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Interventions by Mr. M.R.Masani in the course of the second reading of the Companies (Amendment) Bill, 1963 in the Lok Sabha on December 16, 1963

I

(in regard to conversion of loans into share capital)

"Sir, the choice before the House is between the clause as contained in the Report submitted by the Select Committee and the two amendments moved by the hon. Minister. That is the narrow issue before the House. Before I explain it, may I say I was rather amazed to hear the Minister blaming me for warning Government and Parliament against rejecting the advice of the Select Committee? I explained that the Select Committee had modified the clause and put in the proviso because they thought that the Bill as it was would damage India's credit abroad. The Minister thinks that my speech will damage India's credit abroad. Nobody very much cares what I say in the House. It is the actions of the Parliament and the Government of this country that will decide the credit of India abroad. My warning was that, if this clause is passed in the form that the Government wants and not in the form recommended by the Select Committee, it will deal a great blow to the creditworthiness of this country, which needs foreign capital badly. On the contrary, the Minister now says that my speech will damage the creditworthiness of India. Sir, I am very much flattered at the importance he gives me, but, unfortunately, it is the action of the Government that will damage India's credit abroad and not speeches...

Mr. Speaker: Foreign investors may also see that Mr. Masani had already warned the Government.

Shri M.R.Masani: I am grateful to you for the compliment, but the fact is that they do not need my warning. They move very fast and they know exactly what is happening in the country. They are not going to be guided by a small man like me. It reminds me of the saying:

Sir, following the advice given by your hon. predecessor, Shri Mavalankar, which has just been read out by Mr. Kamath, I propose to do my duty, as laid down by Mr. Mavalankar, of standing by the Report of the Select Committee. Mr. Mavalankar said that it is the obligation of any member of the Select Committee who has not dissented to stand by the Report of the Select Committee. I stand by the clause as modified by the Select Committee. It provides two safeguards. One is that there should be default and the other is that there should be three months' notice to the defaulting company to put itself right. If ~~it~~ it does so, nothing arises. But if the company does not take notice and continues in default for three months, then the contract should be modified and Government could take action. That is what the Select Committee recommended.

The Finance Minister has moved two amendments Nos. 56 and 57. 57 comes first in point of drafting. It refers to omitting lines 34 to 42 and 1 to 4 on the respective pages. That, Sir, is the whole proviso put in by the Select Committee. The Minister wants to undo what the Select Committee did to safeguard India's credit abroad and prestige at home. I oppose this amendment and I stand by the

Report of the Select Committee for the very good reasons given by Mr. Mavalankar, your predecessor.

II

(in regard to deprivation of trustees' right to vote)

Mr. Speaker, the original scheme of this clause was that Government should act in individual cases in regard to the right to vote of individual trustees. The amendment moved by Mr. Solanki and Mr. Bade refers to that position. It wants that there should be individual deprivation of the right of trustees to vote subject to a specific charge of misbehaviour or misuse of rights for personal interests and also subject to the normal equitable guarantees to the trustee - the right of being heard and of having an appeal to the High Court.

My amendment No. 38 is an amendment to the Bill as reported by the Select Committee, because the scheme has undergone a change. There is no longer any question of taking away an individual trustee's right to vote. All trusts lose their right to vote without any intervention on the part of Government. Automatically the right to vote vests in a Public Trustee. The hon. Minister thinks that this is an improvement because it takes away the interference of the Executive from case to case and day to day. There is something in that point. On the other hand, a great deal depends upon who the Public Trustee is.

I am sorry that the Bill does not provide that the public trustee should either be a full time official who does not have any executive and official duties or an official of the Supreme Court or of the High Courts in the respective States. If a judicial official of the Supreme Court for the whole of India or the judicial officers of each Court were made public trustee, I believe that this would be a good thing because the executive power, where all the economic power of the country is being concentrated today, would be out of the picture. But the Act leaves the appointment of a Public Trustee open. My fear is that he may be an executive limb of the Finance Ministry or some other department of Government who may be given this extra function. In that case, the disinterestedness of the Government becomes somewhat deceptive.

