MEMBER OF PARLIAMENT
(LOK SABHA)

(1276)

6th August 1969.

To the Honourable the Acting President,
Rashtrapati Bhavan,
New Delhi.

Sir,

We have watched with distress the manner in which the Banking Companies (Acquisition and Transfer of Undertakings) Bill is being rushed through both Houses of Parliament. Our pleas for reference of the Bill to the Select Committee have unfortunately not been heeded.

The obvious motive of this procedure is to secure your assent to such a measure in order that it may be enacted as an Act of Parliament with a view to frustrate the hearing of certain petitions which the Supreme Court has fixed peremptorily for the morning of August 11 that seek to challenge the validity of the Ordinance which this Bill is to replace. As you are aware, the Supreme Court has admitted the petitions and given a partial Stay Order against the Government.

We may mention that the petitions challenge not only the manner in which the Ordinance was passed but also the substance of the legislation and raise the issue whether the scheme of nationalisation is ultra vires of the Constitution. It seems to us to be highly improper, when an issue is before the Supreme Court and is thus sub judice, for a law on the same lines as the one challenged to be enacted.

We trust you will agree that, when an important Constitutional issue, namely, a proper construction of Article 123 of the Constitution, is before the Supreme Court it should not be faced with a fait accompli as Parliament was faced with a fait accompli in the shape of the Ordinance.

Now that the Government have flouted the canons of propriety and due respect for the highest judiciary of the country, we can only appeal to you to withhold your assent to the Bill under Article 111 of the Constitution. You will observe that the power to withhold assent from the Bill is a power with which the President is endowed and there is nothing in the article to suggest that the President is bound to act on the advice of the Government in such a matter.

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The Constitution als gives you power under Article 111 to refer the Bill to Parliament for reconsideration in respect of certain aspects of the measure, which could on this occasion be effectively and usefully excised, especially as the Bill has been hastily drafted and amended so largely even as it was on the anvil.

If, as we hope, you agree with us that propriety and respect for the Rule of Law dictate that the Bill is not placed on the Statute Book till the Supreme Court has heard the petitions and decided on them, there is an advantage in that the Supreme Court's judgement would give an additional opportunity to the Government and Parliament by indicating the lines on which the present very hasty scheme of nationalisation embodied in the Bill could be modified to bring it in line with the dictates of the Constitution and a further appeal to the Supreme Court and the possibility of the Act being struck down by the Supreme Court would be obviated.

May we also mention for your consideration that no disturbance of the status quo will be caused by waiting until the judgement of the Supreme Court is available in the next few days ? The present Ordinance does not lapse until six weeks from July 21, 1969, that is, the status quo that obtains today will continue without disturbance subject only to the Stay Order of the Supreme Court till August 31, 1969. There will, therefore, be no advêrse effect or complication that will arise out of the course of action that we are suggesting for your kind consideration.

We shall appreciate receiving a line in reply from you.

Yours truly,