
CASE COMMENT: THE STATE OF TAMIL NADU VERSUS THE GOVERNOR OF TAMIL NADU AND ANOTHER

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INTRODUCTION

This paperwork comprehensively studies the recent judgement ruled by the Supreme Court of India.

The case primarily deals with the conundrums that arose from the constitution related to the power of the governor to assent to the bills framed by the state legislature.

The fundamental question revolves around Articles 200 and 201 of the Indian Constitution, which are related to the governor's power to strike, assent to or pass the bill for presidential consideration.

In addition to the above, the court also discussed the concept of veto – absolute and pocket veto – and the governor's power to veto any bill.

The article is silent about the time frame to do so, giving an indefinite time to the governor to assent to the bill. The argument was also drawn pointing to the consequences of this loophole and how it could be perfidiously used, which is really a serious issue and a threat towards the constitutionality and Indian democracy.

In crux, this judgement addressed the limits of gubernatorial discretion and clarified the constitutional duties of the governor.

FACTUAL BACKGROUND

The Tamil Nadu State Legislature introduced a total of 12 bills to the governor between January 13, 2020, and April 28, 2023, which were neither assented to nor returned for two years. The unjust delay in the time period triggered the State Government of Tamil Nadu to end up filing a writ petition.

The Tamil Nadu State Legislature introduced a total of 12 bills to the governor between January 13, 2020, and April 28, 2023, which were neither assented to nor returned for two years.

On November 18, 2023, the state government repassed 10 bills which were withheld from the governor again. Instead of passing them, he sent them to the president of India for consideration under Article 200, second proviso.

The unjust delay and prolonged inaction by the governor triggered the state government of Tamil Nadu to end up filing a writ petition before the hon'ble Supreme Court of India.

ISSUES

1. Whether the Constitution authorize the Governor to withhold a bill for an indefinite period?
2. Whether the governor can reserve the bill for consideration of president even after Passed afresh?
3. Whether the Governor will work on the aid and advice of State's Council of Ministers to assent the bills?

RULES

1. Article 200 of Indian Constitution-

Assent to Bills- Empowers the Governor to assent, withheld or forward the bill to president for Consideration.

2. Article 201 of Indian Constitution -Bills reserved for consideration.

ARGUMENTS PRESENTED

The State of Tamil Nadu, The petitioner argued that the delay in action of the governor is nothing but an invalid, unjust, and unconstitutional action that not only prevented the state government from governing its people but also broke the constitutional framework, which was drafted by the constitution makers to introduce new legislature in the state.

The petitioner also argued that the governor is bound to pass and enact the bill after the

reconsidered bill is passed by both houses of the state legislature regardless of the amendments suggested by the Hon'ble Governor of the respective state, but here the governor forwarded the repassed bill to the President of India for his consideration, which is impermissible and contradicts what the Constitution states.

Additionally, the governor is bound to work on the aid and advice of the Council of Ministers on matters pertaining to the assessment of the bills.

In response to the petitioner's arguments, the respondent countered by pointing out the lines of Article 200 of the Indian Constitution that nowhere assert a time period or deadline by which the governor is required to decide to assent, withhold, or return the bill, making the governor's actions constitutional and legal. The council also stated that although limited, the governor has the right to assent to and withhold the bill, giving him the discretionary power that also gives him discretion to always work on the aid and advice of the Council of Ministers or not.

The respondent also opposed the stance of the petitioner and argued that consideration of a bill is a very crucial mechanism that is vested in our Constitution, which safeguards the state from arbitrary laws and other laws lacking reciprocity.

RATIO DECIDENDI

The Supreme Court of India ruled that the governor has to follow the advice of the Council of Ministers while deciding anything. An exception to this is when the bill is affecting the power of the High Court; also, Article 163(1) empowers the governor to use their discretion, but it is very rare. In support of which, the court cited the case of **Nabam Rebia v. Deputy Speaker¹, Arunachal Pradesh Assembly**, where the judicial bench clarified that the governor's discretion is limited.

The Court also eyed the report by the Sarkaria Commission, which suggested that the governor should work on the aid and advice of the Council of Ministers.

In the case of **Samsher Singh v. State of Punjab²**, the Hon'ble Supreme Court ruled that the governor must act on the aid and advice of the Council of Ministers.

¹ *Nabam Rebia and Others v Deputy Speaker and Others* AIR 2016 SC 3795 (SC)

² *Samsher Singh and Others v State of Punjab* AIR 1974 SC 2192 (SC)

The present case also declared **B.K. Pavitra v. Union of India**³ per incuriam and held that the governor's discretionary decision is bound to judicial review.

There is no concept like absolute or pocket veto under the Indian Constitution. The governor cannot retain it forever; otherwise, the spirit of the constitution will also die with the bill.

The Court highlighted the judgement of **State of Punjab v. Principal Secretary to the Governor of Punjab**⁴, which ruled that the Governor cannot hold the bill for an indefinite time and also stressed that the Governor is not an autonomous authority. The unjust delay is unconstitutional, and the re-passed bill must also be passed by the governor unless any material change is introduced.

The Court also emphasised the wordings of Article 200 "as soon as possible" that signifies nothing but the reasonable efficiency towards the assessment of the bill by the Governor. The Court also suggested a reasonable time limit just to prevent misuse.

The Court also looked at the report by **the Punchhi Commission**, which suggested a time limit for the governor to assent, withhold and return the bill.

CRITICAL ANALYSIS

This case deeply comprehends the issue of delaying the assessing of a bill passed by the State Legislature, which may seem trivial but is very pivotal as it enacts novel laws and acts that help to run the country smoothly.

The indefinite power either to the governor or to the president is dangerous for the legislation, as it may be misused and might sometimes be used for mala fide motives.

In countries like Australia, New Zealand and the United Kingdom, veto power does not exist. In the United States of America, the president has to decide whether to assent or return within 10 days. The Constitution of Singapore also limits time to 30–42 days to decide.

Thus, the Supreme Court of India should also decide to limit the time period for the assessment of the bill, which will protect the spirit of the Constitution and the basic reason to form a

³ *B K Pavitra and Others v Union of India and Others* (2019) 16 SCC 129 (SC)

⁴ *State of Punjab v Principal Secretary to the Governor of Punjab and Others* (2023) 1 SCC 593 (SC)

legislature.

The Court has dealt with the lacuna in Article 200 of the Indian Constitution and also tried to fix the gap by invoking Article 142, vividly answering each and every question that has arisen during the proceedings.

The Supreme Court of India once again ruled in favour of limiting the discretionary power of the governor, which is not an outright step, as the governor is the constitutional head of the state and should have some discretionary power to safeguard against the arbitrary laws introduced by the state government.

CONCLUSION

This judgement fortifies the stance of the state government, curbing the gubernatorial discretionary power of the governor.

The invocation of Article 142 of the Indian Constitution was a major and strong stance taken by the Supreme Court of India, eliminating the grey area by articulating the legal nuances and key points.

It also develops a level of balance between the centre and state, making their relationship more versatile and robust.

The Court reaffirmed Article 200 of the Indian Constitution and restricted the Governor from withholding the bill for an indefinite period.

The court also cited different kinds of judgements, statutes and law reports, making it one of the most comprehensive judgements of the year. The invocation of Article 142 shows the firm view of the Supreme Court saving the constitutional morality by deeply resolving the issue. the government.

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