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THE STATESMAN

CALCUTTA WEDNESDAY APRIL 25 1973

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Fundamental Rights Can Be Amended By Parliament

Majority Ruling By Supreme Court Part Of 25th Amendment Held Unconstitutional

FROM OUR LEGAL CORRESPONDENT

NEW DELHI, April 24.—The Special Bench of the Supreme Court today held by a majority judgment that the Constitution invested Parliament with the right to alter, abridge or abrogate the Fundamental Rights guaranteed by the Constitution. The majority also held that the judgment given by the court in the appeal by Golak Nath against the State of Punjab in 1967 was incorrect. The 24th and the 29th Amendments to the Constitution were declared valid by the full court, whereas a majority held that Section 2(A) and 2(B) of the 25th Amendment were valid.

The first part of Section 3 of the Constitution (25th Amendment) Act 1971 was declared valid. The second part, namely the words "no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" was held to be unconstitutional and void.

The full court also upheld the 29th Amendment whereby certain enactments were placed within the Ninth Schedule of the Constitution and thereby protected against challenge on certain limited grounds. A direction was given by the Special Bench that the Constitution Bench would now deal with the petitions by Kesavananda Bharati against the State of Kerala and other allied petitions and determine the validity of the Constitution 26th Amendment Act in accordance with law.

The order of the court, giving effect to the above, was signed by nine judges.

The Special Bench consisting of 13 judges of the Supreme Court

gave 11 separate judgments on the writ petitions challenging the 25th, 26th and 29th Amendment to the Constitution. The judgments run into 1,717 pages.

The reading of the judgments was commenced this morning and continued till the closing of the court although the judges read out only the important excerpts.

SIX PETITIONS

Six writ petitions were instituted and all raised the common question as to the Constitutional validity of the 24th, 25th and 29th Amendment.

The amendments were made by Parliament and concerned the power of Parliament to amend the Constitution of India, to abridge or take away the Fundamental Rights guaranteed by the Constitution and to remove from challenge before the courts certain legislation violative of the Fundamental Rights.

The petitions were placed before a bench of five judges but since they involved a reconsideration of earlier judgments of the court

and the questions raised were of great importance, the Chief Justice placed them before a Special Constitution Bench of 13 judges.

The 24th Constitution Amendment Act made certain alterations and additions to Article 368 of the Constitution which contained the "procedure for amendment of the Constitution". The Article as it stood, provided that an amendment could be made to the Constitution when the Bill was passed in each House by a majority of its total membership and also by a two-thirds majority of those present and voting.

It further provided that amendments to certain Articles of the Constitution could be made only by the concurrence of the State legislatures.

Article 13 of the Constitution in the chapter on the Fundamental Rights stated that "the State shall not make any law which takes away or abridges the rights conferred by this article and any law made in contravention of this clause shall to the extent be void". The effect of this provision was that any law made by Parliament could be challenged before the courts on the ground that it violated the Fundamental Rights guaranteed by the Constitution. If the plea was accepted by the court, the result would be the law declared void and inoperative.

principles and given in such manner as may be specified in such law. There was further provision that no such law could be challenged on the ground of contravention of the right to property guaranteed by Article 19(1)(F).

By Section 3 of the 25th Amendment it was provided that no law giving effect to the policy of the State towards securing certain principles as defined in Article 39 of the Constitution could be questioned on the ground that it violated the Fundamental Rights guaranteed by Articles 14, 19 and 31 of the Constitution. A declaration made by Parliament that any such law was made in furtherance of the said principles of State policy was declared to be conclusive and beyond judicial review.

The 29th Amendment to the Constitution placed certain enactments, including the Kerala Land Reforms Amendment Act 1969 and the Kerala Land Reforms Amendment Act 1971, in the Ninth Schedule to the Constitution. The effect was that these enactments could not be challenged on the ground of a

(continued on page 7 col 2)

Gujarat Congress Factions Clash

GANDHINAGAR, April 24.—The "oro" and "anti" leadership groups in the Gujarat Congress came out openly against one another for the first time at a stormy GPC meeting here today, says PTI.

Mr. Jhinhbhai Darjee, the PCC president, expressed his distress at the simmering differences in the party and posed a question as to why the Congress should not quit power in this situation. The Chief Minister, Mr. Chhaganbhai Patel, in his concluding speech charged the dissidents with emulating Goebbels' tactics in levelling "baseless charges" against the leadership. He warned them that their severe criticism of the Government had caused more harm to the party than to himself or his Ministry.

