

## XXV

### Our disappointment with proposals contained in the two Bills

28th Oct. '87

Shri RAJIV GANDHI,  
Prime Minister of India,  
NEW DELHI.

Dear Prime Minister,

We thank you once again for all your efforts on behalf of the Tamil people. We repeat our deep anguish at the tragic turn of events in Jaffna.

We feel it our duty to also express our disappointment with the proposals to solve the Tamil problem contained in the two Bills—the 13th Amendment to the constitution and the Provincial Councils Bill—presented to Parliament by the Sri-Lankan Government. These proposals do not meet the aspirations of the Tamil people nor are in any way commensurate with the loss of life, sufferings and privations suffered by the Tamil people. Since 1983, the T.U.L.F. has always negotiated with the Government of Sri Lanka directly, utilising the good offices of the Government of India, and through the Government of India in the hope of evolving a comprehensive scheme of devolution which the T.U.L.F. could commend to the Tamil people.

The T.U.L.F. regrets it cannot recommend the contents of these Bills to the Tamil people as being satisfactory, just and durable.

On the eve of your departure to Sri Lanka to sign the Agreement, we requested you among other things, that a team of experts from India along with their counterparts from Sri Lanka draft the necessary legislation. You agreed that this was a reasonable request.

Now the legislation is sought to be foisted on us without any Indian expert playing a part in the drafting.

The T.U.L.F. expected all along that a copy of the draft legislation would be made available to the Government of India at some reasonable time before it was made public. Apprehending that this might not happen, a delegation of the T.U.L.F. met President Jayewardene on the 29th of September 1987 and made this formal request. We regret that the Bills were gazetted without being made available to the Government of India.

This is not merely cavalier treatment of India but a clear breach of para 2.15 of the Agreement which states inter-alia that "residual matters shall be resolved between India and Sri Lanka". The Bills are certainly not the result of any such resolution.

We do not wish to burden you with a detailed analysis of the Bills. But please permit us to draw your attention to some important matters.

#### 1. Single Administrative Unit.

After a great deal of persuasion, you got President Jayewardene to agree to one administrative unit of the Northern and Eastern provinces as now constituted having one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers. The continuance of such a unit was to be subject to a referendum in the Eastern Province by 31st December 1988, which could be postponed by the President. We objected to such a referendum and we believed that it would eventually never be held.

The provisions of the Bills have made this political arrangement of such importance to the Tamils a farce. The setting up of a single administrative unit is to be done by an executive act of the President, in the form of a mere proclamation, which can always be revoked, and this too has to

depend on the President being satisfied on a number of imponderables.

It was the Tamil expectation that a single administrative unit of the Northern and Eastern Provinces, would be firmly created by an adequate constitutional provision. The provision in Section 154 of the 13th Amendment, however, is of a dubious nature, and could be interpreted to mean that a perpetual power is vested in Parliament to legislate on this all important matter. The resulting position would be that a single administrative unit of the Northern and Eastern Provinces, even when finally established would be an impermanent arrangement.

## **2. Legislative and Executive Power.**

All parties to the negotiations have always understood that the powers to be devolved to the Provincial Council will be the same as those enjoyed by a State in India with suitable adaptations. This was to be particularly so in the field of legislative and executive power.

During the discussions between the Sri Lankan Government and the T.U.L.F. in July/August 1986, it was agreed that the Legislative Power of the Province in respect of Provincial subjects would be near absolute, and that the Governor would be a ceremonial head, with his discretionary powers clearly defined.

The Bills retain the power of Parliament to amend or repeal the chapter pertaining to Provincial Councils, and the Lists of Subjects, and also the power of Parliament to legislate even on subjects transferred to Provincial Councils, by a 2/3rds. majority, and the approval of the people of the whole country at a referendum. This would indeed be a simple exercise in Sri Lanka, where the majority community constitutes 74% of the population.

