

DRAFT CONSTITUTION—(Contd.)

Article 124

Mr. President : The House will now take up the consideration of the Draft Constitution—article 124.

There is an amendment (No. 1974) of Mr. Naziruddin Ahmad to the heading of this Chapter.

As it relates to the heading, we can pass it over.

I see that there is an amendment to add a New Part by Shri Gopal Narain No. 1973.

(The amendment was not moved.)

Now Amendment No. 25 of List for the Third Week may be moved.

Shri T.T. Krishnamachari (Madras : General) : Mr. President, Sir, I move :

“That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, for the word ‘Auditor-General’ wherever it occurs, (including the heading) the words “Comptroller and Auditor-General” be substituted.”

The reason for this amendment is fairly simple. The function which the Draft Constitution imposes on the Auditor-General is not merely audit but also control over the expenses of Government. Undoubtedly the term ‘Auditor-General’ has been all along used in the 1935 Act to include both these functions. But as it is quite possible that we might empower Parliament to enlarge the scope of the work of the Auditor-General, it was thought fit that the nomenclature of the Auditor-General, should be such as to cover all the duties that devolve on him by virtue of the powers conferred on him by the Draft Constitution. The issue is fairly simple. It is merely a matter of a name which covers the duties now carried on by the Auditor-General and will be carried on by him in the future. I hope the House will find no difficulty in accepting this amendment.

Mr. President : Then there is amendment No. 130, also of Shri T.T. Krishnamachari.

Shri T.T. Krishnamachari : There is another amendment to 1975.

Mr. President : You have given notice of amendment No. 130.

Shri T.T. Krishnamachari : It is merely expanding the scope of amendment No. 1975. Either No. 1975 may be moved now or I will move my more comprehensive amendment.

Mr. President : Mr. B. Das may move amendment No. 1975.

Shri B. Das (Orissa : General) : Sir, I move :

“That in clause (1) of article 124 after the word ‘President’ the words ‘by warrant under his hand and seal’ be inserted.”

Sir, this amendment I have given because the Auditor-General, like the Chief Justice of the Supreme Court, is to be appointed by the President and therefore it is essential that the words “by warrant under his hand and seal” should be introduced.

Mr. President : Amendment No. 130 may now be moved.

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

“That with reference to amendment No. 1975 of the List of Amendments, after clause (1) of article 124, the following new clause be inserted :—

‘(1-a) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe

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before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.' "

Sir, this is more or less consequential to the amendment moved by my honourable Friend Mr. B. Das. The Office is now being ennobled by the appointment being made by warrant under the hand and seal of the President. As actually this procedure is followed only in the case of such appointments where the officer concerned has also to take an oath, it is felt that the lacuna may be remedied by the addition of the clause now proposed.

Mr. President : Amendment No. 1976 is not moved, as the House has already disposed of the principle underlying this amendment in connection with some other appointments in the Union.

Amendment No. 1977 is disallowed as of a drafting nature.

(Amendment No. 1978 and 1979 were not moved.)

Amendment No. 1980 is covered by another amendment moved by Shri T.T. Krishnamachari.

Then there are the two amendments to clause (4). One is 25-A of List I.

Shri T.T. Krishnamachari : This is now superseded by No. 131 of List II.

Sir, I move :

"That for amendment No. 25-A of List I of Amendments to Amendments, dated the 28th May 1949, the following be substituted :—

"That with reference to amendment No. 1980 of the List of Amendments, for clause (4) of article 124, the following clause be substituted :—

(4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.' "

Sir, this is in substitution of clause (4) of article 124 and amplifies the idea contained therein. It also provides that the Auditor-General shall not merely consult the President but shall obtain his approval in regard to the fixing of the salaries, allowances and pensions payable to or in respect of members of his staff. All these hinge on the executive discretion of the authorities concerned, as they might affect the principle of parity with the other services under the Government of India. This is non-controversial and is merely an improvement on the present draft. I hope the House will accept it. Sir, I move.

(Amendments Nos. 25-B and 1981 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

"That with reference to amendment No. 1981 of the List of Amendments, for clause (5) of article 124, the following clause be substituted :—

'(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.' "

Sir, the principle is exactly the same as in clause (5) of article 124, and the variation merely is that it covers the administrative expenses of the office of the Comptroller and Auditor-General, which in reality will mean certain ex-

penses like contingencies, travelling expenses, etc., so that it really makes the picture complete. Nothing new has been put in. Sir, I move.

