

Shri M. Narayana Kurup : I move that the Kerala Education Bill, 1957 returned to this Assembly by the President in pursuance of the provision to Article 201 of the Constitution be re-committed to the Select Committee to make suitable and necessary amendments therein in the light of the opinion of the Supreme Court of India.

Shri E. Chandrasekharan Nair : Sir on a point of order. In my humble opinion, such a motion is not allowable. As per Rule 108, when a Bill has been sent back by the President for reconsideration, the scope of the discussion shall not be beyond the recommendations of the President. Here the recommendation is for reconsideration of certain provisions. My submission is that the Bill has been finally passed after it was referred to the Select Committee. When the Bill is sent for reconsideration the legislature is empowered only to discuss those recommendations. If the motion of Mr. Narayana Kurup is accepted, the whole Bill will be reconsidered and under Rule 108 it is not possible.

Shri M. Narayana Kurup : I submit that I am entitled to move this motion. In the directive of the President of India it is stated :—

“.....the Bill be returned to the House of the Legislature of the State of Kerala with a message requesting that the House will reconsider the provisions of the Bill and make suitable and necessary amendments therein in the light of the opinion of the Supreme Court of India, a copy whereof is enclosed.”

The Member who raised the point of order is really supporting me. I agree with him that there are 3 stages in the career of a Bill, the stage of introduction, the stage of consideration and the stage of passing. Now, the Bill must be at any one of these three stages. Here the Bill is not at the stage of introduction. It is not yet passed. It is admitted that it is a pending Bill before the Assembly. The very motion moved by the Minister shows that it is a Bill for consideration. Now, what are the rights given to a member under the Rules of Procedure when a Bill is moved for consideration. Under Rule 78 any member is entitled to move that the Bill may be sent to a Select Committee. It may be said that it has already gone to a Select Committee. Even on a motion for consideration of the Bill which has come out of the Select Committee, the member is entitled to move for recommitment to the Select Committee for special consideration. I agree with the hon. Member who has raised the point of order that if the President or the Governor had recommended any special amendment or special form of amendment, the Assembly should confine itself to accepting or rejecting this amendment. At this stage I would draw the attention of the Speaker and the House to the message regarding the High Court Bill. There it is stated :

“.....that the Bill be returned to the Legislative Assembly of the State of Kerala with a message requesting that the said Legislative Assembly will reconsider clauses 3, 4, 8, 12 and 13 of the Bill, and consider the desirability of omitting the said clauses.....”

If that was so in this Bill certainly I cannot move for reference to the Select Committee, because the President has stated what amendments have to be moved. In this case it is clear that the Bill is pending consideration before the Assembly. The President has said “make amendments in the light of the recommendations of the Supreme Court.” The Supreme Court Judgement is a voluminous document containing 33 foolscap pages. One has to read more than half-a-dozen times to know what its full import is. To find out the suitable and necessary amendments, this Judgement has to be read very minutely. Which is better, to move amendments in the House at random and make speeches as in the case of other Bills or delegate such functions to the Select Committee? Of course, it will facilitate matters if it were referred to a Select Committee. It will again come to the House, and then it will be time for us to consider it. I do not mean that all the clauses should be reconsidered. Besides, it will be the right of the Speaker, as and when the amendments are moved to decide whether it comes within the scope of the President's recommendation. Therefore, when I say that this bill be recommitted to the Select Committee, it does not mean that we are at liberty to make any amendments. We can only make amendments which are within the scope of the judgement of the Supreme Court. Therefore, for the convenient and satisfactory discharge of the functions of this House, I submit, that in view of the special nature of message of the President, the Bill may be properly scrutinised by the Select Committee. I do not say that it is to be sent to a separate Select Committee.

Mr. Speaker : Then, I will have to give a ruling upon the admissibility of the motion.

