

CASE COMMENT

Nehru & Harsh Singh***

STATE OF T.N. V GOVERNOR OF T.N.¹

1. INTRODUCTION

The extent of discretionary powers exercised by Governors in India has long been a contentious issue in constitutional discourse. In a landmark judgment delivered on April 8, 2025, a division bench of the Supreme Court comprising Justices R. Mahadevan and J.B. Pardiwala undertook a detailed examination of this matter. The *a comprehensive 415-page judgment*, authored by Justice Pardiwala, provides authoritative clarity on the constitutionally permissible scope of discretion vested in the Governor under Article 200 and in the President under Article 201, specifically with regard to granting assent to state legislation. This decision constitutes a significant advancement in the constitutional interpretation of executive powers within the framework of Indian federalism.

2. CHRONOLOGICAL SUMMARY²

- (i) Assumption of Office by the Governor: 18th September 2021: Shri R.N. Ravi assumed office as the Governor of Tamil Nadu.
- (ii) Constitutional Dispute Concerning Assent to Bills:
 - (a) 13th January 2020 - 28th April 2023: The Tamil Nadu Legislative Assembly passed 12 Bills and forwarded them to the Governor for his assent.
 - (b) September 2021 - October 2023: The Governor did not take any action on these 12 Bills during this period, neither granting assent nor returning them for reconsideration.

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1. 2025 SCC OnLine SC 770.

2. This chronological summary has been extracted by the researchers from the case facts for ease of understanding.

- (c) 31st October 2023: The Government of Tamil Nadu filed a writ petition before the Hon'ble Supreme Court, challenging the Governor's prolonged inaction as unconstitutional.
- (d) 10th November 2023: The Supreme Court issued notice to the respondents, including the Governor's office.
- (e) 13th November 2023: The Governor withheld assent to 10 of the 12 Bills and reserved the remaining 2 Bills for the President's consideration. Crucially, the 10 Bills were not returned to the Legislature for reconsideration, in apparent contravention of Article 200 of the Constitution.
- (f) 18th November 2023: In response, the Tamil Nadu Legislative Assembly convened a special session and repassed all 10 Bills without amendments. These were immediately resubmitted to the Governor for assent.
- (g) 20 November 2023: The Supreme Court took note of the repassing and adjourned the matter to 1st December 2023, directing that the Governor's response be placed on record.
- (h) 28 November 2023: The Governor, without acting on the advice of the Council of Ministers, reserved all 10 repassed Bills for the President, citing a potential conflict with Entry 66 of the Union List (pertaining to higher education), despite having earlier acknowledged the State's legislative competence.
- (i) 12 December 2023: On the suggestion of the Supreme Court, the Governor extended an invitation to the Chief Minister for a meeting to address the constitutional impasse.
- (j) 30 December 2023: The Governor and Chief Minister met. During the meeting, the State made the following submissions:
- In light of the decision in *State of Punjab v Governor of Punjab* (2024), the Governor was not empowered to reserve Bills that had been repassed by the Legislature.
 - Article 200 mandates that once a Bill is repassed by the State Legislature, the Governor is constitutionally obligated to grant assent.

- The Governor's actions were in violation of Article 163, which requires the Governor to act on the aid and advice of the Council of Ministers.
- (iii) Subsequent Developments: The President withheld assent to 7 of the 10 Bills, granted assent to 1 Bill, and 2 Bills remained pending at the time of reporting.
- (iv) Developments concerning sanction for corruption investigations against public servants: 10th April 2022 - 15 May 2023: The State Government submitted four proposals to the Governor, seeking sanction for prosecuting public servants under the Prevention of Corruption Act, 1988. These files remained pending at the time the writ petition was filed.
- (v) Developments Concerning Proposals for the Premature Release of Prisoners: June 2022 - August 2023: The Government forwarded 53 proposals recommending the premature release of prisoners. As of 1st December 2023, the Governor's office stated that it had received 580 such proposals since September 2021, of which: 362 were approved, 165 were rejected, and 53 (forwarded between June and August 2023) were still under consideration. No further updates on these files were provided to the Court.
- (vi) Impediments to Tamil Nadu Public Service Commission (TNPSC) Appointments:
- (a) 27th September 2023: The Governor returned the State Government's proposal for appointments to the TNPSC, citing concerns about the selection process, tenure, and the credentials of the proposed candidates.
 - (b) 7th October 2023: The State submitted a detailed clarification addressing the concerns raised.
 - (c) 10th October 2023: The proposal was resubmitted for approval. The State emphasised Regulation 3 of the TNPSC Regulations, 1954, which requires the Commission to comprise 1 Chairman and 14 Members. At the time, the Commission was functioning with only four members, affecting its operational capacity.
 - (d) 27th October 2023: The Governor once again returned the files, this time without offering any reasons.

