the courts. In this connection, I would like to make some suggestions.

I fully support the argument pertaining to appeals that has been extended by Dr. Malaisamy. One of the preconditions for preferring an appeal is that a person has to pay 25 per cent of the tax arrears. It is good. Sir, this is the apex body which is being Created for appeals. Below it, there are two or three levels of appeal, namely, the Commissioner of Appeals, the Appellate Tribunal, etc.; now, we have the National Tax Tribunal. So, at every stage of appeal, the person who prefers an appeal has to pay some percentage of tax arrears. Ultimately, when we want to prefer an appeal before the National Tax Tribunal, I feel the entire amount would have already been paid. This is one aspect. The second aspect is that more discretion leads to more corruption in the country. In one proviso, you talk about the precondition of payment of 25 per cent at the time of the preferment of the appeal. In the second proviso, you say, in a fit case, it can be dispensed with. So, this type of interpretation, and discretion, always leads to corruption, especially in revenue matters. That is why, I say, you completely dispense with this pre-condition. Let them prefer an appeal because already, two levels would have been completed, the Commissioner of Appeals and the Appellate Tribunal; after that only, he would have come to the National Tax Tribunal. So, he has to pay the amount in these two places. I think this should be considered by the hon. Minister. Then, the scope of the jurisdiction has to be avoided. The proposed Tribunal would be empowered to hear all tax-related matters. There should have been a provision of appeal against the order of the Appellate Tribunal. If I am correct, only those cases can be entertained by the National Tax Tribunal. Otherwise, the person concerned has to file a writ petition before the High Court under the Constitution. So, my suggestion is, it should not only be the appeals against the orders of ITAT; if a person wants to prefer an appeal, he need not go to the High Court, he can also prefer an appeal before the National Tax Tribunal, though there is no provision in the ITAT. So, such a possibility can also be there. What I am saying is that the scope of the National Tax Tribunal should be widened.

Sir, now this Tribunal is entering into the shoes of the High Court. Till now, the High Court has been adjudicating on all these matters relating to tax appeals. So, my request to the hon. Minister is that he should try to provide full autonomy to the National Tax Tribunal.

The procedure of appointment of the members of the NTT and their terms of office, their salaries, everything could be ensured in such a way



that they totally enjoy their independence. Only then there will be some fairness in discharge of their duties.

Sir, as per the provisions of the Bill, the Selection Committee will consist of a legal person, *i.e.*, the Chief Justice of India and a judge of the Supreme Court nominated by the Chief Justice, the Secretary in the Ministry of Law and Justice, Department of Legal Affairs, and the Secretary in the Ministry of Finance, Department of Revenue. There are two Secretaries from the Government and one member is from the judicial field. Sir, Revenue Secretary is representing the Revenue Department. Revenue Secretary shall be a party either as an appellant or a respondent. Revenue Secretary, always, should be either an appellant or a respondent. So, his interest is there. When such is the case, my suggestion is, let the Revenue Secretary be not there in the Selection Committee in order to have a fair view of the appointment. Because appointment or reappointment, whatever it is, it will be in the hands of this Committee. So, naturally, a person who has got a vested interests likely to be biased in making appointments. Though the vested interests may be in the interest of the revenue, in the interest of the Government. But, what I am trying to say is, it should be in the interest of fairness. So, my suggestion is, let this Secretary from the Ministry of Finance, Department of Revenue be not there. An alternative person, a man with high eminence in the taxation field... *(Interruptions)*.

SHRI JAIRAM RAMESH (Andhra Pradesh): It can be the Finance Secretary.

SHRI C. RAMCHANDRAIAH: Yes, the Finance Secretary can be there.

But, ultimately, the Finance Secretary is also from the same Department. So, what I am trying to say is, the selection may not be that independent as long as I have got an interest in it.

Sir, the tenure of the NTT members has been restricted to five years. There is some mixed opinion in this regard when I spoke to some professional bodies also. But, my feeling is, job security continuity and security can go a long way in ensuring independence. So, my suggestion is, once a person is appointed as a member of the NTT, let him continue because he will be more enriched with this experience, and he will be in a better position to discharge his duties in a fair manner than for every five years you will be changing the members. I think, it is not advisable. So, my suggestion is, once a member is appointed, let him continue till his superannuation.

Sir, my second suggestion is this. There is a provision in the Bill as to who will be eligible to be a member of the NTT. The clause says that a person shall be eligible for appointment as a member, if he is, or, has been, or, he is eligible to be a judge of a High Court; or, he is or has been a member of the Income-tax Appellate Tribunal for, at least, seven years. Sir, what I am trying to say is, even in the legal field also, as the hon. Minister is aware, there are some eminent advocates, who have got tremendous practice, who do not want to come to the post of a judge. Sir, there are eminent Chartered Accountants who do not want to have other posts. So, why can't we make a provision in the Bill that eminent Chartered Accountants can also be made a member of the NTT? After all, they have been practicing in taxation.

SHRI JAIRAM RAMESH: Members of Parliament also. *(Interruptions)*

SHRI C. RAMACHANDRAIAH: Of course, I can assure that I am not interested, though I am a Chartered Accountant. I can depend more on my agricultural income. *(Interruptions)* Sir, my suggestion is, on appellate side, advocates are practising; on the original side, it is the Chartered Accountants who are practising taxation. So, they are more experienced. So, why cannot we utilise the services of those people in the dispensation of cases in taxation matters? My request is, let there be a provision for eminent Chartered Accountants also to occupy this post in the interest of fairness.