Shri M. Narayana Kurup : I agree. But I have not finished. The motion moved by the Hon. Minister is not in proper form. I submit that Rule 242 gives the Speaker the power to give directions in case where no specific provisions are made and where they are not clear. It can only be by a direction. Rule 108 has been quoted by the member. But it does not serve the purpose. Whatever be the rules or directions given, it cannot take away the right of the Assembly and directions cannot be rules. I submit that the Speaker ought to exercise his discretion in favour of the motion because it is a bill of such a nature. I submit that I am entitled to move this motion and it is for the House to reject or accept it.

Mr. Speaker : On this point of order before I give my ruling I shall consult all sides. I do not want to give a haphazard ruling.

Shri E. Chandrasekharan Nair : In my opinion there is no such difficulty as Mr. Narayana Kurup has pointed out. There is one provision in the Rules of Procedure and that is Rule 108. Though it may not be adequate, my submission is that the Speaker cannot go beyond the scope of that provision. It is very clear. It says :

“When a bill which has been passed by the Assembly is returned by the Rajpramukh for reconsideration by the Assembly, the point or points referred for reconsideration shall be put before the Assembly by the Speaker and shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the Speaker may consider most convenient for their consideration by the Assembly”

That is the only procedure allowed. There is no provision here for reference to a Select Committee.

Shri. E. P. Poulse : This is a very important issue. It has to be decided by the hon. Speaker whether the motion is in order or not. Since it is a very important thing, the decision is to be taken only after mature consideration. I also suggest that the views of the hon. members may be heard before coming to a decision. It may be today or tomorrow.

Another thing I would suggest is that discussion on the motion by the hon. Minister may be postponed since we have to consider a very difficult question, viz. the opinion of the Supreme Court on certain provisions of the Kerala Education Bill, 1957 and the interpretations thereon. I submit that it is not possible to understand the full implications before careful study and discussion on the important principles. The President in his message has suggested that the House will reconsider the provisions of the Bill and make suitable and necessary amendments therein in the light of the opinion of the Supreme Court of India. Without casting any reflection on the legal knowledge and understanding of the hon. members of this House, I would suggest that this House would not be able to do full justice to a very important issue as the one before us in the short time we have had till now. So, I submit that we may have the discussion tomorrow or on any convenient date during this week. In view of the fact that it might help the discussion the Advocate General may be asked to be present.

I would draw the attention of the House to an observation made by the Chief Justice viz., “these are, no doubt, serious inroads on the right of administration and appear perilously near violating that right”. We would not only welcome amendments which conform to the provisions of the Constitution on the fundamental rights of the minorities of the State, but we must see that as far as possible the grievances of the minorities are redressed, particularly with reference to the observations made by the Chief Justice that there are provisions in the bill which make very serious inroads into the fundamental rights. So, let us defer discussion on this motion and see what are the impli-

cations of the Supreme Court's Judgment on the President's reference and after that take the question whether it is necessary to refer the Bill to a Select Committee. We may at least discuss the various provisions of the Bill with this object in view.

Mr. Speaker : Here is a point of order raised by a Member. I would like to have the views of the Leader of the Oppositions, in this connection.

Shri. P. T. Chacko : The Article which covers the procedure is 201 of the Constitution. In that Article it is stated that the Bill or the specific provisions which are referred to in the message may be reconsidered. The word used is "reconsider". Now, in this message there is no specific suggestion excepting that the Bill be reconsidered in the light of the opinion of the Supreme Court. Now if there were amendments suggested by the President, I have no doubt that the proper procedure would have been to consider those amendments alone. Now no amendments are suggested and also on specific provisions are referred to in the message. So, it has to be reconsidered in the light of the opinion of the Supreme Court.