(Amendment No. 1982 was not moved.)

Mr. President : Now, the original article and the amendments moved are before the House for discussion.

Shri R.K. Sidhwa (C.P. & Berar : General) : Mr. President, Sir, I have got only a very few remarks to make in connection with this article and the amendments moved thereto. The Post of the Auditor-General is so very important that I will give it the first place so far as the financial provisions of this Constitution are concerned. The Auditor-General should be always independent of either the legislature or the executive. He is the watch-dog of our finances and his position must be made so strong that he cannot be influenced by anyone, howsoever great he may be. From that point of view I am very glad that certain amendments have been moved whereby the position of the Auditor-General has been made very strong. To that extent I welcome the amendments and also the article as duly amended. I also do not want that the Auditor-General should be responsible to the legislature, but I find that the amendment just now moved by my Friend, Mr. Krishnamachari, says :

“(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.”

I take strong exception to this amendment by which the expenses of the Auditor-General and his office are made chargeable on the revenues of India. The system of charging certain things to revenue existed under the 1935 Act under extraordinary circumstances, when the Secretary of State ruled this country. Now, we are ruling our country; we have done away with the British rule. As I said, the Auditor-General should be placed above the influence of anybody, but Parliament should not be deprived of its right to consider the question of his and his office's salaries and allowances. When we have a legislature responsible to the country, I fail to understand why this old system of charging certain items to revenue should continue. This would mean that the House will have no right of voting on these subjects. We shall no doubt have the right of discussing it, but this alone will not do. Under the new Constitution, we should do away with the system of charging anything to revenue. I therefore desire that this part of the article should be deleted. While as I said I entirely agree that the Auditor-General should be made absolutely independent, I take very strong objection to this amendment which has been moved by Mr. Krishnamachari.

Shri B. Das : Sir, I do feel happy at the way this article 124 has been amended. I have been a member of the old Parliament for twenty-three years under the foreign rule, when the Secretary of State used to appoint the Auditor-General. Later during the war the Finance Member of the Government of India began to dictate terms to the Auditor-General. He was told that he was not to report against anything which did not agree with the whims and whimsicalities of the Finance Department. The Auditor-General was debarred from reporting any irregularities against the European officials of the time. After twenty-three years of hard suffering which some of us went through, we have thrown out the British rule. Therefore, it is necessary for the maintenance of the integrity of the Government of India and high moral principles of the employees of the Government of India in public expenditure that the Auditor-General should be placed in the status wherein we have placed the members of the Federal Public Service Commission and also the Chief Justice of the Supreme Court of India. It is a happy day that the

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Drafting Committee thought fit and changed the draft by these two amendments, which have been moved by my honourable Friend, Mr. T.T. Krishnamachari.

I am surprised that my honourable Friend, Mr. Sidhva, did not agree on the matter of “charged” expenditure. Mr. Sidhva perhaps had forgotten under the British rule by orders of the Secretary of State more than 75 per cent, of the revenues of India were non-voted. Under the new dispensation there are certain functions of the Government which must remain “charged”. Then he forgot that in the demands for Budget grants which have to be passed in the Parliament the interest on borrowed money is a charged expenditure. There are certain other items which are charged. The expenditure of the Governor-General now and later, of the President, is charged to Government. The members of the Legislature are not debarred from criticising the Governor-General’s extravagance or the extravagance of the Auditor-General or the Supreme Court. We have already placed on the charged list especially the Supreme Court. Why should we fight shy in placing the Auditor-General on the charged list, so that he knows the supply sanctioned by Parliament? The amendment which my honourable Friend, Mr. T.T. Krishnamachari has moved says :—

“Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President”.

Our chosen Cabinet elected by the very Parliament is there. Then the President who functions as the mouth-piece of the Cabinet will see.....

Shri R.K. Sidhwa : Then make everything chargeable.