It is a very good Bill and my last suggestion is, it should have come earlier. But the Minister has to ensure that it is being provided full autonomy and independence. Only the purpose for which it has been created will be served.

I hope, the Minister will take note of my suggestions. Thank you.

**श्री मंगनी लाल मंडल (बिहार):** माननीय उपसभाध्यक्ष महोदय, कई वक्ताओं ने इस विधेयक के बारे में अपनी राय रखी है। मैं श्री रामचन्द्रैया के एक सुझाव से सहमत हूँ कि इसकी स्वायत्तता बनाए रखने के लिए इसमें और आवश्यक प्रावधान किया जाना चाहिए। महोदय, कई माननीय सदस्यों ने कहा है कि एकरूपता होगी और एकरूपता के दृष्टिकोण से ही चूंकि कर के मामले में जो सरकार ने फिस्कल रिस्पॉसिबिलिटी और बजट मैनेजमेंट एक्ट पारित कराया था, उसके बाद जो कर संग्रह होना चाहिए था, उसमें कई कारणों से विलम्ब होता था, लेकिन उसका सबसे बड़ा कारण यह था कि न्यायालय में मामले लंबित हैं। महोदय, कई माननीय सदस्यों ने कहा और स्वयं वित्त मंत्री जी ने गत वर्ष यह उदघोषणा की थी कि 1,03,000 करोड़ रुपया टैक्स एरियर है।

साथ ही विभिन्न उच्च न्यायालयों में 30 हजार मामले लंबित हैं और सिर्फ न्यायालय, उच्च- न्यायालय के मामले नहीं हैं, उस के बाद भी लोग उच्चतम न्यायालय में जाते हैं। इस विधेयक में भी उच्चतम न्यायालय में अपील करने का प्रावधान रखा गया है। महोदय, उच्चतम न्यायालय में भी 6383 करोड़ के करीब 10615 मामले 30.9.2004 के आधार पर लंबित हैं। तो यह बात जरूर है कि कर संग्रह के मामले में जो अधिकरण है उसमें एकरूपता नहीं है और उच्च न्यायालय और कई अधिकरणों में भी जो निर्णय होते रहे हैं, उन में एकरूपता नहीं वरन् विभिन्नता रही है। इसलिए जो आयकर अपील अधिकरण और सीमा शुल्क, उत्पाद शुल्क व सेवाकर अपील अधिकरण है — दोनों के आधार पर अलग से राष्ट्रीय स्तर पर समरूपता लाने के लिए यह राष्ट्रीय कर अधिकरण विधेयक आया है। मैं इस विधेयक का स्वागत करता हूँ।

माननीय विधि मंत्री जी ने इस के उद्देश्य पर प्रकाश डाला है, लेकिन इसमें जो चयन प्रक्रिया है, उस के बारे में माननीय रामचन्द्रैया साहब ने भी आपत्ति की है। यह जो अधिकरण होगा उस में वित्त सचिव, राजस्व विभाग के सचिव और उच्चतम न्यायालय के मुख्य न्यायाधीश व उनके द्वारा प्राधिकृत व्यक्ति मिलकर यह कार्य करेंगे, लेकिन यह अधिकरण विधि और न्याय मंत्रालय व विधि कार्य विभाग के अधीन कार्य करेगा। वित्त मंत्रालय के अधीन यह अधिकरण काम नहीं करेगा। उसका इस पर सीधा नियंत्रण नहीं रहेगा। इसलिए इस बारे में कोई आपत्ति नहीं होनी चाहिए और कोई वित्त सचिव या राजस्व विभाग के सचिव स्वार्थ के तहत किसी व्यक्ति की सिफारिश करेगा, ऐसा नहीं है। इसलिए मैं समझता हूँ कि यह प्रावधान उचित है।

महोदय, दो-तीन बातों का जिक्र और माननीय सदस्यों ने किया है जिनकी ओर मैं माननीय मंत्री जी का ध्यान आकर्षित करना चाहूँगा। जो दो अधिकरण हैं, उस में सेवानिवृत्ति की आयु 62 वर्ष है और जो मुख्य न्यायाधीश या हाईकोर्ट के चीफ जस्टिस, उसकी भी सेवानिवृत्ति की आयु 62 वर्ष है, किन्तु सुप्रीम कोर्ट के जो मुख्य न्यायाधीश और न्यायाधीश हैं, उनकी सेवानिवृत्ति की आयु 65 वर्ष निर्धारित है। आप ने इस में 68 वर्ष तक सेवा करने का प्रावधान रखा है। अब जो 62 वर्ष के व्यक्ति आएंगे, आपने उनकी पुनर्नियुक्ति का जो प्रावधान रखा है कि पुनर्नियुक्ति हो सकती है, तो चेयरमैन या मेम्बर में से किन की पुनर्नियुक्ति होगी। क्योंकि जो रिटायर्ड चीफ जस्टिस उच्चतम न्यायालय अथवा जस्टिस सुप्रीम कोर्ट के होंगे — वे 65 वर्ष के बाद आएंगे और 3 वर्ष सेवा करेंगे। जो 62 वर्ष के बाद आएंगे, वे तीन वर्ष तक करेंगे और 65 वर्ष तक रहेंगे। इस प्रकार समरूपता इसमें नहीं है और ये विसंगतियाँ हैं, स्पष्ट नहीं है। मैं माननीय मंत्री महोदय से यह आग्रह करूँगा कि हो सकता है कि मेरे जैसे सदस्य इस बात को नहीं समझ रहे हों, लेकिन कई माननीय सदस्यों ने इस ओर ध्यान आकृष्ट किया है। मैं चाहूँगा कि इसको स्पष्ट करने की आवश्यकता है।