The question therefore is what is the meaning of the word "reconsideration". The hon. Member who has raised the point of order has correctly said that when a bill is taken up in a Legislature, it has to pass through three stages and no fourth stage is envisaged. Therefore, "reconsideration" must also refer to one of these stages. Evidently this is not the first stage viz., introduction. The second stage is 'consideration'. We have once considered the Bill. It is true. But the Constitution says that we should reconsider it. To me it appears, Sir, that this House has the right or this House is entitled to consider those provisions which are referred to in the message of the President. Now, since no provisions are referred to in this particular message and no specific amendments are suggested in this particular message, it seems to me Sir, that we have to take up the Bill from the stage of the motion for consideration. According to me, this House will have to take up the consideration of the Bill and consider all those clauses of the Bill about which observations have been made by the Supreme Court. Now, there is nothing in the Constitution or in the Rules of Procedure of this House to show that this House is not entitled to consider the Bill according to the rules laid down. If that is the position, I submit Sir, that it would be quite competent for this House to refer the Bill to a Select Committee. In this particular case also, that will be the only proper course because, as my hon. friend Mr. Kurup has stated, the only message is that the clauses of the Bill have to be reconsidered in the light of the opinion of the Judgment which is pretty long. There are ever so many observations in the judgment and we have to consider all the

observations and the clauses which are affected by the opinion of the Supreme Court. It would be proper, according to me, Sir, to refer this for reconsideration by the Select Committee. But the Select Committee can only make amendments in clauses which are affected by the opinion of the Supreme Court. That is my view.

Shri T. A. Thommen : According to me, Sir, the matter is entirely covered by rule 108. Rule 108 is the rule which deals with reconsideration. Here we are at the reconsideration stage and the reconsideration stage is completely covered by rule 108. This is what the rule says :

"When a Bill which has been passed by the Assembly is returned by the Rajpramukh for reconsideration by the Assembly, the point or points referred for reconsideration shall be put before the Assembly by the Speaker and shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the Speaker may consider most convenient for their consideration by the Assembly".

So when there are specific points, they are considered as amendments. In other cases, the Speaker can determine the way in which the reconsideration of the Bill has to be done. That is why it is said 'in such other way as the Speaker may consider most convenient for their consideration in the Assembly'. So, my submission is that it is proper to refer the Bill to a Select Committee for reconsideration. The matter is left to the discretion of the Speaker and the Speaker has the right to choose the method of discussion to be conducted and there is nothing in the way of the Bill being referred to a Select Committee if the Speaker so chooses. There is no prohibition ; on the other hand, the rule specifically allows that. Moreover in reconsidering the Bill it becomes necessary to scrutinise the Bill in the light of the judgment of the Supreme Court.

I may refer to the remarks of the Supreme Court with regard to certain provisions of the Education Bill. It is said "These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right"..... We are prepared, as at present advised, to treat these clauses 9, 11 (2) and 12 (4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions." So, on certain matters, the Supreme Court has not expressed a conclusive finding. But their Lordships have practically left the matter open because what is stated is "we are prepared, as at present advised,...." Then there is the expression of opinion "serious inroads on the right of administration and appear perilously near violating that right." So, it is necessary to consider whether we should enact a law which will go "perilously near violating that right". My submission is that we have to consider all these aspects with all their implications. So, the best course will be to refer the matter to a Select Committee.

Shri A. Thanu Pillai : I would like to know what stand the mover of the Bill takes.

Mr. Speaker : But before that I would like to hear the Minister for Law.

Minister for Law (Shri V. R. Krishna Iyer) :

This message has come from the Governor under Article 200 and 201.

Mr. Speaker, Sir, It is Article 201 and the Proviso to it that really govern the scope of discussion of the Bill in the Assembly. The Proviso reads thus:

"Provided that where the Bill is not a money Bill the President may direct the Governor to return the Bill to the House, or as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message....." That is what we are told. We are told to reconsider the Bill within a period of six months from the date of the receipt of the message. How exactly this is to be exercised by the Assembly is the subject matter of Rule 108. It is not right to say that Rule 108 is inept. Rule 242 operates only in cases where the procedure is not laid down in any other rule. It is only then that the Speaker can give directions as contemplated in that Rule. Rule 242 which is a residuary rule says that if there is no rule then directions may be given by the Speaker. But Rule 108 is very specific and clear and is on all fours with the point at issue. Rule 108 says :-

"When a Bill which has been passed by the Assembly is returned by the Rajpramukh for reconsideration by the Assembly, the point or points referred for reconsideration shall be put before the Assembly by the Speaker and shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the Speaker may consider most convenient for their consideration by the Assembly."

