

sanitation. In 2012-13, about 99,000 crore rupees are being given to the State Governments for rural development programmes. The responsibility for spending money on these programmes is entirely that of the State Governments. This is the federal structure. Sir, it is true that the ability of the States to spend this amount of money in the time span in which it is meant for is often not very, very visible. There are very many reasons for this. They may be administrative capacity, technical capacity, audit requirements and the need for bringing utilisation certificates. In today's environment, one wants to have transparency and accountability. You can't always allow a single tender because you can never wish away the possibility of the tender being manipulated.

So, you have to go for competitive bids. There are very many practical problems in the field. I accept the point that we must work with the State Governments to help them expand and improve their capacity to spend money. There is no shortage of money. There is no shortage of resources. But the real problem is in the ability of the States to spend the money, particularly States like Bihar, Jharkhand, Odisha, Assam, West Bengal for some programmes, Uttar Pradesh and Madhya Pradesh. Largely in Central and Eastern India, the administrative and technical capacity to spend money quickly in a transparent and accountable manner needs to be strengthened. And I am working with the State Governments to ensure that this happens sooner rather than later.

Vacancy in Appellate Tribunal for Foreign Exchange

*224. DR. CHANDAN MITRA : Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether it is a fact that the position of Chairperson is vacant at the Appellate Tribunal for Foreign Exchange;

(b) if so, the details thereof and the reasons therefor;

(c) whether Government is aware that no benches of the Tribunal have been constituted to exercise its jurisdiction;

(d) whether Government intends to appoint a Chairperson and any other member to the Tribunal; and

(e) if so, the details thereof?

THE MINISTER OF LAW AND JUSTICE (SHRI ASHWANI KUMAR) : (a) and (e) A Statement is laid on the Table of the House.

Statement

(a) and (b) Yes, Sir. The post of Chairperson in the Appellate Tribunal for Foreign Exchange (ATFE), is vacant with effect from 8th April, 2011, consequent upon the resignation of the last incumbent of the post.

(c) The then Chairperson of the ATFE, in exercise of his powers under Section 20(2)(b) of the Foreign Exchange Management Act, 1999 (FEMA), constituted two Single Member Benches (one consisting of the Chairperson and the other consisting of a Member) and one Division Bench consisting of the Chairperson and a Member, *vide* the Notification dated 4th April, 2001. The Division Bench hears cases in which the amount of penalty exceeds Rs. 5 lakhs and all other cases are heard by a Single Member Bench. Since there is only one full-time Member in ATFE at present, cases in which amount of penalty is up to Rs. 5 lakhs, are being heard. Section 26 of the Foreign Exchange Management Act, 1999 (FEMA) provides that in the event of the office of the Chairperson of ATFE being vacant, the senior-most Member shall act as the Chairperson.

(d) and (e) Yes, Sir. Action has been initiated to appoint Chairperson and Members in the ATFE.

DR. CHANDAN MITRA : Sir, it is pathetic acknowledgement of the total policy failure and the failure on all fronts of the Government. The Minister, by his own confession, in the reply says that the position of the Chairperson of such an important Appellate Tribunal is lying vacant since 8th April 2011. Since then, one more member had left. The Appellate Tribunal, which must have three members, has only one member at present. And that one member is empowered to hear cases only up to five lakh rupees. Most FEMA cases are of much higher magnitude. I fail to understand why the Government has not been able to appoint either the Chairperson or another member in one year and eight months to break the deadlock. Either the Government is not interested or it just simply wants the FEMA cases to lapse. Therefore, my first supplementary is this. What steps has the Government taken to fill the vacancies and appoint the Chairperson and the Member? The Minister merely says that the action has been initiated to appoint them. Sir, through you, I would like to know from the Minister as to what action has been initiated and why nothing has happened so far. Why are these posts still lying vacant?

SHRI ASHWANI KUMAR : Sir, it is absolutely true that since 8th April, 2011 the Tribunal has been without a Chairman; and the reason was that the person who was appointed as Chairman, she was to resign post. Now, under the law there is a procedure

for appointment and there is by a selection committee. It is presided over by a sitting Judge of the Supreme Court. Sir, two advertisements were given for filling up that post in June, 2011, and in February, 2012. Pursuant thereto 77 applications in toto were received. The Selection Committee met on two occasions to select a candidate. On both the occasions suitable person could not be identified. Today itself, that is, the day we are speaking today, a third advertisement has been placed inviting applications. In the meanwhile, another complication occurred. The Supreme Court struck down the appointment of part time members. Therefore, we are now in the process of amending the ATFE rules in order to reflect the spirit of the judgement of the Supreme Court. So, the short answer to my learned friend is that there has been delay, the delay is on account of the resignation and the inability of a high powered selection board, presided over by the sitting Judge of the Supreme Court to shortlist and recommend an appropriate candidate. We can't have somebody not suitable appointed to this Tribunal. As the hon. Member said, it is an important Tribunal. Today, we have sent out a third advertisement and hopefully this time we would be able to find a suitable person. I would personally monitor this.

DR. CHANDAN MITRA : My second supplementary is this. As per my question the Government took some action only today. They have issued an advertisement and timed it with the question in the House. Whether that is true or not that is another matter. While I accept that the Government has made some effort, I would like to know that due to this long delay in the process from 8th April to till date, how many cases have been piled up in the backlog in FEMA courts. Even penalties up to Rs. 5 lakhs are heard in the Tribunal. I am told that the present Member is hearing cases but not pronouncing any decision on the subject. So, all FEMA cases are in a limbo because appeals are being heard but no decisions are taken. So, what is the precise figure of backlog at the moment?

SHRI ASHWANI KUMAR : As per the 2011, the precise figure is 799. Now, there is another issue. The issue is about pendency. The pendency is on account of various reasons. Cases involving a penalty of up to Rs. 5 lakh are required to be decided by the Division Bench of the Tribunal. It is headed by the Chairman. Since we don't have a Chairman, we don't have a Division Bench. Of course, cases involving a penalty of Rs. 5 lakhs cannot be heard. But there are other cases, where the penalty is below Rs. 5 lakhs, which are being heard and which are being decided. The only difficulty is that while we decide some cases, new cases keep coming up. So, there is a need to fill up all the three or four posts. We have taken steps and we will purposefully do so as soon as possible.