Mr. Ozar, however, disagreed with Mr. Darjee's proposition and said it was not a position of prestige but an instrument to serve the people. "Criticism is to be faced boldly and not shrunken by frightened of them," he observed.

Ahmed-Maitra Talks Today

By a Staff Reporter

MR. Fakhruddin Ali Ahmed, Union Food Minister, will meet West Bengal Food Minister, Mr. Kasikanta Maitra, in Calcutta on Wednesday, on his way back to Delhi.

Maitra told reporters on Tuesday that he would once again place before Mr. Ahmed West Bengal's case for more wheat and rice from the Centre.

On Tuesday, several district magistrates informed Mr. Maitra that the wheat position in their districts was causing concern. Mr. Maitra asked them to examine ways of lifting over the temporary surplus of wheat with stocks of levied rice.

Central Plan To Rush Food Supplies To Deficit States

From Our Special Representative

NEW DELHI, April 24.—Asserting that the most difficult phase of the food situation was practically over, Mr. A. P. Shinde told the Lok Sabha today that the Central Government had decided to substantially step up supplies to the deficit States like Maharashtra, West Bengal, Gujarat and Kerala.

The increased allocation should enable the States to increase the quantum of foodgrains issued through fair price shops and to that extent mitigate the hardship of the people, he said.

Mr. Shinde, who was replying to a call-attention motion on the food riots in Maharashtra, said that the first 12 special trains carrying wheat procured from Punjab was on its way to Maharashtra. During the next two months arrangements had been made to move 14 to 15 lakh tonnes of wheat from the north to various parts of the country, specially the deficit and drought-hit States, by special trains.

Asked by Mr. A. B. Vajpayee (JS) whether the Government was moving towards total rationing, Mr. Shinde said that whether one called it total rationing or not the Centre would shortly meet the full requirements of the people in Calcutta and other urban cities.

Mr. Madhu Dandavate (SOC), Initiating the discussion, described the situation in Maharashtra as extremely dangerous and blamed the deteriorating condition on the faltering way in which the Government had implemented the policy of take-over of wholesale trade. His party, he said, would tell the people to be determined to face bullets rather than let them die of starvation.

Assuring the member that nothing like the Bengal Famine of 1943 was likely to happen in the country, Mr. Shinde pointed with confidence to the vigorous procurement that was now on. He expected the procurement to reach the figure of 100,000 tonnes a day within a week or ten days.

Referring to the Minister's comments about the people having faced a difficult situation with courage and confidence, Mr. S. M. Banerjee (CPI) tauntingly remarked that bread was made of wheat flour and not of confidence. He accused the Chief Minister of Maharashtra of leading the "kulak" lobby and deliberately creating scarcity conditions to prevent failure of the policy on wholesale trade.

Denying the charge, Mr. Shinde welcomed the suggestion about the setting up of "popular committees". The Government proposed to set up the State Governments to set up such committees, comprising representatives of parties which believed in take-over of wholesale trade, at the State and district levels.

To Mr. Vajpayee's demand for a remunerative price to the farmer, the Minister made it clear



Calcutta Corporation ambulance staff squatting and shouting slogans in front of their headquarters on Chittaranjan Avenue, Calcutta, on Tuesday morning when they staged a head-strike to press their demands.—Statesman.

Pande Ministry Faces Crisis

From Our Special Representative

PATNA, April 24.—The one-year-old Pande Ministry is faced with a twofold crisis created by indignant protests throughout the Bihar Congress of the death of Mr. Suraj Narain Singh, MLA, allegedly caused by police beating at Ranchi on April 15 and a spate of allegations and counter-allegations by warring groups in the Bihar Congress of "internal sabotage" resulting in the rout of the Congress nominee, Mrs. Shaktikanta Devi, in the prestigious by-election at Banka.

The Government's decision to order a judicial inquiry into the death of Mr. Singh has not mollified passions. There was a complete halt in the district headquarters of Madhubani yesterday as angry crowds disrupted train services there and in Darbhanga.

Protest meetings demanding the resignation of the Pande Ministry were held at Madhubani, Patna, Darbhanga and Ranchi.