There are two situations. There may be specific points referred for re-consideration or there may not be any specific points and the matter has to be considered accordingly. There is no doubt that there are three stages in the career of a Bill. All that we can do in this case is to treat the Bill as if we are discussing amendments to a Bill and vote upon them. Questions like referring it to a Select Committee or eliciting public opinion are not relevant here, because all those things are over. The only point to be considered is: have there been points referred for re-consideration. The argument put forward by the hon. Member Shri Narayana Kurup as also the Leader of the Opposition is that the message simply says ".....that the Bill be returned to the House of the Legislature of the State of Kerala with a message requesting that the House will reconsider the provisions of the Bill and make suitable and necessary amendments

therein in the light of the opinion of the Supreme Court of India "My humble submission is that the matter is quite clear and that specific points have been referred. There are two methods of referring back a bill which can be adopted by the President. Either he may say "I formulate these amendments, consider these" as in the case of the High Court Bill or the President may say 'I ask you to reconsider the Bill not *in toto* but with regard to specific points which have been referred to and commented upon by the Supreme Court.' That is what is done in regard to this Bill.

Is the Supreme Court judgment vague and general? No. On the other hand the Supreme Court judgment is specific and pinpointed. The President has set certain questions and the Supreme Court judgment says "these references have been made by the President under Article 143 (1) of the Constitution of India for the opinion of this Court." In one place it says ".... the President has referred to this Court, for consideration and report the following questions :—Question 1., question 2, question 3 and question 4." The words "following questions" is used in the same sense as points in Rule 108. "Questions for consideration" can be interpreted as "points for consideration".

Shri P. T. Chacko : In the message there is no reference to questions raised or points. The only reference is to the opinion by the Supreme Court.

● **Shri V. R. Krishna Iyer :** The Supreme Court Judges being very eminent men answer only questions referred to them. They do not refer to outside questions. They do not deal with questions which are altogether outside their reference. They deliberately address themselves to questions which have been specifically put to them under Article 143. So opinions have been sought and given and in the concluding portion, in the usual manner which lawyers will be well aware, they have summarised the points for determination such as question No. 1, question No. 2, question No. 3, & question No. 4. Instead of carrying these things and putting them in the message and making it rather clumsy, the President has said "I am referring this matter to the Assembly with the Supreme Court's opinion thereon". Then the procedure laid down in Rule 108 together with the direction given by the President must govern the scope of the debate in this House. In the message of the Governor what is the matter referred to? The matter referred to is the opinion of the Supreme Court. Nobody can escape from it. So we are confined to the discussion of the matters covered by the opinion of the Supreme Court. My submission is that Rule 108 is attracted. The amendments have to be discussed and voted upon. On reading Rule 108 along with Article 201 of the Constitution it will be obvious that the House has to re-consider the points in the opinion of the Supreme Court. Amendments have been drafted in the light of the points which have been crystallised in the opinion of the Supreme Court. We have only to

confine ourselves to the set points and discuss amendments and vote upon them. It is not as if we can start *de novo* discussion. The point is that the original Bill is not available for reconsideration according to the Rule. We have to confine to the points in the message that has been sent to this House.

Shri A. Thanu Pillai : I also would like to say a word on this issue. I never thought that there will be any objection to the motion moved by Mr. Narayana Kurup. There seems to be a good deal of unnecessary misconception. Nobody did ever suggest that we should go beyond what is strictly covered by the opinion expressed by the Supreme Court. The argument advanced by the Law Minister is against reference to a Select Committee because when a Bill is introduced the next stage so far as this house is concerned will be to move amendments and get them passed or discarded. Now the argument of Mr. Krishna Iyer may well be made use of to say that there shall be no Select Committee because amendments have been moved and so they may be either passed or rejected. Here the Supreme Court has expressed its opinion. Certain amendments have necessarily to be moved and considered and the honourable Minister himself has given notice of seven or eight amendments. So far as these amendments are concerned, some drafting is necessary. 10 a.m.] Is that not so? Does not the question of making necessarily incidental or ancillary provisions also arise? That does not mean that we will stray beyond the scope of the opinions expressed by the Supreme Court. Nobody can deny that some careful drafting is necessary.