एक दूसरी बात और है कि आपने इस अधिकरण को बहुत अधिकार दिया है। इसके बाद कोई अपील करने के लिए सीधे सुप्रीम कोर्ट में जाएगा, उच्चतम न्यायालय में जाएगा। लेकिन अगर इस

अधिकरण में कोई मामला लम्बित है तो हाई कोर्ट में कोई समादेश याचिका दायर करेगा, आपने इस विधेयक में इसके अवरोध अथवा निषेध करने का कोई प्रावधान नहीं किया है। जबकि यह प्रोविजन किया है कि इस विधेयक के पास होने के बाद जो भी मामले हाई कोर्ट में हैं, वे सभी इसमें अंतर्निहित हो जाएंगे, चले जाएंगे। इस प्रकार यह मामला जिसमें कोई आदमी जिसका कर संग्रह के मामले में, मूल्यांकन के मामले में किसी तरह की आपत्ति है, वह कर देना नहीं चाहता है, कर-वंचना करना चाहता है, वह न्यायाधिकरण में नीचे से जीतता गया या वह कोई मामला हारता गया और वह जाएगा न्यायाधिकरण में, तो वह जा सकता है, रिट पेटिशन में, समादेश याचिका में। इस मामले में भी मैं माननीय मंत्री महोदय से चाहूँगा कि स्थिति स्पष्ट की जाए।

हमारे यह दो बिन्दु थे। मैं इन पर ज्यादा बातें नहीं कहूँगा। मैं अपनी बातें समाप्त करते हुए इस बिल का समर्थन करता हूँ। देर से ही सही, यह बिल बहुत अच्छा है और मैं समझता हूँ कि सरकार का भी उद्देश्य है, ध्येय है कि इस अधिकरण से कर संग्रह करने में त्वरित गति आएगी। सरकार का यह ध्येय पूरा हो। मैं इस विधेयक का समर्थन करता हूँ।

**श्री राजीव शुक्ल (उत्तर प्रदेश):** महोदय, मैं केन्द्रीय कानून मंत्री हंसराज भारद्वाज साहब को इस बात के लिए धन्यवाद देना चाहता हूँ कि बहुत दिन से, बहु-प्रतीक्षित यह बिल इस सदन में पेश किया गया। इससे टैक्स पेयर्स को बहुत बड़ी राहत मिलेगी।

सर, एक-दो बातें हैं, जिन्हें मैं संक्षेप में रखना चाहता हूँ। ऐसा लगता है कि इसका नाम "रिटायर्ड जजेज रिहैबिलिटेशन ट्रिब्यूनल" रखना चाहिए था, क्योंकि इसमें जगह-जगह इतने ज्यादा रिटायर्ड जज रखे गए हैं। इसके चेयरमैन भी रिटायर्ड जज और मैम्बर्स के लिए भी रिटायर्ड जज का प्रोविजन है। मेरा मानना है कि आप इसका चेयरमैन रिटायर्ड जज को बना दीजिए, कम-से-कम इसके मैम्बर्स तो दुसरे क्षेत्रों से होने चाहिए। वह ग्रामी इसका दायरा केवल इनकम टैक्स के कमिश्नर तक रखा जाए, मेरे ख्याल से यह उचित नहीं है। इसको बढ़ाना चाहिए। इसके लिए पहले सुझाव आया था कि इसमें सीनियर एडवोकेट्स हों, बैंकिंग सेक्टर से लोग हों। इसमें आईएस ऑफिसर्स क्यों नहीं आ सकते हैं, इकोनॉमिस्ट्स क्यों नहीं हो सकते हैं? जर्नलिस्ट्स की बात मैं नहीं कह सकता हूँ, क्योंकि जर्नलिस्ट्स को तो पहले ही पर्सोना-नन-ग्राटा बनाया गया है, इन्हें कहीं भी नहीं लेते हैं। मैं क्रिकेट एडमिनिस्ट्रेटर्स की भी बात नहीं करता हूँ, लेकिन इन तमाम क्षेत्रों के लोग इस ट्रिब्यूनल में क्यों नहीं हो सकते हैं, मैं यह नहीं समझ पाता हूँ। हमारी निगाह हर समय उसी जगह, सिर्फ रिटायर्ड जज के ऊपर, फँस जाती है या फिर उस क्षेत्र से जुड़े एकाध लोगों को लिया जाता है। इसलिए इसका दायरा बढ़ाना चाहिए। जजों को इसका मैम्बर्स बिल्कुल नहीं रखना चाहिए, सिर्फ चेयरमैन जज हों, बाकी दूसरे क्षेत्र के लोगों को लाया जाना चाहिए। इसमें मैं यह सुझाव देना चाह रहा था।