The resignation of the BPCP chief, Mr. Vidyaakar Kavi, in protest against the Congress nominee's direct accusation of sabotage against the Pande Ministry, Mrs. Shaktikanta Devi from demanding the immediate removal of the party's two general secretaries who, in her opinion, worked in concert with the Congress chief against her in Banka.

Seven prominent dissident leaders of the Congress Legislature Party yesterday issued a statement urging the chief to withdraw his resignation "as he enjoyed the full confidence of an overwhelming number of Congressmen". The wangling continues unabated notwithstanding Dr. Shankar Dayal Sharma's direct appeal to the Bihar Congress not to indulge in "mutual mud-slinging".

PAK COMMUNICATION Dacca Will Be Consulted Over Reply

—SWARAN SINGH

From Our Special Representative

NEW DELHI, April 24.—Expressing regret and disappointment over the Pakistan Government's reaction to the joint Indo-Bangladesh declaration, Mr. Swaran Singh today made it clear that in dealing with the problem, in the light of the latest developments, consultation with Bangladesh was essential.

The process in this direction had already started and he hoped that a joint and common attitude would be worked out. India did not take a completely negative attitude in the matter despite the unsatisfactory features of the Pakistan Government's statement. He hoped that Pakistan would even now review the position and agree to the basic principle of settling the humanitarian issues emanating from the 1971 conflict separately from political considerations. If this principle was accepted he was certain the way would be cleared for the immediate repatriation of POWs and others.

The External Affairs Minister, who was replying to the debate on the demands for grants of his Ministry in the Lok Sabha, disclosed the receipt by India of a formal communication from the Ministry of Foreign Affairs of Pakistan, India would send a reply after consultations with the Government of Bangladesh.

Mr. Shyamnandan Misra (C-O) interrupted the statement by Mr. Aziz Ahmed, Pakistan's Minister of State for Foreign Affairs, that the deadline was broken. The Foreign Minister pointed out that it was not unusual for Pakistan to blow hot and cold in the same

Ambulance Men Strike

Two Cholera Patients Die

By a Staff Reporter

TWO cholera patients, who could not be removed to hospital in time, died in the Kidderpore area on Monday, according to Calcutta Corporation sources. The patients could not be rushed to hospital because no ambulance van was available. The ambulance men went on strike during the day.

Mr. Ram Pevari Ram, the Congress MLA of Kidderpore, said that he could arrange for an ambulance only after contacting Writers' Buildings. But by the time the vehicle arrived, the patients' condition had deteriorated very much, he said.

The ambulance men observed a day's token strike in support of their eight-point demand from 7 a.m. on Tuesday.

The Administrator of Calcutta Corporation said that the ambulance staff had announced a strike decision on Monday-Tuesday night. He said the Corporation authorities made some alternative arrangements with some ambulances from the Health Department and the Civil Defence. But not more than three vans could be requisitioned against the need of at least eight, he said. He added that the employees had gone on strike despite a letter sent to them by the Corporation Commissioner on Monday assuring them that

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their demands were under consideration.

The Health Minister, Mr. Ajit Panja, who is now looking after Municipal Affairs, visited Calcutta Corporation during the day.

Utter confusion prevailed in the Central Municipal building at that time. The ambulance men were on strike; members of the Corporation Employees' Coordination Committee resorted to mass squatting; some pumping station staff had begun a mass hunger-strike from Monday; the Corporation employees of Manicktala were on a complete cessation; Motor Vehicles Department staff had raised some demands and at the same time, MLAs' nominees had arranged a function at the Councilor's Club to welcome the Bengali New Year. Besides there was a threat of cease-work and squatting by members of the Sangram Committee on April 26.

The Minister, who was invited to attend the New Year function, addressed the squatting employees after his arrival at the Central Municipal Building. He requested them to withdraw their agitation and promised to look into their grievances. He said that he could not make any false promise to the employees. He would inform them about the Government's decision on their demands within a fortnight after consulting the Chief Minister.

Later, Mr. Panja told reporters that at his request the ambulance men had withdrawn their strike and the others had called off their squatting and hunger-strike.

But representatives of the Coordination Committee said that the executive committee was yet to decide about withdrawing the strikes and squatting.

Central Official's Talks In Calcutta

By a Staff Reporter

MR. N. K. Khowar, a senior official of the Union Government, had discussions with the West Bengal Government's Chief Secretary, Mr. A. Niyogi, on Tuesday in Writers' Building on a Union Government housing project, already under way in a neighbourhood of Calcutta.