Shri B. Das : You will have to accept the “charged expenditure”. There are other items which should not be interfered with by Ministries, because every Ministry today always exceeds its sanctioned expenditure and resists any Budget control and any financial control. Surely, my honourable Friend, Mr. Sidhva knows that 118 crores worth of supplementary estimates came on the 31st of March 1949 for sanction by Parliament. So, if the Auditor-General and the staff are not placed at a certain high level, it will be very difficult for them to discharge the responsibility that the Constitution Act imposes on the Auditor-General or, similarly on the Federal Public Service Commission or on the Supreme Court Judges. Therefore, certain items of expenditure should remain “charged”, as also the interest charges, so that the executive need not interfere. Of course, Parliament can interfere by raising debates and discussions and nobody will deny that right to my honourable Friend Mr. Sidhva. I have great pleasure in supporting the amended article 124.

Shri Biswanath Das (Orissa : General) : Sir, the amendment proposed by my honourable Friend, Mr. T.T. Krishnamachari represents the compromise between two opposite points of view. Before I proceed to justify the amendment moved by my honourable Friend, it is better that I place before honourable Members a picture of the activities of the Auditor-General and the Controller.

It would be wrong to say that any power, prestige or responsibility of the Legislature has been limited or restricted by the proposals brought forth by the amendment proposed by my honourable Friend. We have to realize that it is the Legislature that is competent to pass laws. The interpretation of law is being left to the judiciary. Sir, it is the Assembly that sanctions money to be spent by the executive and the executive is the proper authority to spend monies as are sanctioned by the Legislature. Who is the authority that is to audit whether the money sanctioned by the Legislature has been spent properly? To discharge this onerous responsibility, a new authority has been created under

the law by the Legislature and that authority is no other than the Auditor-General. Having thus defined the functions of the executive and the Auditor-General in a definite and specified manner, the question arises as to how is the Auditor-General to function. Sir, I will just now refer to amendment 25-A to article 124 which has been moved just a few minutes ago, which lays down that all appointments to the staff of the Comptroller and Auditor-General shall be made by him or such person as he may direct. This gives power to the Auditor-General to re-appoint the existing staff. Then we come to (4a) which give him power to appoint additional staff that may be required for the purpose. Regarding this, I again invite the attention of honourable Members to the proviso which specifically restricts the powers of the Auditor-General even by the Head of the executive, namely the President of the Indian Republic. I will read it for the benefit of the Members of the House.

“Provided that the rules made under this clause shall so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.”

Even here, I for myself would have desired to wipe off this proviso because it mars the independent action, and independence to that extent of the Auditor-General by putting him in a position where he has to depend on the executive for getting approved the rules that relate to salaries, allowances or leave. To this extent the Auditor-General, instead of being independent of the executive, is made dependent on the executive. Therefore, my honourable Friend, Mr. Sidhva will please see that the amendment proposed by Mr. T.T. Krishnamachari represents merely a compromise. You have reserved to yourself the approval of the President, the Head of the executive, which means approval of the Cabinet, and which means the authority of the Legislature behind the Cabinet to the rules framed regarding salaries, allowances, leave or pensions. Therefore, nothing more is called for. The proposed charged amount is something different, absolutely different from that which has been provided under the Government of India Act of 1935. The British Parliament have made provisions anticipating that there may be conflict between the legislature, and the executive with the Governor-General, but here there is absolutely no conflict contemplated. I will again invite the attention of honourable Members to article 125 which reads : “The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of India and of the Government of any State as are or may be prescribed by or under any law made by Parliament.” On the other hand it will be seen that the Auditor-General and Comptroller is absolutely left to the mercy of the legislature. Provision for a charged amount has been made only to avoid a clash and deadlock in future in the operation of the responsibilities of the Central Executive and the Auditor-General. Therefore, the provision is a sane one, is a necessary one, is a very desirable one and represents not one view, but merely a compromise view of the two conflicting sets of views.

With these words, I support Mr. Krishnamachari's amendments.

Mr. President : I do not think any further comment is necessary on this.

The Honourable Dr. B.R. Ambedkar : (Bombay : General) : Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles relating to the Auditor-General in this House, assigns to him. Personally speaking for myself, I am of opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the duties—and his duties, I submit, are far more important than the duties even of the judiciary

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—he should have been certainly as independent as the Judiciary. But, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not giving him the same independence which we have given to the Judiciary, although I personally feel that he ought to have far greater independence than the Judiciary itself.