My amendment tries to make the discretion of the Public Trustee subject to the possibility of appeal to the Courts of Law. My amendment is drafted in such language that if a Public Trustee were unreasonably to deprive a normal trustee of his voting rights or to vote against the interests of the trusts perversely, because of Governmental or political interference, the normal trustees would have the right to go to the Courts. The Bill as it comes from the Select Committee does not give this supervisory right to the Judiciary. It does not make an action of the Public Trustee justiciable. If the hon. Minister really means that he wants to wash his department's and his own hands of the affair, I suggest two things: acceptance of the amendment so that the judiciary watches the Public Trustee, and an assurance that the Public Trustee will not be a member of the executive limb of the Government but either a judicial officer or a full-time officer who has no other executive functions.

III

(in regard to grounds for placing Company directors and managers before the Tribunal)

Mr. Speaker, Sir, clause 9 has some features which are quite pernicious, and do not show any understanding of industrial management. There are four grounds on which it is suggested that a company manager or director may be referred to a tribunal. Two of these grounds are perfectly fair. If hon. Members will turn to page 11 of the Bill, section 388B, they will see that the first ground is:

> "(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust;"

Such a case should go to the tribunal. Except for the word 'negligence', there is nothing wrong with this section and one would heartily support it.

Similarly, there is section 388B (d) which says:

"that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest."

That is also perfectly in order. But sub-clauses (b) and (c) show an amazing lack of understanding of what industrial management is. It says that a man should be referred to the tribunal where "the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices." Similarly, sub -clause (c) says that where Government thinks that any man's conduct of business is likely to damage that business, the matter should go to the tribunal.

This is an absolutely outrageous proposal. The manager of a company and the directors represent those who have invested their own capital, those who have risked their own money so that they may make a profit. They and they alone are the best judges of what is good for the company. For a politician in office or a Government official to presume to sit in judgement over the correct conduct of a business, to say that Mr. XYZ should indulge in this business and should not undertake that business, should take this risk or should not take that risk, this is how he should do the job and not that way is presumptuous. Neither politicians nor Government officials are competent to run businesses. Very few of them, with some exceptions like my hon. friend the Minister and a little like myself, show ~~that~~ any capacity to run a business . For such people, who are unqualified to run a business, to presume to sit in judgement not only on those who know their jobs but who are risking their money and nobody else's money is an impertinence. It just shows where we are drifting.

We are trying to impose bureaucracy on business. This is like the monkey playing the violin. It is, I say, an outrageous proposal. It would mean that every businessman has to think a hundred times before taking a decision. He may say "if I go in for this business in this way, suppose the Finance Ministry thinks this is not the right way to carry on business, or the Finance Ministry's ideas of sound business principles are different from mine, what will happen to me? I would be taken to a tribunal as a defaulter." Ultimately, the tribunal, having good sense, might say: "There is nothing wrong with it. Mr. XYZ was indulging in his own business transaction. Leave him alone." But the reputation of the man who is dragged before the tribunal is already damaged. Other people in business will say: "Better not deal with this man; the Government think there is something wrong with him." They may not realise that no allegation is made against him; his bona fides are not questioned. Some official who never ran a business, who could not make a hundred rupees in his life in business, sits in judgment and says: "You are not running the business in a correct way. We think it should be run like this." What cheek! What impertinence! Is this what we are coming to? Is this the way that the hon. Minister wants to help industry and enterprise?

The Finance Minister made a very enlightended statement in his broadcast of 11th October to which he refferred this morning. When I read it I thought: "Thank God, some sense is going to come into this Government's policy." Let me read what he said.

Shri T.T.Krishnamachari: Very short-lived!

Shri M.R.Masani: Very short-lived, unfortunately. He said: "The word 'socialism' has come to mean 'all things to all men.' In fact, it is rapidly on the way to being debased." I entirely agree. He went on to say: "To some, socialism appears to be synonymous with restraining the individual from exercising his initiative." Sub-clauses (b) and (c) do exactly what the hon. Minister criticised in his broadcast of October 11. Then he said: "To me, however, socialism, far from curbing the individual, seeks to stimulate and reward individual initiative and enterprise." If he would be only consistent with himself as on October 11, he will be well-advised to accept my amendment and withdraw this idiotic clause. There is no other word for it. "

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