Subdued Satisfaction In Government Circles

From Our Special Representative

NEW DELHI, April 24.—The Government received today a subdued satisfaction. It was happy that the basic ideas behind the Constitutional amendments, initiated by it after the mid-term election had been upheld in particular by the restoration of Parliament's authority to change Fundamental Rights as also recognition of its power to legislate to give effect to Directive Principles of the Constitution, even by abridging Fundamental Rights. (Under one of the Amendments, courts were barred from examining the merits of Parliamentary declarations.) But it was dismayed by another feature of the judgment—which would subject to judicial review Parliament's declaration of a particular emergency as intended to give effect to the Directive Principles.

The radicals as in the ruling party, however, were visibly dismayed. They attacked the government to the powers of Parliament—and State legislature—to determine whether Directive Principles provided the motive force behind a law.

Soon after the main points of the judgment were known, Mr. H. R. Gokhale and Mr. Mohan Kumararamangalam hurriedly examined its implications. Reserving his detailed comments till the text of the judgment was received, Mr. Gokhale was happy that the validity of the major part of the Constitutional amendments had been upheld and the major objections were not upset. However, he regretted that the court, by a slender majority, had invalidated a portion of Article 31C inserted by the 25th Amendment which was the most crucial part giving supremacy to Directive Principles.

Similar was the reaction of Mr.

Kumararamangalam. He was satisfied at the "decisive" rejection by the Supreme Court of an earlier ruling in the Golaknath case and validation of the major part of the Constitutional Amendments which were intended to restore to Parliament its "undoubted sovereign power to amend the Constitution".

Noting the rider, apparently added by the judgment—that Parliament could not change the basic structure of the Constitution—Mr. Kumararamangalam found solace in the fact that the majority of judges did not appear to regard the Fundamental Rights or the right to property as part of the basic structure. Taken as a whole, he found in the judgment a basis for further action, without facing legal difficulties on the socio-economic programme set by the Government before it. He, too, was unhappy that Parliamentary declarations under Article 31C would be subject to judicial scrutiny.

Today's judgments do not, for the time being, upset any of the steps taken by the Government. The court's view on Parliamentary declarations was not altogether unexpected. In November 1971 when the basic frame of most of the Amendments was finalized, the Government had remained undecided in regard to judicial review of Parliamentary declarations. Till the last moment it was inclined to accept the law commissions' observations on the subject favouring judicial scrutiny. It was only under pressure from a section of the Parliamentary party that the relaxations contemplated at one stage, were not taken up.

The judgment, does not set a seal, of finally on abolition of privy purses which is to be considered by a Constitution bench of the court.

MISA Detenus To Be Freed In A Week

By a Staff Reporter

In line with the recent Supreme Court Order for the release of all people detained under MISA Section 17(A), should be complete in about a week from now.

This was stated by Government sources on Tuesday. The sources denied a report appearing in certain sections of the Press that the State Government had decided to release 200 people and not to re-arrest them. The sources said that no decision on the number of releases had been taken.

CPI And RSP Walk Out Of Assembly

By a Staff Reporter

AMID persistent heckling from the Congress benches, the CPI and the RSP members walked out of the West Bengal Assembly on Tuesday in protest against the refusal of Dr. Zainal Abedin, Minister for Public Undertakings, to specify when the Government would make a statement in the House on the removal of Mr. Moni Sanyal from the Chairmanship of the Hooghly River Bridge Commission (CPI) alleged that Mr. Sanyal was removed by the State Government "arbitrarily" and demanded an immediate statement from the Minister in this connexion. The CPI was "stunned" by the Government action, he added.

Refusing to give an immediate statement on the issue, Dr. Abedin said that according to parliamentary rules, the Government was not bound to make any statement in the House during discussions on "motion" cases. But as the CPI members were "aggravated" about the action taken against Mr. Sanyal, the Government would make a statement "as early as possible". But as Mr. Mukherjee had made certain charges against the Central Government also, it would take some time before the statement could be made.

Drawing the Government's attention to the removal of Mr. Sanyal, Mr. Biswanath Mukher-

jee, the leader of the CPI Assembly group, said that Mr. Sanyal was an honoured member of his party and held many public posts during his career. But it was "amazing" to find him dismissed by the Government without showing any cause. The Government did not even like to consult the CPI leaders before taking any action against Mr. Sanyal, he remarked.