**3.00 म०प०**

दूसरी बात यह है कि एज के बारे में यह मांग थी कि इसे 70 साल किया जाए। 65 साल से ऊपर 5 साल बढ़ा कर इसे 70 साल किया जाए। मैं इससे कतई सहमत नहीं हूँ। 68 अपने आपमें बहुत है। वैसे तो 65 पर खत्म करना चाहिए, क्योंकि इस देश में, जहां बिल्कुल बेरोजगारी है, वहां आप लगातार मौके पर मौका देते रहें। मैं तो यह कहता हूँ कि आप इनमें सिटिंग जज को क्यों नहीं रखते? आप हाई कोर्ट और सुप्रीम कोर्ट में नए जजेज़ भर्ती कीजिए। यहां पर सिटिंग जजेज़ को मौका दीजिए। सारे पावर्स, सारी सुविधाएं वहीं हैं, सेलरीज़ वही हैं, तो उन्हें मौका देना चाहिए। इस तरह से हम 70-70 साल तक, 68-68 साल तक नौकरी कराएंगे, यह मेरे ख्याल से उचित नहीं है।

तीसरी चीज़ यह है कि 20-20 साल कैसेज़ पड़े हुए हैं। पहले वह अपेलेट ट्रिब्यूनल में लड़ेगा, अपेलेट ट्रिब्यूनल से निकलने के बाद वह इसमें जाएगा। इससे वह इतने साल तक इसमें लटक जाएगा कि उसे न्याय मिलते-मिलते 20 साल लग जाएंगे। इसलिए मेरा मानना है कि इसमें कहीं-न-कहीं टाइम-फ्रेम का भी कुछ प्रोविज़न रखना चाहिए, ताकि स्पीडी ट्रायल हो सके, ताकि टैक्स-इन-कैसेज़ का स्पीडी डिस्पोजल हो सके। इसके चेप्टर 7 में यह बात कही गई है कि चेयरमैन से परमीशन लेकर 15 दिन के लिए कहीं भी बैच लग सकती है, जो मेरे ख्याल से एक बहुत अच्छा प्रावधान है और इससे स्पीडी डिस्पोजल में काफी मदद मिलेगी। पन्द्रह-पन्द्रह दिन के लिए जगह-जगह जाकर बैचेज लगाने से मामलों का डिस्पोज-ऑफ जल्दी हो सकता है। मैं समझता हूँ कि मंत्री जी को, भारद्वाज जी को इसमें और जोर देना चाहिए ताकि इसका जितना उपयोग हो सके, अच्छा रहेगा। रोमिंग बैचेज का कन्सेप्ट डालकर इसको आगे बढ़ाना चाहिए।

महोदय, इसमें एक चीज़ और कही गई है, जो चेप्टर 11 में है, कि अगर किसी की शिकायत, चेयरमैन की या मैम्बर्स की आती है, तो उसमें सुप्रीम कोर्ट के जज से इन्क्वायरी कराई जाएगी। मैं समझता हूँ कि सुप्रीम कोर्ट के जज को कहां फुरसत कहां उनके पास इन शिकायतों की जांच के लिए या इनके निपटारे के लिए वक्त है? दस-दस साल, पांच-पांच साल तक मामले लटकते रहते हैं और जज से जज के खिलाफ तो कभी इन्क्वायरी पूरी होती ही नहीं। मैंने तो आज तक ऐसी इन्क्वायरी पूरी होते देखी नहीं है। इसलिए जब इसमें इनके लिए पब्लिक सर्वेण्ट का प्रोवीजन डाला डाला है, रो इनको सी.वी.सी. के दायरे में लाना चाहिए, चाहे वे ट्रिब्यूनल के चेयरमैन हों या मैम्बर्स हों। इसमें शिकायतें बहुत होंगी, क्योंकि इसमें सारे मामले टैक्स रिलेटिड होंगे, उनमें पैसे का इन्चोलवमेंट रहेगा और इसलिए दसियों शिकायतें आएंगी। इस चीज़ को ध्यान में रखते हुए मुझे लगता है कि इन्हें सी.वी.सी. के दायरे में लाना चाहिए। सुप्रीम कोर्ट के जज से आप किस किस मामले की इन्क्वायरी कराते घूमेंगे? यह बात समझ में नहीं आती।

महोदय, एक महत्वपूर्ण बिन्दु यह है कि जब यह ट्रिब्यूनल बन रहा है, जो एक ऐतिहासिक कदम है, तो मुझे लगता है कि इसमें सबसे बड़ी दिक्कत यह है कि टैक्स-पेयर पर तो सभी तरफ दबाव है,

हमला है, उस पर रेड होती है, उसको हर तरह से दबाया जाता है, मगर टैक्स-पेयर गवर्नमेंट की एकाउंटिबिलिटी कोई नहीं है। टैक्स-पेयर के प्रति ब्यूरोक्रेट्स, गवर्नमेंट आफिशियल्स की एकाउंटिबिलिटी क्या है? यह बात इसमें कहीं नहीं आती है। टैक्स देते देते टैक्स-पेयर परेशान रहता है, लेकिन उसको कोई सुविधा नहीं मिलती और उसे सुविधाएं न देने के लिए किसी पर किसी प्रकार की कोई एकाउंटिबिलिटी नहीं डाली जाती। हां, जो टैक्स चोरी करते हैं, उनके लिए तो सजा का प्रावधान है, उन पर रेड भी आप करते हैं, कई किस्म के केस चल रहे हैं। आपने यहां सेक्शन 16 में दिया है — प्रोसीजर एंड पावर्स ऑफ नेशनल टैक्स ट्रिब्यूनल, उसमें यह प्रोविजन बिल्कुल डालना चाहिए कि उसमें वे टैक्स-पेयर भी जा सकते हैं, जो सर्टेन डिपार्टमेंट पर एकाउंटिबिलिटी फिक्स कराना चाहते हैं, कि हम आप को टैक्स दे रहे हैं और आपकी ओर से हमारे लिए क्या काम हो रहा है। जो टैक्स-पेयर है, उसके प्रति भी गवर्नमेंट की एकाउंटिबिलिटी के लिए प्रावधान होना चाहिए।

