
CASE COMMENT ON “STATE OF PUNJAB V. PRINCIPAL SECRETARY TO THE GOVERNOR OF PUNJAB AND ANOTHER” WRIT PETITION (CIVIL) NO 1224 OF 2023

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Introduction

Wherever there is a non BJP government, there is a tussle between the government and the governors. It has been observed that in some situations, the Governor appears to be powerful than the government. However, this is not a new thing. In the past, too, there have been differences or disputes between state governments and the Governor, but the extent to which this has progressed in the present times is harmful for the peaceful centre- State relations. The conflict between governors and the elected government has increased significantly in non-BJP-ruled states.

In the state of Punjab, there is a tussle ongoing between the Governor and Chief Minister. The clashes between Punjab Governor Banwarilal Purohit and Chief Minister Mann are not just limited to the issue of when to convene Assembly sessions, but also on matters like the manner in which state’s affairs are being run, appointments to various institutions, including universities.

The Supreme Court has recently examined the power of the Governor to return the Bills to the Legislative Assembly in case he withholds the assent to them under Article 200 of the Constitution of India. In the recent times, the constitutional crisis is emerging in the non- BJP ruled states due to the differences with the Centre and elected Governments. The judgment came in the light of the ongoing tussle between the Punjab Governor and Chief Minister of Punjab. The dispute in Punjab arose due to the legality of the Budget Session. The 4 Bills were passed by the Assembly in the Session but the Governor refused to give assent to the bills on the ground that sessions of the legislative assembly were “patently illegal and against the accepted procedure and provisions of the Constitution”

Facts

- The Council of Ministers in Punjab on 22nd February 2023 forwarded a recommendation to Governor of Punjab requesting him to summon the Punjab Legislative Assembly for the budget session which was to commence from 3rd March 2023
- The Governor refused to summon the budget session on the ground that he was seeking the legal advice on the matter. The Government of Punjab approached the Supreme Court
- On 28th February, 2023, the Apex Court in the “State of Punjab v. Principal Secretary to the Governor of Punjab” held that the Governor is bound by the advice of the Council of Ministers. There is no need for the Governor to seek the legal advice on the issue of convening the Budget Session of the Legislative Assembly. The Court mentioned that the functionaries of the State are required to apply the political governance in the administration of the State.
- After this decision, the 16th Punjab Vidhan Sabha was summoned on 3rd March 2023. During this session, 4 bills were passed by the Legislative Assembly - The Sikh Gurdwaras (Amendment) Bill 2023, Punjab Affiliated Colleges (Security of Service) (Amendment) Bill 2023, Punjab Universities Law (Amendment) Bill 2023 and Punjab Police (Amendment) Bill 2023.
- The Governor did not take any action on these Bills. The Assembly was reconvened on 19th October 2023 in which three money bills were introduced by the Government.
- Again the Governor did not gave assent to the Bills and expressed serious concerns over the legitimacy of the convening of the Assembly Session and the Bills introduced by the legislative assembly. The Governor considered them “patently unconstitutionally and extremely derogatory”
- The failure of the Governor to summon the Budget Assembly has prompted the Punjab State to move to the Supreme Court under Article 32 of the Constitution of India.

ISSUES RAISED

- Whether the Governor can withhold the assent on the Bills which have been passed by the State Legislative Assembly
- Whether the Speaker can reconvene the sitting of the State Legislative Assembly Session which has been adjourned sine die without prorogation

JUDGMENT

The Supreme Court gave a new interpretation to Article 200 of Constitution of India which relates to the options before a Governor when a Bill after being passed by the State Legislature is presented to him for his assent. The Court held that “the Governor may send the Bill back to the Assembly with a request for re-consideration of the Bill as whole or certain provisions.” It further states that if the Assembly after such re-consideration passes the Bill with or without the amendments, the Governor shall not withhold assent from the Bill. The Court observed that the Governors cannot delay the decision on the Bills.

CASE ANALYSIS

The Court analysed the powers of the Governor regarding the assent of Bills passed by the State Legislature. It was observed by the Apex Court that the Governor is the nominal head of the state and cannot withhold the Bills passed by the Legislative Assembly. In a parliamentary form of the democracy, real power vests in the Council of the Ministers headed by the Chief Minister at its head. This practice has been consistently followed since the adoption of the Constitution. The Governor is bound to act on the aid and advice of the Council of the Ministers except in those cases where the Governor is required to act in the discretion.

The same principle has been established in the case of “*Shamsher Singh v. State of Punjab*¹”. The Court held that “In the Cabinet form of Government as established by the Indian Constitution, the Governor is the only formal head of the State and he exercises all the powers entrusted to him by the Constitution on the aid and advice of the Council of Ministers except when he is requires to act under his own discretion” Moreover, In “*S.R Bommai v. Union of*

¹ 1974 AIR 2192

*India*²”, the Court observed that “Federalism is a part of the basic structure of the Constitution. The role of the Governor as a formal Head of the State is important to protect the constitutional democracy.”

The dispute in this case pertains to the fact that Governor has detained the four Bills which were passed by the State Legislative Assembly. First Proviso of Article 200 of the Constitution provides that “When a Bill is passed by the Legislative Assembly; it is required to be passed by the Governor. The Governor can either give assent or withholds his assent to the Bill or reserve the Bill for the consideration of the President. In case if the Governor is not declaring his assent to the Bill, he may return the Bill to the Legislative Assembly for the reconsideration. After the return of the Bill, the State Legislative Assembly is bound to reconsider the Bill. After the Bill is again presented either with or without the amendments, the Governor shall not withhold the assent”.

The second proviso to Article 200 provides that in some situations, the Governor can reserve the Bills for consideration of the President. The reservation of the bill by the governor is mandatory if the bill endangers the position of the state high court. The Bill can be reserved by the Governor if it is against the provisions of the Constitution, the Directive Principles of State Policy, the larger interest of the country, or of grave national importance, or deals with compulsory acquisition of property under Article 31A of the Constitution.

So far the second issue is concerned, the Court held that the Speaker has the power to reconvene the sitting of the Legislative Assembly which has not been prorogued. The Court referred to Article 174 of the Constitution of India which provides that the Governor has the authority to summon, prorogue and dissolve the legislative assembly on the advice of the Council of Ministers. In this particular matter, the Governor cannot exercise his own discretion. He is bound by the advice of the Council of the Ministers. In addition to this, Article 178 of the Constitution provides for the office of the Speaker and Deputy Speaker of the Legislative Assembly. The Speaker has the power to reconvene the sitting of the Legislative Assembly after it was adjourned sine die without prorogation. The Speaker is empowered as the sole custodian of the proceedings of the House to adjourn and reconvene the House.

² (1994) 2 SCR 644

CONCLUSION

The Supreme Court through this judgment has protected the rights of the State Legislature in the law-making and the entire constitutional system from the depredations of the unelected Governors. The Court remarked that the Governor cannot withhold the assent to the Bills passed by the State legislative Assembly. He can't put an indefinite delay in giving assent to the Bills. The judgment is important in the context of the ongoing constitutional crisis between elected Governments and Governors in non- BJP ruled states i.e. Punjab, Tamil Nadu, Kerala, West Bengal, and Jharkhand. In addition to this, the Court remarked that the Governor and the Chief Minister are required to observe their constitutional duties for the effective administration of the State and not let their political rivalries hinder the well being of the State.