Now the only object of the motion is that instead of ourselves considering here amendment after amendment in relation to the opinions expressed—and fortunately or unfortunately this is a very lengthy document—and dealing with the matter, why not a Select Committee look into the whole thing and draft the necessary amendments after due consideration, fully keeping in view the limitations imposed upon the scope of their work. I cannot understand how there can be any serious objection in regard to that.

Not only that, Sir, I should be excused when I say that in matters of legislation, we should be prepared, this House as a whole should be prepared, to spend necessary time and attention. It may be a small thing or a big thing. It may be a short bill or a long bill; but let us not stint time. Ofcourse, the result of stinting time is not favourable or helpful; that has been our experience. Let us not forget that. You have to dispel any illusion as far as the object of the motion and the scope of the work that the Select Committee will have to do is concerned thoroughly consistent with the opinions expressed—nothing this side or that side; nothing against it definitely.

Then, Mr. Krishna Iyer was referring to Rule 108. That rule says: "When a Bill which has been passed by the Assembly is returned by the Rajpramukh for reconsideration by the

Assembly, the point or points referred for reconsideration shall be put before the Assembly by the Speaker....." If we are to put upon those words a very strict interpretation, how then can the Minister's motion itself come here? In that case, it has to be ruled out. Now, here are the opinions. The questions to be put will be: "On opinion No. 1, what do you say?"; "On opinion No. 2, what do you say?" and so on. Of the opinions, I think, only two of them come up for our consideration. Now, what is meant by Rule 108? You have to interpret the rules reasonably. Not only that, Sir. In the Rules that have been passed by you, Sir, you direct a certain procedure to be adopted. In those rules, with regard to motion for reconsideration, you say: "On the day on which the motion for reconsideration is set down.....the Minister or the member giving notice may move that the Bill be taken up for reconsideration in the light of the directions contained in the message." You have passed that rule. That is not in the existing Rules. It is in order to facilitate discussions here that you have passed these new rules; that does not mean that your power to pass more elaborate rules are taken away where matters are not specifically provided for in the Rules of Procedure. There is a clear provision for that under Chapter XXIV, i. e., Rule 242 relating to Residuary Powers. That rule says that "all matters not specifically provided for in these Rules and all questions relating to the detailed working of these Rules shall be regulated in such manner as the Speaker may from time to time direct." That rule must be used in cases of this kind.

Sir, I have seen the Rules of Procedure of certain other Legislatures also, relating to cases of this kind. Elaborate rules have been passed regarding the procedure to be followed, when a Bill is returned by the President.

Mr. Speaker : Where ?

Shri A. Thanu Pillai : I think I read that in the Rules of Procedure of West Bengal and in the Rules of Orissa.

Mr. Speaker : No. In Lok Sabha, I think there are.....

Shri A. Thanu Pillai : I think I read the rules relating to West Bengal and Orissa. I looked into those rules.

Mr. Speaker : There also, no exhaustive rules are laid down and they do not give us a guidance.

Shri A. Thanu Pillai : Similarly you can frame rules; this Assembly can frame rules; there is nothing against it. Not only that, even under rule 108, "it shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the Speaker may consider most convenient for their consideration by the Assembly." So, the point is, you may consider the way most convenient for the consideration of this matter. When we interpret a rule, we should take that interpretation which would be helpful.