महोदय, एक बड़ी प्रॉब्लम यह है कि यहां रोज नए नए कमीशन और ट्रिब्यूनल बन रहे हैं और दिल्ली में रहने को घर नहीं है, राज्यों की राजधानियों में भी घर नहीं हैं, इसलिए इनके लिए गवर्नमेंट के हाऊस का प्रोविजन नहीं रखना चाहिए बल्कि इनकी हाऊस-रेंट या हाऊस-एलाउन्स देना चाहिए ताकि ये लोग अपने लिए प्राइवेट घर ले सकें। इन्हीं शब्दों के साथ मैं इन सारी दिक्कतों की ओर से सरकार का ध्यान दिलाते हुए अपनी बात समाप्त करता हूँ, क्योंकि मेरे लिए चार मिनट का समय था और चार मिनट हो गए हैं। धन्यवाद।

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): Okay, thank you Mr. Shuklaji. I didn't say that you have only four minutes. If you wanted you could have spoken for a few minutes more.

SHRI RAJEEV SHUKLA: I have completed.

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): Okay, thank you. Now, Shrimati N.P. Durga.

SHRIMATI N.P. DURGA (Andhra Pradesh): Sir, I thank you for having given me an opportunity to speak on this piece of legislation which not only helps many tax-payers but also reduce the burden on the High Courts. This is the consequence of the recommendation of the Law Commission in its 115th Report for setting up of Central Tax Courts having All-India jurisdiction. Even the Chowksi Committee also recommended for setting up of a Central Tax Court with All-India jurisdiction to appeal with the litigation to the exclusion of the High Courts. This is the step in the right direction. Once this Tribunal is set up with 15 Benches to deal with direct taxes disputes and 10 Benches to deal with indirect taxes disputes, all matters

pending in appeals under the direct and indirect tax laws before the High Courts will stand transferred to the National Tax Tribunal. The aim of the Bill is to adjudicate disputes, with reference to levy, assessment, collections, and enforcement of direct taxes and the determination of the rates of duties of customs and central excise on goods as well as the valuation of goods for the assessment of such duties and also levy of the tax on service. While many of the objects of the proposed body mark a welcome departure from present practice, some of the provisions that may cause hardship to the appellants need fine-tuning. The earlier Government, actually, introduced this Bill, but due to the dissolution of the 13th Lok Sabha, this could not become an Act. Sir, as of today, roughly, 30,000 cases are pending in the various High Courts. And this has resulted in blockage of huge revenue in litigations adversely affecting the economy. The maximum of this 10,000 in Mumbai and an equal number of cases are pending in Delhi. So, I suggest for immediate setting up of Benches in Mumbai and Delhi first. Sir, I have a few clarifications to seek from the hon. Minister and of few suggestions to make for his consideration. My first point is relating to Clause 6 of the Bill which deals with appointment of Members. Under Clause 6(2) (a) and (b) deals with the appointment of Members of the NIT. The Bill is, primarily, concerns with direct and indirect tax related issues. But surprisingly you have barred the professional tax people i.e., Chartered Accountants from becoming the Members of the NTT. Earlier, when the Ordinances were issued on 16th October, 2003, it was clearly mentioned that there would be a technical Member to assist in technical matters and that technical Member is drawn from the various strata such as CBDT, ITSC or a practising CA with 20 years standing. You have deleted this in the present Bill. I would like to know from the hon. Minister the reasons behind sidelining Chartered Accountants from becoming Member of the Tribunal.

The second point that I would like to mention is this. Clause 13(2) says that the Government will authorise one or more legal practitioners, or, any of its officers to present its case before the National Tax Tribunal. Sir, I would like to submit that Chartered Accountant are the people who are professional qualified to deal with taxation issues. And, on the one hand, you are allowing the Chartered Accountants to present the case of the

assesses before the NTT, and, on the other, when it comes to present the case before the NTT on behalf of the Government, you are not allowing the CAs to present the case on behalf of the Government. I fail to understand the rationale behind this. In fact, they should be given preference than the legal practitioners, as has been mentioned in this Bill, because they are professionally more competent.

My next point relates to clause 15(2). I agree that appeal should be filed within 120 days from the date on which the order appealed against is received by the assesses or aggrieved persons. This period is the same that has been prescribed under section 260A of the Income Tax Act, 1961. But, it is a general practice that High courts admit appeal even beyond one or two years, if a suitable cause is shown for the delay, and, the High Court condones the delay. But, here, you are limiting the appeal to only 180 days i.e., 120 days is normal course and 60 days if the appellant has a sufficient cause. This is not fair. I would only say that this limit of 60 days should be dispensed with and the assesses be given an opportunity that if he shows a sufficient cause for delay that may be condoned as has been the practice under the Income Tax Act.

My next point relates to clause 24 of the Bill, which deals with appeals. I agree that article 232B (3)(d) exclude the jurisdiction of all courts, excluding the Supreme Court under article 136. But, the point is, so far, no Tribunal, constituted under article 232A or 232B of the Constitution, can ever oust the jurisdiction of the High Court under the Article 226/227. This means that the Writ Jurisdiction of the High Court will continue. But, in the Bill, you have barred the High Courts from appeal and said that the appeals should like only with the Supreme Court. I would like to know the reasons from this departure.