- (vii) Supreme Court's Final Judgment: On 8th April 2025, the Supreme Court invoked Article 142 and declared that all 10 Bills shall be deemed effective from the date they were originally sent to the Governor. The Court reaffirmed the binding nature of ministerial advice and limited discretion of the Governor under Article 200.

3. FACTUL MATRIX

This case concerns an ongoing constitutional crisis in Tamil Nadu arising from the Governor's alleged failure to discharge constitutional duties, resulting in legislative and administrative paralysis. Central issues include (1) prolonged inaction on bills passed by the State Legislature; (2) obstruction of routine executive functions such as granting prisoner remissions and prosecution sanctions; and (3) interference in ministerial appointments and public service commission approvals.³ Twelve bills passed by the Tamil Nadu Legislative Assembly between January 2020 and April 2023 remained pending until the State approached the Supreme Court in October 2023. Following judicial scrutiny, Governor R.N. Ravi withheld assent to ten bills on November 13, 2023, without returning them to the legislature, in contravention of Article 200 of the Constitution. Subsequently, the Governor reserved these bills for presidential consideration, despite the Assembly repassing them in a special session, an act the State argues violates constitutional norms and judicial precedent.

Beyond the legislative impasse, the Governor's office has allegedly stalled 53 out of 580 prisoner remission applications, impeded appointments to the Tamil Nadu Public Service Commission, and exceeded constitutional authority by attempting to dismiss and delay reinstatement of duly appointed ministers, including Ministers Senthil Balaji and K. Ponmudy. The State of Tamil Nadu seeks judicial intervention to declare the Governor's reservation of repassed bills and the withholding of assent as unconstitutional. It further prays for directions to the Governor to promptly grant prosecution sanctions, dispose of remission applications, and approve TNPSC appointments in accordance with constitutional provisions.

For the purpose of clarity and ease of understanding, the researcher has identified the specific issues framed by the courts, outlined the reasoning adopted in addressing those issues, and presented the final decisions rendered by the courts in response to each.

3. Emphasis through bold, italics, and underlining has been added by the researcher to highlight key aspects and aid the reader's understanding of the case comment.

4. ISSUES FRAMED

The issues framed by the issues which involved in the present case were⁴:

- I. What courses of action are available to the Governor in exercise of his powers under Article 200 of the Constitution?
 - (i) Whether the first proviso could be said to provide an independent course of action available to the Governor in addition to the three options provided under the substantive part of Article 200?
 - (ii) In what manner the expression ‘the Bill falls through unless the procedure under the first proviso is followed’, as used in *Union of India v Valluri Basavaiah Chowdhary*,⁵ should be construed?
 - (iii) Whether the decision of this Court in *State of Punjab v Governor of Punjab*⁶ could be said to be per incuriam for not having taken into consideration the observations made in previous decisions rendered by larger benches of this Court?
 - (iv) Whether the scheme of Article 200 of the Constitution envisages the exercise of ‘absolute veto’ or ‘pocket veto’ of a bill by the Governor?

While answering the above question and sub-questions raised, the Supreme Court, while examining the issue of the Governor’s assent to Bills, the Supreme Court referred to Section 75 of the Government of India Act, 1935 - the precursor to Article 200 of the Constitution. The Court highlighted key distinctions, including: (a) the omission of the phrase ‘in his discretion,’ (b) the shift from assent in the name of the Crown to the Governor, (c) a clause mandating assent to reconsidered Bills, and (d) the addition of a second proviso not found in Section 75. Citing D.D. Basu, the Court affirmed that the Governor is bound by ministerial advice and cannot withhold assent once a Bill is reconsidered and passed by the legislature. The Court also relied on *State of Bihar v Kameshwar Singh* (1952) to interpret Article 200. It observed that the term ‘shall’ mandates the Governor to choose only one of the three available options- grant assent, withhold assent, or reserve the Bill for the President. The use of

4. The six issues and sub-issues are adopted as framed in the judgment, with focus on the Court’s reasoning and conclusions.

5. (1979) 3 SCC 324 : AIR 1979 SC 1415.

6. (2024) 1 SCC 384.