[Shri A. Thanu Pillai]

Sir, I may again try to dispel this illusion. Let there be no misgiving so far as the Minister and the Government Benches are concerned that there is any attempt to stand in the way of the passage of this Bill. Not in the least; let us do things properly. It may be said that even when the amendments are moved here, the thing may be done fairly satisfactorily. I concede that. But why not you give satisfaction to all sides of this House that the Bill has been given due consideration after it came back from the President? Why should the Minister stand in the way of that feeling? Already there are complaints that this Bill was somehow rushed through in this House and that it was somehow passed and it was so done in order to annoy or harm one section of the people. There are complaints of that kind. Even from that practical point of view, why should there be any opposition, provided the course suggested is not against the Constitution or the rules? In accepting my friend's motion, I do not think there is anything against the Constitution or the Rules. It is fully within the competence of this House and fully within our powers. Not only that, Sir, you know, even after a Bill has come to the Assembly from the Select Committee, we return it to the Committee giving strict directions as to the scope of further consideration by the Select Committee. That is provided for in Rule 90.—that the Bill as reported by the Select Committee be recommitted. There is that provision. If the general provisions in the Constitution and rules that the opinion recorded by the Supreme Court should be strictly adhered to, why not give a specific direction here that the Select Committee will certainly limit its scope of consideration to the points raised and considered and expressed upon by the Supreme Court? Sir, that will give satisfaction. That will expedite the thing better. We also find here any number of other amendments of which notice has been given. Whether all those amendments are in order, I am not sure. All these things have to be considered by a Select Committee. You can fix a time-limit and then send it to the Select Committee. Not only that I do not see any objection to this being done, but I think we must also build up healthy conventions; and so far as this Bill, its history, the circumstances surrounding it, etc., are concerned, I think it will be best to refer it to the Select Committee and get its opinion as soon as possible.

Mr. Speaker : You have not said anything about the admissibility of the motion.

Shri A. Thanu Pillai : I fully support the admissibility of the motion.

Mr. Speaker : I also wanted the Advocate-General to be here while such questions are discussed, but I am informed that the Advocate-General is not now available in Kerala, but that he has gone to Delhi in connection with some case in the Supreme Court. Now, can the hon. Minister for Law enlighten me as to when we will be able to have the Advocate-General?

Shri V. R. Krishna Iyer : I think it would not be possible for him to come here during the next few days, because he is held up in Delhi in connection with an important business. It would take some time for him to return.

Shri M. Narayana Kurup : Before he appears here, the Select Committee would have reported.

Mr. Speaker : One hon. Member Shri E. P. Poullose said that it would be good if the Advocate General is present here when this is discussed. I was also of that view. But now that he is not available, I think it better to consider the points raised by the different sections of the House in respect of the admissibility of the motion for reference to the Select Committee and give a ruling tomorrow. Just at the moment I am not myself sure of the procedure to be adopted. I have to take into account all the opinions expressed by the different sections of the House. So why not I give the ruling later on? In the meanwhile, I think we will take up the next item of business, viz., reconsideration of the Kerala High Court Bill, 1957.

Shri V. R. Krishna Iyer : No objection from this side, if a little time is taken to give a just ruling.

Mr. Speaker : The question raised here is slightly difficult inasmuch as there is no precedent to guide us. No procedure has been laid down by this House or by the Lok Sabha or by any other Legislatures. So, I think I would have to go into the question in some detail and give you a ruling later.

Shri V. R. Krishna Iyer : Many things happen in Kerala of which there are no precedents.

Mr. Speaker : Now we will take up the reconsideration of the Kerala High court Bill.

The Kerala High Court Bill, 1957.

Minister for Law (Shri V. R. Krishna Iyer) :

Under Rule 8 of the Rules regulating the procedure for reconsideration of Bills in the Assembly returned under Articles 200 and 201 of the Constitution, read with rule 2 thereof, I move that the Kerala High Court Bill, 1957, returned to the House by the Governor with his message dated 17-10-1958 under Article 201 as directed by the President for reconsideration, may now be taken up for reconsideration by this House in the light of the directions of the President communicated by the Governor in his message aforesaid.

Minister for Health (Dr. A. R. Memon) :

I second the motion.

Shri A. Thanu Pillai : May I know from the Law Minister whether the President or the Governor has sent any communication as to why the deletion of these clauses is suggested.

Mr. Speaker : The Minister may now speak in support of his motion.