In the field of executive power, the Executive Power of the President is sought to be retained by providing that the Governor shall hold office in accordance with Article 4 (b), which provides that 'executive power of the people shall be exercised by the President of the Republic', through the wide and undefined discretionary powers of the Governor, which according to Section 154F (2) have to be exercised on the President's directions; and through powers exercisable on the Proclamation of an emergency on very wide grounds.

It would be relevant to recall that between 1970 and 1987, Sri Lanka has been under Emer-

gency Rule for more than ten years. The Sri Lankan Government has declined to accept the T.U.L.F.'s persistent demand that the Indian pattern pertaining to the proclamation of emergency be followed. Not merely have the justiciability of Proclamations of Emergency and Break down of Constitutional Machinery been specifically denied, power has even been vested with the President, to make Emergency Regulations with respect to any matter set out in the Provincial Council List, or having the effect of overriding amending or suspending the operation of a statute made by the Provincial Council. Vide: Article 155 (3A).

These provisions were never accepted by the T.U.L.F.—some of them were not even proposed to the T.U.L.F., and we are certain that these provisions have not been accepted by India.

During discussions with the T.U.L.F., the Sri Lankan Government indicated that the number of Ministers of the Province should not exceed one-third the total number of members. The North Eastern Province would have seventy one members. The T.U.L.F.'s proposal was that the number of Ministers should not exceed one-fifth the total number of Members. The number of Ministers has now been restricted to four. This has been done with the ulterior motive of promoting discord amongst the different peoples of the Northern and Eastern Provinces, and so as to diminish the importance of the Provincial Council and hamper and impede efficient Provincial Government.

## **3. Lists of Subjects.**

Though it was clearly understood that the Lists of Subjects would substantially conform to the Indian pattern, the Concurrent List has been heavily loaded, and the Provincial List clearly starved. Subjects such as Fisheries other than beyond Territorial Waters, Agriculture, Animal Husbandry, Industries, Redemarcation including creation of Districts, Assistant Government Agents divisions, and Grama Sevaka Divisions, Restoration, reconstruction of destroyed towns, villages, properties, compensation or relief to persons who have sustained loss or damage, Palmyrah plantation and Palmyrah Industry, coconut plantation and industry related thereto, the ownership management and control of State-owned industrial enterprises within the Province dependant wholly or mainly on raw materials found in the Province (recommended by the Political Parties Conference) Co-operative Banks, Prisons, Provincial Public Service, Provincial Public Services Commission, Local Government

Service, Inquiries, Surveys and Statistics for any of the purposes in the Provincial List and such others have not been included in the Provincial List, in keeping with the discussions held with the T.U.L.F. or on the basis of the Indian pattern. In the field of Education, the powers of the Provincial Council are substantially curtailed even in the matter of Secondary Education.

Both the Concurrent and Reserve Lists have been so framed as to minimise to the maximum possible extent, the scope and content of the Provincial Council's powers.

#### **4. Land and Land Settlement.**

On the all important subject of Land and Land Settlement, Appendix-II in the Bill is in many respects even worse than the Appendix attached to the proposals of 23rd September 1986 which itself was substantially deficient.

The following matters are clearly unacceptable :—

- (i) The inclusion of State Land in the Reserve List,
- (ii) The reference to State Land continuing to be vested in the Republic, and the power of disposition by the President,
- (iii) The denial of the right to the Province, though land is a devolved subject, of the ipso-facto use of State Land for devolved subjects,
- (iv) The restriction of the right of the Province to administer and control only such land as is made available to it,
- (v) The stipulation that the alienation and disposition of State Land within a Province to any citizen or organisation shall be by the President in accordance with "Laws" governing the matter contrary to even existing procedures for alienation,
- (vi) The wide definition given to Inter Provincial Irrigation and Land Development Projects, the principle of the National Ethnic Ratio in such projects, the right given to the Government of Sri Lanka to determine the selection of allottees for such lands, designedly to perpetuate the present pernicious practices,
- (vii) The failure to properly formulate the principle of the Cumulative Entitlement of

the Tamil speaking people in Schemes under the Mahaweli Project in the Eastern Province, and the failure to incorporate with Appendix-II the Annexure on settlement in the Eastern Province under the Mahaweli Project.