Finally, Sir, I request the hon. Minister to reduce the mandatory depositing of, at least, 25 per cent of the duty, or, tax payable, because 25 per cent, to my mind, is at a higher side. I suggest that this may be considered by the hon. Minister to reduce it to 10 per cent, which will help the appellant. Otherwise, his money would be blocked, since it takes years to finalise a case.

With these observations, I support the Bill with a hope that hon. Minister will seriously look into the points raised by me.



SHRI SHANTARAM LAXMAN NAIK (Goa): Mr. Vice-Chairman, Sir, I stand here to support the Bill. But it is a very difficult job. A difficult job in the sense that the Bill originally originated from that side. And, from other side, I do not think, any good proposals had come during their regime. And, this is one such thing. Somehow our Minister has tried to do something so that it can roughly be presentable. Therefore, we are here to support the Bill. I am saying so because you will see, Sir, that every speaker who has spoken on this Bill has pointed out that this particular Bill will not lead to that particular objective. Now, what are the objectives? Roughly speaking, these are reduction of burden on High Court and Supreme Court, speedy disposal of tax matters, smaller assesses may be able to have access to this tribunal, etc.

Now, the question is, each and every speaker has pointed out whether we can rule out the jurisdiction of the High Court under article 226. If you cannot, then the whole objective of the Bill fails. Let the Government make a daring. Although there are pronouncements that you cannot take away the jurisdiction of the High Courts in the matter, let the Government put up a clause to that effect. Let there be a stay again by the courts. If this clause is for speedy disposal of justice, then, the High Courts will have to agree.

They themselves are saying, time and again, that there must be speedy disposal of justice, convenient justice etc. etc. then, why will any higher court come in the way? Therefore, I appeal to the Government, let a clause be put into this, at some future date, restricting the jurisdiction of the High Court under 226 so that at lower level you can get speedy justice.

Then, again, Sir, the question, is, ultimately, if you do not do it, when are we going to restore the supremacy of Parliament? As it is, 50 per cent of our jurisdiction has been taken away by various interpretations. We have not done anything on that court although it is our inherent right. As it is, Sir, with due apologies to you, Mr. Gill Saheb, of course, you have only followed your predecessor, 25 per cent of the jurisdiction has been taken away by the Election Commission under article 324 under supervisory jurisdiction. Time and again, orders have been passed for the last five years, starting right from Seshan, and it has been followed by Mr. Gill Saheb also meticulously. Twenty-five per cent jurisdiction has been taken away by it. What is remaining is 25 per cent only. First of all, in spite of passing of various Bills, it is high time that we restore the supremacy of Parliament over the Legislature. And, therefore, at some stage or the other we should

decide about it. And I will also request you, Sir, let the five years period be a testing period for this Bill. After five years, if the necessary results and objectives are not achieved, I think, ultimately, the Bill should be scrapped.

Then, the question arises why we are extravagant. Huge expenditures are involved. Sir, you have tried your best to fill the vacancies in the various High Courts. There is much more required, yet, you will not be able to do so because of financial constraints and other things. You have not been able to establish a Bench of Supreme Court in the South although there is a great demand. This is the need of the poor people. Why should we first give priority to satisfy higher echelons of the society; the corporate bodies, wealthy people, and have tribunals; appellate tribunals and national tribunals for them? Let us concentrate on establishing more high courts, more judges, even in lower judiciary so that the common man gets speedy justice. These people in the higher echelons, higher society people can, certainly, wait.

Another aspect in this particular Bill is, dismissal *ex parte*. These are normal, standard clauses. But, if real justice is to be done, when a person files a petition or appeal or whatever it is, the points, arguments are all contained in that petition. But just because the party does not remain present, why should the petition be dismissed? Let it be decided on merits. However, all things are stated therein. Therefore, this concept of dismissal *ex parte* is an old concept. Today's pleadings if you see, all arguments are given in petition. In reply also everything is there. Then, on law points, especially, at the national tribunals what are the legal points? So, the presence or absence of respondent or petitioner should not matter. Therefore, this dismissal and those clauses, according to me, are redundant.

Then, another aspect I would like to submit here is this. Now, after this Bill becomes a law, all those matters which stand in high court, will stand transferred to the National Tribunal. Now, there is an option for the National Tribunal to start *de novo* or to start from the stage it was in the High Court. This option has been given. Why should there be an option? If the option is given, everybody will start *de novo* mostly, and again, so many years it will take. Let it be compulsory that it should be started from the stage of the High Court so that those matters which, in any case, are in thousands will be disposed of fast. Otherwise, all matters, basically, will be started *de novo*.

Then, in the clause 27, which relates to power to remove difficulties, it is mentioned 'make such provisions, not inconsistent with the provisions of this Act...' I am not able to follow this. In the past legislation, to remove difficulties, some sort of directions were issued --just to remove a difficulty. To make a fresh provision for the purpose of removing a difficulty is like conceiving a new legislation. And, where are you going to include this provision? Is there some circular issued by some Secretary? Well, I have not followed this. If it is a provision, then, it should be in the Act, because provision means a provision in an Act. In the clause it is mentioned, 'make such provisions, not inconsistent with the provisions of this Act.' For removing difficulties, another provision is to be made, it is not stated where it is. Therefore, Sir, this is a bad part of legislation, which should be given a rethinking.

