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Select Committee on Companies (Amendment) Bill, 1963

Minute of Dissent by Mr. M.R.Masani,M.P. & Mr.R.V.Bade,M.P.

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The Report of the Select Committee on this Bill shows that the brief reference of the Bill to a Select Committee has been more than justified. Among the several useful changes made in the Bill, there are two modifications which will to a large extent meet the strong exception taken to the Bill by large sections of public opinion and the press.

The first of these is the elimination of the power proposed to be left to Government to transfer to a Tribunal to be set up under the Bill by notification from time to time various powers of the Courts of Law. The second major improvement is the exclusion from the mischief of Clause 5 of the Bill, except only in case of default on the part of a company, of companies which had taken loans from the Government before the coming into operation of this legislation giving power to the Government unilaterally to convert itself from a creditor of the company to its shareholder. We welcome this change because, otherwise, there was ground for the charge that the power of unilateral action given to Government retrospectively would have amounted to a breach of contract and of faith and would have damaged, at home and abroad, India's credit as a country that has so far scrupulously adhered to its contractual obligations.

All the same, we regret that several blemishes still remain in the Bill as reported by the Select Committee.

The one that towers over all others is to be found in Clauses 7 and 8 which give Government the right to deprive all trustees of their right to vote as shareholders of joint stock companies and to transfer this right to a Public Trustee appointed by Government. No case has to be made out against any trustee or trustees for expropriating them of this right of theirs and no right of appeal is proposed to those so expropriated. We note that in paragraph 2 of the Statement of Objects and Reasons appended to the Bill it has been stated that: "In order to prevent the use of voting rights attached to shares held by trusts for the advancement of the personal interests of the donors, it is considered necessary to regulate the exercise of such rights in suitable cases." It is a matter of regret to us that our plea that the deprivation of voting rights should only operate in the case of trustees who were found to be using their voting rights for the advancement of their personal interests or of those of the donors was not accepted by the Select Committee. This is one of the increasing number of cases where the provisions of a law bear little relation to the Statement of Objects and Reasons appended to the Bill. The provisions are also inconsistent with the assurance given by the Hon. Finance Minister on the floor of the House on 28th November 1963 that there would be an amendment exempting "genuine trusts created for safeguarding family interests or charitable or educational trusts."

We consider Clauses 7 and 8 of the Bill as embodied in the Report of the Select Committee to be nothing less than outrageous. There are three facets of the right of a shareholder, whether he happens to be a trustee or otherwise. The first is the right to a dividend, the second is his right to his capital and any capital appreciation that may take place, and the third and perhaps the most valuable right is that of participating in the control and management of the enterprise through the exercise of his right as a shareholder. To deprive trustees of this right without any rhyme or reason, without any recourse to a Court of Law for justice or redress is to us a proposal of a shocking nature which should have no place in a free society. What justification can there possibly be for such a drastic power? As the Bill now stands, an official of Government would be competent to deprive a citizen of his valuable right as a shareholder without anything whatsoever being proved or even alleged against him.

In our view, in order to make a provision of this nature appropriate in a democracy, the least that could be done is to modify this clause by providing for the following:

(i) Limitation of this provision to public charitable trusts, in regard to which there are tax concessions, holding shares in public limited companies;

(ii) The restriction of this provision to cases where the trustee is proved to have acted either in his own interest or in the interests of the settlor or otherwise in a way adverse to the interests of the Trust;

(iii) A provision that the trustee should be given the right of being heard in regard to the grounds on which he is proposed to be deprived of his voting rights and a right to appeal to the Courts against the decision depriving him of his right to vote.

Among other provisions of the Bill as reported by the Select Committee to which we would like to draw attention with a view to their modification are the following:

1. In Clause 3 of the Bill, the right of appeal afforded to a person against whom a finding has been arrived at by a Tribunal is restricted only to matters of law arising out of such a finding. We consider this right of appeal to be unduly restrictive and would suggest its being extended to any other question with the leave of the Court.

2. In Clause 9 which provides for the circumstances in which a person concerned with the conduct and management of the affairs of a Company can be removed from his position are included grounds which appear to us to be altogether out of place, such as, negligence or that the business of the company "is not or has not been conducted or managed by such a person in accordance with sound business principles or prudent commercial practices."

   While we are in agreement with the other parts of the clause which would permit the removal from office of a person guilty of fraud, misfeasance or persistent default or conduct which is unlawful, we believe that the question whether or not a business is being conducted prudently or on sound business principles is not one which should be referred to a Tribunal or one which is capable of judicial or quasi-judicial examination. Commercial prudence and sound business practice are matters in regard to which there can be legitimate difference of opinion and those who risk their capital for the business should be the sole judges of such issues. To place in judgement over their business decisions officials of government or members of a Tribunal who may have no knowledge of how to conduct a business and who have no record of business success which would qualify them to judge others is, in our view, something that will paralyse people in business from taking decisions and retard the economic progress of the country. The record of the present Government in regard to the management of its own enterprises in the State sector is hardly such as to warrant the arrogation of any superiority.

3. We see no reason whatsoever for the provision that the previous approval of the Central Government should be required under Clause 9 (Section 388E Sub-clause (5)) in all cases where a successor is to be nominated to an office vacated by removal of the previous incumbent. No doubt such approval would have to be obtained in the case of those offices in respect of which the Companies Act requires such previous approval but it is difficult to see why it is sought to extend the right of the Government to withhold approval to other offices where the Companies Act does not provide for such approval just because a particular incumbent has been disqualified.

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