The above are clearly directed towards reducing the Provincial Council to the position of a Nonentity in respect of State Land even though Land is a devolved subject, and enabling the Central Government to have dominant power over State Land. Ample scope is also retained for the continued colonisation of the Northern and Eastern Provinces with members of the majority community.

Such a position would be completely contrary to the discussions held with the T.U.L.F. and is totally different from the Indian pattern where Land-Colonization etc., is a State subject with no power whatever reserved to the Union.

The Tamils can never accept any settlement which does not satisfactorily resolve the burning question of State Land. The Land Settlement programmes carried out by the Sri Lankan Government in the post Agreement period have been a major destabilising factor and do not inspire any confidence whatever in the Tamils.

#### **5. Trincomalee Port.**

The subject of Ports has been included in the Reserve List and the Trincomalee Port as a Major Port would come under central control. Annexure 'C' specifically provided that "A Port Authority under the Central Government will be set up for administering the Trincomalee Port and Harbour. The area which will come under the administration of the Port Authority as well as the powers to be assigned to it will be further discussed". This matter was raised with the Sri Lanka Government and though apparently certain assurances were given the Bills do not contain any provision reflecting such assurances. Tamil apprehensions are greatly aggravated by the fact that in 1984 after the finalisation of Annexure "C" an extent of 5150 acres of land around the Trincomalee Port was vested in the Port Authority, which could result in the creation of a new Township with racial overtones around the Port, and be the cause for prolonged conflict. The manner of recruitment to employment in the Port since 1983 and the facilities provided to such employees clearly indicate this trend. The T.U.L.F. had given the Indian negotiators a comprehensive paper dealing with this subject. It is essential that this matter too be resolved in an acceptable manner,

## **6. Provincial Public Service.**

The provisions in respect to the Provincial Public Service and the Provincial Public Service Commission have been included in the Provincial Councils Bill contrary to the Sri Lankan Government's draft proposals for the amendment of the constitution of 23rd September 1986 which categorically stated "Provision regarding Provincial Public Service to be included". The appointment, transfer, dismissal and disciplinary control of Provincial Public Servants being vested in the Governor who is subject to Presidential directions is contrary to the proposal made by the T.U.L.F. that the provisions of Article 55 which vests the appointment, transfer, dismissal and disciplinary control of Public Officers in the Cabinet of Ministers be made mutatis-mutandis applicable. This together with the omission of the subjects of the Provincial Public Service and the Provincial Public Service Commission from the Provincial List, suggest that the Provincial Public Service will not function under the executive control of the Provincial Board of Ministers. Effective Provincial Government would be an impossibility in this situation.

Contrary to the belief that the chapter pertaining to Provincial Councils would confer on the Provinces a measure of credible autonomy without derogating from the entrenched clauses in the constitution, the present Bills at every turn, enable Parliament and the Central Executive, to extend its tentacles into the Provincial sphere circumscribing and emasculating the exercise of even the powers conferred on the Province.

## **7. Tamil as Official Language and matters relating to the Central Government.**

The provisions in Clause 2 of the 13th Amendment making Tamil also an Official Language has

been nullified by paragraph (4) which states that "Parliament shall by law provide for the implementation of the provisions of this Chapter".

In relation to Sinhala as the Official Language, the Constitution provides for the manner of its use. The same constitutional provisions should be made applicable to Tamil also as an Official Language.

Besides these there are other matters regarding the rights of the Tamils in relation to the Central Government which have to be discussed and resolved.

In view of the above we earnestly request you to ask President Jayewardene not to proceed with the two Bills in Parliament in the present form till the matters referred to herein, are discussed and resolved to the satisfaction of the Tamil people.

We request that we be granted an early appointment to discuss these matters more fully with you.

with kind regards,

Yours Sincerely,

**M. SIVASITHAMPARAM.**  
President,  
T.U.L.F.

**A. AMIRTHALINGUM,**  
Secretary General,  
T.U.L.F.

**R. SAMPANTHAN,**  
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