

RAJYA SABHA

***SYNOPSIS OF DEBATE**

(Proceedings other than Questions and Answers)

Tuesday, July 15, 2014/ Ashadha 24, 1936 (Saka)

I. STATUTORY RESOLUTION

**Disapproval of the Telecom Regulatory Authority of India
(Amendment) Ordinance, 2014**

II. GOVERNMENT BILL

**The Telecom Regulatory Authority of India (Amendment) Bill,
2014**

DR. T. SUBBARAMI REDDY, moving the Statutory Resolution, said: We strongly object to the Ordinance promulgated by the Hon'ble President for amending the Telecom Regulatory Authority of India Act. Ordinances under the Constitution of India should be sparingly used. Ordinances were promulgated on several occasions in the past also. They should be issued in the best interest of the nation where time factor is important and the government cannot afford to wait, and has simply to do so. This is my submission. We do not accept the principle of issuing Ordinance or amending the Act for one single officer. Therefore, my party and I take strong objection to the use of Ordinance for an individual.

***This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha.**

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD), moving the motion for consideration of the Bill, said: In the Telecom Regulatory Authority of India Act, 1997, we are just making one amendment. In India, we have got many regulatory bodies. The chairpersons of these Regulatory bodies can be eligible for employment after a certain number of years. There are certain constitutional posts where there is no bar for their appointment in the government after they demit office. The bar is only in case of CAG and member of the Public Service Commission. This particular Ordinance is not individual-specific. It only seeks to change the anomaly which exists in TRAI Act and some other regulatory bodies where there is no such provision of life-long ban. The government should engage the services of any talented authority whose capabilities it trusts, even if such an officer belongs to TRAI. This Bill attempts to bring parity in regulatory bodies, therefore, I would urge the House that the Bill be passed.

SHRI MANI SHANKAR AIYAR: I rise to oppose the amendment that has been tabled. I object to the adoption of the Ordinance route. I believe the amendment is violative of Article 14 of the Constitution, and the Prime Minister had many options other than going against the established law to secure the services of the competent Principal Secretary. First and foremost, there were no emergent or urgent conditions warranting the issue of an Ordinance. The Ordinance has to be issued in conformity with the provisions of the Constitution and the judgments of the Supreme Court. Why then this tearing hurry to get over a legal obstacle by issuing an Ordinance?

This amendment, which was initially promulgated as an ordinance, appears to have only one object, giving the Prime Minister the one individual he wants as Principal Secretary. Therefore, the legislation that is now being brought before us is evidently a legislation that is designed to benefit only one single individual. Now, is this compatible with Article 14 read with Article 16 of the Constitution? These Articles of our sacred Constitution make it amply clear that legislation cannot be directed at a single individual. At a

minimum, it has to be established that the legislation is designed for a class of people. This principle was established by the Supreme Court in the 1992 case of State of Himachal Pradesh versus Kailash Chand Mahajan. Now, if this amendment had been brought without an ordinance, I would not have made these arguments. Has any of the TRAI Chairmen been appointed to any post in the Government? It is just one and done through an Ordinance. Therefore, the real intent and purpose of this legislation is only to exempt one single individual from his obligations which were extant under the law. I do not believe that this amendment will stand the scrutiny of the courts. In the interest of getting one individual made the Principal Secretary, this Government should not bring itself and possibly this House to eternal shame. Had this individual covered himself in glory in his last assignment as Chairman of TRAI, then maybe the argument could be made that there is simply no one else among 1.2 billion people, who is available to become the Principal Secretary. Why is this insistence on appointing this one individual? This is, arguably, the most important bureaucratic post in the country. Is this Ordinance and this draft Amendment a reward for services rendered in the past?

SHRI BHUPENDER YADAV: During the last 10-15 years, regulatory authorities have been constituted in various service sectors in the country. The minimum qualifications for appointment in these regulatory authorities as Chairman or Member are impartiality, expertise in the concerned field and administrative skill. If there is a provision to appoint the people, working as administrative officers and chairmen in all other regulatory authorities after a cooling off period, then why there should be a restriction only on people working in TRAI? The Government has given a practical and concrete shape to this legal concordance by bringing the ordinance. Whatever action the Government had taken, it was constitutional and in consonance with the circumstances and laid constitutional provisions. The Government has fixed a period of two years. Besides that, if they join any company working in the same field, the consent and recommendation of the Government has been made mandatory. This law will bring concordance with other regulatory authorities and it will give an

opportunity to the experts working therein with impartiality, expertise and administrative skill to serve the country.

KM. MAYAWATI: The Telecom Regulatory Authority of India (Amendment) Bill, 2014 has been brought today for consideration and passing in this House. Our party has always given priority to the issues of the public interest. If you will take up the issues of public interest, we will support you. This Bill had to be brought because there were some legal hurdles in appointing an officer as the Principal Secretary to the Prime Minister. This Bill has been brought to remove these hurdles. I think there is nothing wrong in it. Therefore, our party supports this Bill.