“or” between these options makes them mutually exclusive; the Governor cannot simultaneously assent to and reserve a Bill, nor withhold assent and reserve it at the same time.

Article 200 mandates that a Bill passed by the State Legislature must be presented to the Governor, who can then choose one of only three options: (a) grant assent, (b) withhold assent, or (c) reserve it for the President’s consideration - only one of which can be exercised at a time. The first proviso allows the Governor, except in the case of Money Bills, to return a Bill for reconsideration with suggested amendments. If the Bill is passed again, with or without those amendments, the Governor must grant assent. The second proviso mandates that the Governor must reserve a Bill for the President if it seeks to erode the High Court’s authority.

The Court emphasised the importance of understanding the historical and constitutional context of Article 200, tracing its evolution from British and Canadian models, Indian pre-independence political documents, and the Constituent Assembly Debates. Post-independence, several commissions examined Articles 200 and 201. The First Administrative Reforms Commission (1966), the Rajamannar Committee (1971), and the Sarkaria Commission explored the scope of the Governor’s discretion, delays in granting assent, and the President’s powers. The Sarkaria Commission stressed the importance of clear and complete communication when referring Bills to the President. The Punchhi Commission proposed a six-month deadline for presidential decisions on reserved Bills and recommended that the President seek the Supreme Court’s opinion under Article 143 to avoid political bias.

The National Commission to Review the Working of the Constitution (NCRWC) recommended several reforms to Article 200: *(a) a four-month time limit for the Governor to decide on assent or reservation, (b) removal of the Governor’s power to withhold assent, (c) a three-month deadline for the President to decide on reserved Bills, (d) mandatory assent by the President if the State Legislature re-passes the Bill, (e) a bar on reserving Money Bills, and (f) limiting the Governor’s power to reserve Bills only to cases mandated by the Constitution.* The Punchhi Commission supported these recommendations and *called for their implementation through a constitutional amendment* to uphold federalism and prevent misuse of the power of assent.

The Supreme Court, in interpreting Article 200, also drew upon international jurisprudence to contextualise the role of assent in various

democratic systems. In the United Kingdom, royal assent is considered a constitutional formality and has not been refused since Queen Anne in 1707. In Canada, courts have held that royal assent by the Governor-General is a legislative act and thus non-justiciable, with the Lieutenant-Governor being part of the legislature. In the United States, once a Bill is passed by both Houses, the President may sign it into law or return it with objections. If re-passed by two-thirds of both Houses, the Bill becomes law. If the President takes no action within ten days while Congress is in session, the Bill becomes law automatically. However, if Congress adjourns during this period, the Bill does not become law- a process known as the pocket veto. In New Zealand, under the Constitution Act, 1986, the Governor-General acts solely on the advice of the Executive Council, and assent is a formal act without discretion. In Australia, State Governors usually act independently, though South Australia follows executive advice. In Ireland, the President may refer a Bill to the Supreme Court for a constitutional review within seven days of presentation, and if the court finds it unconstitutional, the President cannot grant assent. Singapore prescribes specific time limits (ranging from 30 days to six weeks) for the President to grant or withhold assent. If no action is taken, or if a tribunal upholds the Bill's validity, assent is deemed granted.

In Sri Lanka, upon initial presentation, the Governor may assent or return the Bill for reconsideration. On its second passage, the Governor may only reserve it for the President to seek judicial review; independent withholding of assent is not permitted. Similarly, in Kiribati, the head of state may withhold assent only on constitutional grounds, requiring judicial review if disagreement persists. Fiji mandates that the President must act within seven days, after which assent is deemed granted. In Antigua and Barbuda and the Solomon Islands, the Governor-General must signify assent once a Bill is duly passed by the legislature. In Pakistan, the President must act within ten days- either granting assent or returning the Bill for reconsideration. If re-passed, assent becomes mandatory. Additionally, Article 105 requires Governors to act on ministerial advice, though they may request reconsideration. Germany's Basic Law stipulates that a Bill passed by the Bundestag becomes law upon Bundesrat consent and presidential certification. In Berlin, the House President must sign the Bill without delay, and the Mayor must promulgate it within two weeks. In Italy, the President may return a Bill once with reasons, but if it is re-passed, it must be promulgated. France provides the President with 15 days to promulgate a law but permits a one-time request for reconsideration by Parliament. Lastly, Japan vests law-making authority in the Diet; if

the House of Councillors rejects a Bill, the House of Representatives may override the decision by a two-thirds majority. All laws must be signed by the competent Minister and countersigned by the Prime Minister.