He said that the Progressive Democratic Alliance was formed with the Chief Minister, Mr. Siddhartha Ray, as the leader and Mr. Biswanath Mukherjee as the deputy leader. He said that it was expected that the ruling party would take CPI leaders into confidence before taking any action against Mr. Sanyal.

Mr. Biswanath Mukherjee said that as one of the partners of the PDA, the CPI had taken exception to this action of the ruling party. He pointed out that even while the CPI had been a partner of the United Front, the party did not refrain from protesting against arbitrary actions by the CPI(M). And as the CPI (M) had continued to do what they liked, the CPI did not hesitate to boycott the Front meetings.

Mr. Mukherjee said that from the beginning some "interested persons" were trying to hinder the work of the Second Hooghly Bridge. First, there was a con-

troversy about whether the bridge should be a sign one or a low one. After this was settled, differences arose as to which company should be given the tender. There was also some delay over the foreign exchange allocation, Mr. Mukherjee alleged that an officer of the Union Transport Ministry was "interfering" at every stage. According to Mr. Mukherjee, Mr. Moni Sanyal had objected to such interferences.

As soon as the Speaker, Mr. Apurba Majumdar, called upon Mr. Timir Bhaduri (RSP) to speak, the CPI members were seen shouting in unison. They quietened down when the Speaker explained that Mr. Bhaduri intended to speak on Mr. Sanyal's removal. Mr. Bhaduri alleged that Mr. Sanyal had been removed for political reasons although the people of West Bengal had full faith in him.

At this stage, Dr. Abedin commented that if one partner of the PDA became disgruntled, it was natural for a "third party" to try to take advantage of it. When the Speaker called upon a Congress member to speak, the CPI members insisted that the question of Mr. Sanyal's removal be settled first. As Dr. Abedin said that the Government could not make statement immediately, the CPI and RSP members walked

(Continued on back page col. 4)

Extensive Load-Shedding In Industrial Areas

By a Staff Reporter

Because of a shortfall of about 12 MW in the power supply from CESC sources on Tuesday morning, parts of Shalimar, Akapara, Kamarhati, Metiabruz, Bauria, Budge Budge, Kalighat and Baranpore were affected by load-shedding. In the evening there was a drop in the supply of about 50 MW from the same sources and most of the areas affected included those previously. Announced by the CESC in its programme for load-shedding.

In a memorandum to the Minister for Irrigation and Power, West Bengal, the Chairman of the Vanaspati Manufacturers' Association (East Zone), expressed grave concern at the colossal loss the Vanaspati manufacturing industry had been suffering both in production and in damage caused State Government's order restricting the use of electricity, but, unfortunately, it was being subjected to load-shedding, he said. He said that the Minister should see to it that the industry was allowed to maintain its production without any interruption.

(See also Page 7)

CALCUTTA WEATHER

Forecast for today: Thunderclouds may develop towards afternoon or evening. Little change in day temperature.

Maximum temperature recorded till 5-30 p.m. yesterday was 33.9°C (93.0°F), 3°C below normal.

Minimum temperature was 24.2°C (75.6°F), 2°C below normal.

Maximum humidity was 83% and the minimum 48%.

Rainfall: 2.4 mm.

Humidity at 8-30 a.m. was 74% (2% above normal), 5-30 p.m. 74% (15% above normal).

Sun sets today at 6-01 a.m. Rises tomorrow at 5-08 a.m.

Moon sets today at 10-54 a.m. Rises tonight at 12-22 a.m.

Last Quarter of the Moon tonight.

Hooghly River: High at Garden Reach.

April 25: High water 5-37 a.m. 3.61 mt. April 25: Low water 1-07 p.m. 1.46 mt.

April 26: High water 6-13 p.m. 3.85 mt. April 26: Low water 1-51 a.m. 1.64 mt.

Widespread Rain In West Bengal

Rainfall was fairly widespread in West Bengal during the 24-hour period ending at 8-30 a.m. on Tuesday, according to the Alipore Meteorological office.

The chief amounts of rainfall were: Contai—38.4 mm., Darjeeling—31.0 mm., Sagar Island—21.7 mm., Coochbehar—20.2 mm., Magra (Hooghly)—13.2 mm., Uluberia—13.9 mm., Bankura—10.0 mm., Jalpaiguri—9.0 mm., and Midnapore—8.2 mm.

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