Then, another aspect (would like to mention is with respect to Benches. As the Hon. Minister has rightly pointed out, and I welcome that, initially, 15 benches of National Tribunal will be constituted. At this stage, I myself take an opportunity to request for a Bench in Goa. This is because if it is going to be in Kerala, Karnataka will fight, and if it is going to be in Karnataka, Kerala will fight. So, it would be better to have it in Goa. Nobody will mind to come to Goa. Therefore, if in the Southernmost part, we are going to have one tribunal, then, it should be in Goa. That is my request, Sir.

Now, I come to the last aspect. Ultimately, this is one step, let us presume for a moment, towards speedy disposal of the cases. But the question is, for speedy disposal of cases, one more aspect which is required is codification of the pronouncement of judgements. In tax matters also, there are various judgements which are lying in libraries, and in journals. Propositions in a judgement are of only 3-4 lines whereas judgements run into 200-300 pages. Why not consolidate these judgements into proper amendments in a respective statute, so that disposal of cases will be faster. Today, much of the time is taken by the judicial officers in reading judgements consisting of thousands of pages, whereas if it is concised in two, three lines, a proposition, then, justice will be speedier. With these words, I welcome and support the Bill.

SHRI HANSRAJ BHARDWAJ: Mr. Vice-Chairman, Sir, at the outset, I thank all the hon. Members who have supported this small Bill. I thank Shri Surendra Lath, Shri Sudarsana Natchiappan, Shri Prasanta

Chatterjee, Dr. Malaisamy, Shri Ramchandraiahji, Shri Mangani Lai Mandal, Shri Rajeev Shukla, Shrimati N.P. Durga and Mr. Naik. Sir, I will briefly touch on why this Bill has found unanimous support from the other House and this House because it is a very, very limited provision of law which was moved during the NDA's time and we are following it up. This Bill, primarily, deals with a small matter like the question of law arising out of the decisions of two Tribunals, namely, the Income-Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal. Sir, these two Tribunals are very well established Tribunals and they are functioning. Earlier, any question of law arising out of it, was decided by the High Courts. And, for a considerable length of time, there was no difficulty in constituting Tax Benches in High Courts.

I know, for a long time, that the High Courts are not able to provide a Tax Bench, Special Tax Bench, primarily, for two reasons, that not very many tax lawyers are coming as Judges of the High Court. The source of recruitment of Judges, primarily, is the Civil Bar. Similarly, there is a dearth of the judges coming from the Criminal Bar or from the Tax Bar. So, the reason is that the High Courts are not able to provide tax Benches in each High Court, and the result is that the tax matters are not getting priority there. So, the earlier Government decided and, rightly so, that we should constitute a National Tax Tribunal to decide the question of huge arrears, because the Income Tax Appellate Tribunal and the Custom Excise Service Appellate Tribunal decide both, the question of fact as well as law. So, if any question of law arises thereafter, it was decided by the High Court, and, unfortunately, it was found that they are not getting decided by the High Court. So, they are constituting another Appellate Tribunal, the National Tax Tribunal which will decide the limited question of huge arrears. So, therefore, there should be no controversy that people have wider jurisdiction or something like that. The tax hierarchies are well known to everybody, and thereafter, the appeal shall lie to the Supreme Court. Therefore, this is the reason why a National Tax Tribunal is being set up.

Then, who are getting appointed? An apprehension has been expressed by the hon. Members that it may become a rehabilitation programme for retired Judges. Certainly not, Sir. You will find that with regard to the qualifications of people who are going to be the Chairman and Members, • \* we have provided that a Judge of the Supreme Court, sitting or retired, will be the Chairman. So, this is a very high profile job. The Chairman will be a Judge of the Supreme Court. And, for Members I may explain — the

qualificaion entitles, 'the Members from the Income Tax Appellate Tribunal and other Tribunals, who have seven years experience.' He should not be merely a simple member of the Income Tax Appellate Tribunal. And, everybody knows what is the source of recruitment to the Income Tax Appellate Tribunal. You can draw from Chartered Accountants who are technical Member, and from Bar and Judges, the judicial members. They both constitute the Income Tax Appellate Tribunal. Therefore, the technical members are already there in the Income tax Tribunal. Naturally, a Chartered Accountant who is already a member of the Income Tax Appellate Tribunal, namely, he is a technical member, and if he has seven years experience, he will also be competent to be appointed. But we are not straightway providing a new Chartered Accountant. However, a Chartered Accountant will be provided. So, Chartered Accountant has an entry. Similarly, lawyers have an entry. When one is competent enough to become a High Court Judge,- a ten years' experience as a High Court lawyer - he can be appointed. So, it is provided in the qualification. So, entry to the Bar is also not restricted. Entry to the Chartered Accountant is also not restricted. But, simply, since it is going to be a Tax Appeallate Tribunal, we are saying that 'he should have seven years experience as a Member of the Income Tax Appellate Tribunal, or, a persons who is competent and qualified to be judge of the High Court will be a Member.' Now, there is no ambiguity whatsoever. The Chartered Accountants are welcome through the Incoam Tax Appellate Tribunal route. Similarly, lawyers are also welcome. But now the question is, how do we appoint them? The normal procedure, which is being followed for all Tribunals is, we request the CJI. If he is himself free, he can sit in the selection process. Even for the High Court Judges, we go to the CJI for consultation. Similarly, here also either the CJI himself will preside, or he may nominate a sitting Judge. So, he will preside over the selection proceedings. Now, the Secretaries to the Government are the Heads of the departments. They are there to assist the Judge as Members, and as far as qualificaion is concerned, it is not that we are selecting every 'Tom, Dick and Harry" to be Member. The procedure is that only the quanfied people are short-Ksted. The names of only those persons who have seven years' experience as a Member of the Income Tax Tribunal are forwarded. Then, there are other Members. So, once they are there, their qualifications are prescribed by law. Only those people will apply.