In addressing the first issue, the Court relying on *State of Punjab v Governor of Punjab*,⁷ *Union of India v Valluri Basavaiah Chowdhary*⁸ and *Hoechst Pharmaceuticals Ltd v State of Bihar*⁹ clarified that a Bill 'falls through' if the procedure under the first proviso to Article 200 is not followed after the Governor withholds assent. The proviso permits the Governor, 'as soon as possible,' to return a non-Money Bill to the legislature with a message suggesting reconsideration or amendments. However, the State Legislature is not bound to accept or act upon these suggestions. It retains the discretion to re-pass the Bill with or without amendments or not at all. The expression 'may' in the proviso does not grant the Governor unfettered discretion to trigger or ignore the procedure. Rather, as affirmed in case of *State of Punjab*, it reflects *the Governor's choice among the three mutually exclusive options in Article 200 - assent, return, or reservation for the President. Once the Governor opts to withhold assent, initiating the return-and-reconsideration procedure becomes constitutionally obligatory*. The Court further clarified that the word 'shall' in 'shall reconsider the Bill accordingly' must be read in context. The legislature's obligation is procedural; it must consider the Governor's suggestions if it chooses to reconsider the Bill. But it is not substantively bound to amend the Bill. The Bill lapses only if the legislature elects not to re-pass it, not due to any discretion vested in the Governor.

Importantly, the Court reaffirmed that the first proviso is not severable from the substantive provision; it is activated only upon the Governor's decision to withhold assent. The mutual exclusivity of the three options under Article 200 precludes combining or delaying them. The Court also clarified that while the substantive part of Article 200 does not exclude Money Bills from being withheld, the first proviso - being inapplicable to such Bills, precludes their return for reconsideration. Thus, the observations in *Basavaiah Chowdhary* and *Hoechst* reinforce the interpretation in *State of Punjab*, rather than rendering it per incuriam. Accordingly, the phrase 'Bill falls through unless the procedure in the first proviso is followed' must be read to mean that failure by the legislature to re-pass a returned Bill causes it to lapse - not that the Governor may unilaterally disregard the

7. (2024) 1 SCC 384.

8. (1979) 3 SCC 324.

9. (1983) 4 SCC 45.

procedure. The Court rejected the Attorney General's reading that treated the procedure as discretionary and independent of the decision to withhold assent.

In paragraphs 196 to 198, the Court unequivocally held that, Article 200 confers upon the Governor only three mutually exclusive options when a Bill is presented for assent: (i) grant assent, (ii) withhold assent (subject to the procedure in the first proviso), or (iii) reserve the Bill for the President's consideration. The first proviso is not an independent fourth option but is procedurally linked to the exercise of withholding assent, detailing the steps to be followed when that option is invoked. The use of the terms 'shall' in the substantive portion of Article 200 and 'as soon as possible' in the first proviso underscores the constitutional imperative of timely action by the Governor, ruling out the possibility of a 'pocket veto.' Inaction in this context violates the principle of constitutional expediency embedded in Article 200. Moreover, the Governor is not vested with an absolute or unilateral veto. Once a Bill, returned with a message, is reconsidered and repassed by the legislature, whether with or without amendments, the Governor is constitutionally bound to grant assent. The Governor may, where appropriate, reserve a Bill for the President under Article 200, triggering the procedure under Article 201. However, under no circumstance is the Governor empowered to indefinitely withhold assent or unilaterally terminate the legislative process. At no point can the Governor block a Bill permanently or end the legislative process unilaterally. The Governor's role is procedural and limited, not final or discretionary.

II. Whether the Governor can reserve a Bill for the consideration of the President when it is presented to him for assent after being reconsidered in accordance with the first proviso to Article 200, more particularly, when he had not reserved it for the consideration of the President in the first instance?

(i) Whether the reservation by the Governor, for the consideration of the President of the ten Bills which were repassed by the Tamil Nadu State Assembly and presented to the Governor on 18.11.2023, is erroneous in law and hence liable to be set aside?

While addressing Question No. 2 and interpreting Article 200, the Supreme Court clarified that a Governor has three mutually exclusive options upon receiving a bill: (a) to grant assent, (b) to withhold assent, or (c) to reserve it for the President. The use of the conjunction 'or'

underscores that once one option is exercised, the others stand foreclosed. Citing Kameshwar Singh, the Court emphasised that a bill cannot be subsequently reserved for the President's consideration once assent has been accorded, and vice versa. Significantly, the Court elucidated that the act of withholding assent under the substantive part of Article 200 cannot be equated with an absolute or discretionary veto. Drawing on dictionary definitions and constitutional context, it held that 'withholding' signifies a deferment or postponement of assent, not a denial. This interpretation is rooted in the principle of representative democracy, which does not envision a Governor acting as an unelected veto authority.