SHRI DEREK O'BRIEN: We heard from the Government that there are other statutory bodies which have certain other requirements, so, it is to provide some logic to match TRAI and the Chairman of TRAI with some other statutory bodies. They did not bypass Parliament. If it was done for one person then this person is no less a person than the Principal Secretary to the Prime Minister. It is about having a key person by Government need to have there. The Prime Minister needs this person because of good governance.

SHRI K.C. TYAGI: I rise to oppose this Bill. I am partially in agreement with what Ayiar ji has said. Person ,who has been appointed as principal secretary, was also personal secretary to Shri Mulayam Singh Yadav when he was Chief Minister in 1989.and he had made quite caustic remarks for his functioning and political manoeuvring. Normally, Principal secretary to the Prime Minister or Chief Minister are their conscience keeper. I have no issue with amendment which are being made to TRAI Act.

DR. V. MAITREYAN: on behalf of all India Anna DMK, I rise to support the Telecom Regulatory Authority of India (Amendment) Bill, 2014. It is the prerogative of the Prime Minister or the Chief Minister to choose his team. There may be thousand people who are more competent, but the fact is that I should have confidence that this man will be confidential to me. It is the confidentiality which matters. I would like to say that the highest authority, who signs the Ordinance, should be satisfied about the existence of the

circumstances. The Writ Petition was filed in the Madras High Court on this very same Ordinance praying that 'this Ordinance should be declared as null and void and unconstitutional. The Judges finally dismissed this petition.

PROF. RAM GOPAL YADAV: This Bill is basically related to the appointment of principal secretary to Prime Minister. There should not be any objection in this regard. All the regulators can accept any assignment after two years of their retirement but it was not in case of TRAI. Therefore if Government want to amend TRAI Act then there is no irregularity in this. The Prime Minister should be allowed to appoint his principal secretary and there should be no dissent in this issue.

SHRI P. RAJEEVE: Article 123 of the Constitution should be used only when 'circumstances exist which render it necessary to take immediate action. I read the Statement of Objects and Reasons of this Bill but I could not find any urgent need for this Ordinance. This Amendment Bill moved by the Government is on a par with other laws such as the Insurance Bill or the Bill on the Competition Commission of India. There is a particular clause in the TRAI Act, which prohibits the Chairman and full-time members of TRAI from taking up any other Government job. My opinion is that all the other Acts should be amended on a par with the TRAI Act so as to protect the credibility and transparency of the regulatory mechanism. I am not against the power of the Prime Minister to appoint any person as his Principal Secretary in his office. But, absolute majority of Government does not give them power to bypass the Parliament. Whether country is facing any scarcity of dedicated and efficient bureaucrats ? If it is so, then create urgency. I think, it is not so. it is crystal evident that the Government promulgated this Ordinance to remove the statutory prohibition of a person. That means that this Bill is against the oath taken by the Minister. The Minister has no constitutional right to move this Bill. I vehemently oppose this TRAI (Amendment) Bill.

SHRI D. RAJA: The Government of the day should have confidence in Parliament and Ordinance route is not an acceptable

thing. I have objections to the Bill also. Why did the spectrum take place? One of the reasons that the officials were allowed immediately after the retirement to take up jobs. Now, my point is what does 'any appointment in any company in the business of telecommunication services' mean. Are Government going to allow the Chairperson or members to take up employment or jobs in private companies, Indian or multi-nationals?

I have serious objections to this Bill. This is going to have very adverse far-reaching implications on our economic development, on our entire political development. If you amend TRAI, you will have to think of amending other similar Acts of the Parliament, and we would like to know as to what are those. I want the Government, with an open mind, to have a relook at this clause. I am not in favour of this Bill and the Ordinance.

SHRI SHANTARAM NAIK: It was the duty of the Government to specify as to what are the circumstances which led the Government to issue the Ordinance. Ordinance route is not the appropriate route. Anomaly is not urgency. If it is an anomaly, you can debate, legislate and discuss as to what is the anomaly. So, that can't be the reason for this thing. Whenever public cause required, we issued Ordinances. Why is this Ordinance coming? Are you going in for an Ordinance route to abolish Article 370 of the Constitution?

SHRI PYARIMOHAN MOHAPATRA: I give conditional support to this legislation as there is bit of confusion in the mind of the Government about what they want to do, If Supreme Court Judges, Chief Election Commissioner and Members of Election Commission are to be debarred, instead of your committing to that, allowing this legislation to pass, it is not a proper example. If he finds the present incumbent as the best material for his Principal Secretary, he has a right to have him. How can a Prime Minister wait for days together to pick up someone? The Act of 1997 says that you can't have the incumbent in Central or State Government appointments. But they can seek employment in a commercial organisation or in a company after one year. Why in a company? If there is some merit in an officer, who has retired, and if you want him, allow him in the Central and State

employment. His services should be made available first to the Governments, not to the corporate sector. Make a provision for giving them employment under the Central Government or the State Government with previous approval.