One difference, if I may point out, between the position which we have assigned to the Judiciary and which we propose to assign to the Auditor-General is this. It is only during the course of the last week that I moved an amendment to the original article 122 vesting in the Supreme Court the power of appointment of officers and servants of the Supreme Court. I see both from the original draft as well as from the amendments that are moved that the Auditor-General is not to have any such power. The absence of such a power means that the staff of the Auditor-General shall be appointed by the Executive. Being appointed by the Executive, the Staff shall be subject to the Executive for disciplinary action. I have not the slightest doubt in my mind that if an officer does not possess the power of disciplinary control over his immediate subordinates, his administration is going to be thoroughly demoralised. From that point of view, I should have thought that it would have been proper in the interest of the people that such a power should have been given to the Auditor-General. But, sentiment seems to be opposed to investing the Auditor-General with such a power. For the moment, I feel that nothing more can be done than to remain content with the sentiment such as it is today. This is my general view.

Coming to the amendments, I accept the amendments moved by Mr. T.T. Krishnamachari and one amendment moved by Mr. B. Das, No. 1975. These amendments certainly to a large extent improve the position of the Auditor-General which has been assigned to him in the Draft Constitution or in the various amendments. But, I find that even with the article as amended by these amendments, Mr. Sidhva seems to have a complaint. If I understand him properly, his complaint was that the expenses of the Auditor-General should not be made a charge on the Consolidated Fund, but that they should be treated as ordinary supplies and services which should be voted upon by Parliament. His position was that there is no good reason why Parliament should be deprived of its right to discuss the charges and the administrative expenses of the Auditor-General. I think my honourable Friend Mr. Sidhva has completely misunderstood what is meant by charging certain expenses on the revenues of India. If my honourable Friend Mr. Sidhva will turn to article 93, which deals with this matter, he will find that although certain expenses may be charged upon the revenues of India the mere fact that that has been done does not deprive Parliament of the right to discuss those charges. The right to discuss is there. The only thing is that the right to vote is not given. It is a non-votable item. The reason why it is made non-votable is a very good reason because just as we do not want the Executive to interfere too much in the necessities as determined by the Auditor-General with regard to his own requirements, we do not want a lot of legislators who might have been discontented or some reason or other or because they may have some kind of a fad for economy, to interfere with the good and efficient administration of the Auditor-General. That is why this provision has been made. My Friend Mr. Sidhva will also realise that this provision is not in any way extraordinary. It is really on a par with the provision we have made with regard to the Supreme Court. I therefore think that there is no good ground for accepting the criticism that has been made by Mr. Sidhva on this point.

Sir, I move that the article as amended be adopted. I accept the amendments Nos. 25 in List I, 1975 of Mr. Das, 130 of Mr. T.T. Krishnamachari, 131 of Mr. T.T. Krishnamachari and 25-C of List I also by Mr. Krishnamachari.

Mr. President : I will now put the amendments to vote.

The question is :

“That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, of Part V for the word ‘Auditor-General’ wherever it occurs, (including the heading) the words ‘Comptroller and Auditor-General’ be substituted.”

The amendment was adopted.

Mr. President : The question is :

“That in clause (1) of article 124 after the word ‘President’ the words ‘by warrant under his hand and seal’ be inserted.”

The amendment was adopted.

Mr. President : The question is :—

“That with reference to amendment No. 1975 of the List of Amendments, after clause (1) of article 124, the following new clause be inserted :—

- ‘(1a) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.’”

The amendment was adopted.

Mr. President : The question is :

“That for amendment No. 25-A of List-I (Third Week) of Amendments to Amendments, dated the 28th May 1949, the following be substituted :—

“That with reference to amendment No. 1980 of the List of Amendments, for clause (4) of article 124, the following clause be substituted :—

- ‘(4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.’”

The amendment was adopted.

Mr. President : The question is :

“That with reference to amendment No. 1981 of the List of Amendments, for clause (5) of article 124, the following clause be substituted :—

- ‘(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.’ ”

The amendment was adopted.

Mr. President : The question is :

“That article 124, as amended, stand part of the Constitution.”

The motion was adopted.

Article 124, as amended, was added, to the Constitution.

New Article 124-A

Mr. President : Article 124-A notice of which has been given by Professor Shah.