Thereafter, out of them, those who are the best are selected. It is the judge, who presides and these two are Members - the Law Secretary is a highly qualified member in law; similarly, any person from the Revenue Department who knows how to test the competence of a technical member or a person - are there to assist. And once they make the recommendation, it is the Government that appoints. It is the Appointments Committee of the Government, which will ultimately appoint people. So, there is no scope to say that stray people could get appointed in the system. All tribunals get appointed only like this. So, I say that full care has been taken with regard to the process of selection also.

Now, Sir, questions were raised about autonomy. Earlier, the Excise and Customs Tribunal was under the Ministry of Finance. So, we are taking it out. This Tribunal will be placed exclusively under the administrative control of the Law Ministry. The Law Ministry is not a Revenue Ministry. All High Courts and; the Supreme Court are administratively administered by the Law Ministry. So, this body would be fully autonomous and there would be no interference except from the Chairman, who will head the Tribunal, who would be administratively responsible for it. So, there will be full autonomy; there should be no grievance on the autonomy aspect also.

Now, with regard to the jurisdiction, initially, there will be 15 Benches for Direct Taxes and 10 for Indirect Taxes, I am informed that about 31,000 is the pendency in both these Tribunals. So, we are providing 25 Benches in all. The Chairman will decide where they would be located according to the quantum of work in each place. Of course, places where there are lots of cases, would get the priority. Wherever the number of cases is more, we will have to locate a tribunal. If there is no case at a place, how can we locate a tribunal there? The discretion to locate the Benches, vests, in all cases, with the Chairman. But we have ensured that if there is a place where a Circuit Bench has to function, it can go there and function for fifteen days. That provision has also been given. So, this is the overall scheme.

Now, questions have been raised about the writ jurisdiction. I may inform hon. Members that writ jurisdiction is a Constitutional Remedy. No law can take it away, directly or indirectly. It is provided in the Constitution — Article 226 and Article 32. Article 226 is an extraordinary remedy provided by the Constitution. So, no simple law of the Parliament can take it away.

They are the inherent power of the Court of Records. Therefore, we cannot touch it. Also, they are not exercised for appeal matters. Wherever there is a special law already, the extraordinary remedy of writ is not available. You have to certify that there is no equally efficacious remedy available in law. Only then the writ is entertained. Article 226 is not available when there is an Appellate Tribunal available to hear that matter. That is a well-established law and we should accept that. Article 32 is to enforce Fundamental Rights and nobody can go into Article 32.

So, these are the points that were made. Also, a question was put about the age of retirement. Sixty-two years is the age for the Judges and Chief Justices of the High Courts to retire. So, if a Chief Justice of the High Court is available as the Chairman of the Tribunal, or is selected, then he will have five years' tenure, because five years are available to him from 62 to 68 years. Similarly, if the age of a member, who is already serving in the Income Tax Appellate Tribunal, is also 62 years, he will also have five years. If he is selected at 60 years, he can retire at 65 years. If a member is selected at 55 years of age, then he can be reappointed for another term. So, these provisions are kept in view so that a member who can continue for another term can be reappointed. So, the age has been aimed only with regard to this, that if a judge of the Supreme Court has been provided there, he should have a cushion of three year's service after retiring at the age of 65 years. The Supreme Court Judges and Chief Justices retire at 65 years of age.

This is a well-considered provision of law and there is no scope for amending it. I have explained it that the provision of reappointment is there for those people who get appointed at younger age so that they can continue. Retired people are not there. Whether it is Income Tax Tribunal or CEGAT, they are all sitting people. They will be interviewed and they will be elevated. So, it is an opening for these officers who are being elevated to these highest tribunals. So, Sir, I am grateful to the House for extending full support to this unanimously. There are always possibilities of improvement. When this institution is established, if there is a room to improve it, we will do so. No law is perfect. You can always learn from experience and improve upon it. But basically it is a good law. We should give it our support. Sir, I commend that this should be passed.

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): Now, the question is:

That the Bill to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration. \*

*The motion was adopted.*

THE VICE-CHAIRMAN (PROF. P.J. KURIAN): Now, we shall take up clause-by-clause consideration of the Bill.

*Clauses 2 to 30 were added to the Bill*

*The Schedule was added to the Bill.*

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

SHRI HANSRAJ BHARDWAJ: Sir, I beg to move:

That the Bill be passed.

*The question was put and the motion was adopted.*

## **SPECIAL MENTIONS**

### **Demand for revival of ailing Sugar Mills in the Country**

SHRI VIJAY J. DARDA (Maharashtra): Sir, it is a welcome step to reduce interest on term loan to ailing sugar mills from 15 per cent to 10 per cent; and NABARD is also providing liquidity support of Rs. 500 crore for their restructuring. Whether this package will achieve its envisioned objectives, will depend upon Government's solving the problem in a holistic manner. Low production due to capacity under-utilization, in power supply, comparatively less sucrose content of the sugarcane, strife in industrial relations, lobbying by vested interests, mounting arrears of payments to farmers, etc. are major contributory factors and vulnerable