SARDAR SUKHDEV SINGH DHINDSA: I fully support this bill on behalf of my party. We should pass this bill unanimously as there is nothing in it to object and oppose it in such a strong way.

SHRI KALPATARU DAS: I support the bill. When the Cabinet felt the urgency for bringing forward such an Ordinance, this Ordinance was promulgated. There is no irregularity in it. In the past, several such Ordinances have been promulgated and ratified by this House and Houses of Legislatures. It is a fact that soon after the promulgation of the Ordinance, the Principal Secretary to the Prime Minister, who was holding the post of Chairman, TRAI, has been appointed. When the Prime Minister has selected an officer of repute to aid and advise him in his functions, we should not object to it.

SHRI TIRUCHI SIVA: On behalf of my party I support this Bill. This must be understood that a need was felt to suitably amend the provisions of sub-section 8 of Section 5 of the aforesaid Act. If the Telecom Regulatory Authority does not restrict a person to join a private firm after demitting office after a few years, why it does so for Government employment?

The Hon'ble Minister replying to the debate, said: I am really very grateful for a very lightning discussion on the subject and for giving very wise suggestions. The Ordinance provision is part of the Constitution and when the Government comes forward with an Ordinance, the Government is exercising the Ordinance power given under Article 123 of the Constitution itself. Therefore, it is not unconstitutional.

There is no such restriction in the Constitution. When there is no such restriction on the hon. Justices, the Chief Election Commissioner and on other Regulators who can hold Government offices after two years of their retirement then why it is so in the case

of TRAI. The real purport of this whole legislation is to bring parity among all the regulators. It is not individual- specific.

The officer concerned has a very vast experience of working on several important posts. When UPA Government came in to power in 2004, on the basis of his vast experience it appointed him as the Chairman of TRAI. But now when the present Prime Minister is appointing him you are raising the questions. Let me clear one thing that this concerned officer has not worked in Gujarat Government even a single day and at the same time he has not been related to the present Prime Minister directly or indirectly. He has only been selected on the basis of his capability and experience. The country is changing. The country is expecting for the good governance. I am very grateful of all the members and parties who have supported the Bill and also urge upon the House to pass the Bill unanimously.

The Hon'ble Member, replying to the discussion on the Resolution, said: The hon. Minister has categorically been emphasizing in the House that the Prime Minister has every right to appoint his officials according to his choice. We are not objecting to it. He has stated that the Principal Secretary, who was appointed, was an outstanding person. We are not objecting to it either. What we objected to is the principle adopted in bringing about an Ordinance. We do not object to the Amendment to the TRAI Act. The only point is that the principle of Ordinance should be, as I said, Brahmastra. So, it should be very rarely used.

- I. *The Statutory Resolution was negatived.*
- II. *The motion for consideration of the Bill, was adopted.*
Clauses etc. were adopted.
The Bill was passed.

STATEMENT BY THE MINISTER

The Meeting of a Journalist Shri Ved Pratap Vaidik with Hafiz Saeed in Pakistan

THE MINISTER OF EXTERNAL AFFAIRS AND THE MINISTER OF OVERSEAS INDIAN AFFAIRS (SMT. SUSHMA SWARAJ): First of all I wish to clarify that I did 'not give any *suo-motu* statement in Lok Sabha. My senior colleague Shri Jaitley Ji has already responded to the matter in this House. I would like to apprise the House that Government of India has nothing to do with either the Pakistan visit of Shri Ved Pratap Vaidik or his meeting with Hafiz Saeed in Pakistan. Neither before going to Pakistan nor during his stay in that country had he given any information to us about it. His visit to Pakistan and his meeting with Hafiz Saeed was totally personal. I deny all the charges that he went there as an emissary of anyone and that the Government of India has facilitated his visit.

The Hon'ble Minister, replying to the points raised by the Members, said: The Government of India completely disapprove the meeting between Ved Pratap Vaidik and Hafiz Saeed. Therefore, question of any hidden agenda does not arise. I would like to say that this meeting with the prime accused of Mumbai attack is not only amount to be disapproved but condemnable also. I strongly condemn it. We completely disassociate ourselves from these things. We have sought full report from High commissioner in this regard. The report is yet to be received. I assure the House that I would share the information after the report is received.

SHUMSHER K. SHERIFF,
Secretary-General.

rssynop@sansad.nic.in

ERRATA TO SYNOPSIS OF DEBATE DATED 14th JULY, 2014

Page No.	Line No.	Correction
69	18	Replace the word 'Telangaa' with 'Telangana'
70	5	Replace the word 'Chattisgarh' with 'Chhattisgarh'
71	25	Replace the word 'decision' with 'decisions'
72	17	Replace the word 'Telengana' with 'Telangana'