The Court emphasised that once the Governor withholds assent and returns the bill with a message as envisaged under the first proviso to Article 200. The procedural mechanism outlined therein becomes operative to the exclusion of the other options under Article 200. The first proviso is a self-contained procedural code that binds the Governor to grant assent if the bill is re-passed by the Legislature 'accordingly,' i.e., in conformity with the Governor's recommendations. The phrase 'shall not withhold assent' imposes a mandatory obligation, leaving no scope for further discretion. Nonetheless, the Court acknowledged a limited exception. If the Legislature, upon reconsideration, introduces substantive changes beyond those suggested by the Governor, and such changes potentially invoke constitutional scrutiny (e.g., under the second proviso to Article 200), the Governor may retain the option to reserve the bill for the President. However, such a reservation must be based on a legitimate assessment that the bill was not reconsidered 'accordingly' and is thus not protected by the mandate of the first proviso.

In applying these principles to the facts at hand, *the Court observed that while two of the twelve contested bills were appropriately reserved for the President at the outset, the remaining ten were subjected to a procedurally improper exercise of the Governor's discretionary powers.* Specifically, the Governor withheld assent to these ten bills without issuing the mandatory message to the State Legislature, as required under the first proviso to Article 200 of the Constitution. This omission effectively bypassed the procedural framework envisaged by the Constitution. Despite this procedural lapse, the State Legislature reconvened in a special session and re-passed the same ten bills without substantial amendment, treating them as if they had been returned for reconsideration in accordance with constitutional norms. Thereafter, the Governor reserved these re-enacted bills for the President's consideration, citing repugnancy to Entry 66 of

List I of the Seventh Schedule. The Court held this act of reservation to be unconstitutional. It reasoned that, since the bills had been re-passed without deviation from their original form and in the absence of any prior message from the Governor initiating reconsideration, the subsequent reservation contravened the first proviso to Article 200.

The Court emphasised that endorsing such a course of action would effectively amount to permitting a ‘pocket veto,’ a concept foreign to the Indian constitutional scheme. *Consequently, the Court declared that both the Governor’s reservation of the bills and any decision made by the President pursuant to such reservation were ultra vires and void ab initio.*

III. Whether there is an express constitutionally prescribed time-limit within which the Governor is required to act in the exercise of his powers under Article 200 of the Constitution?

- (i) How is the absence of an express time-limit in Article 200 to be construed for ascertaining the manner in which the Governor is expected to exercise his powers under the said provision?
- (ii) What is the import of the expression ‘as soon as possible’ appearing in the first proviso to Article 200?
- (iii) Whether a time-limit can be prescribed by this Court for ensuring that the exercise of power by the Governor under Article 200 is in conformity with the object of expediency underlying the scheme of the said provision?

While addressing Question 3 and its sub-questions, the Supreme Court referred to the Constituent Assembly debates concerning the language of Article 91 (later reflected in Article 111 and Article 200). Dr B.R. Ambedkar proposed replacing the phrase ‘not later than six weeks’ with ‘as soon as possible’, arguing for flexibility in the President’s review of legislation. Shri Naziruddin Ahmad, however, suggested changing it further to ‘as soon as may be’, asserting that ‘as soon as possible’ implied immediate action, limiting the President’s ability to deliberate thoroughly. He felt ‘as soon as may be’ would better reflect ‘reasonably practicable’ action. Others disagreed with both suggestions. Shri P.S. Deshmukh supported retaining ‘not later than six weeks’ to ensure a clear deadline, while Shri H.V. Kamath warned against vague timelines, arguing that human nature tends to procrastinate without defined limits. Despite these concerns, on 20 May 1949, the Assembly adopted Dr Ambedkar’s amendment, showing a

degree of trust in the President's timely conduct. The same language was later adopted in Article 200 for Governors. However, experience has shown that the concerns raised during the debates were justified. Commissions such as Sarkaria and Punchhi have noted that Governors have withheld bills for prolonged periods, effectively exercising a 'pocket veto'. This inaction undermines the legislative process, as Article 200 represents the final step in enacting a law. As argued by Dr Singhvi, the Governor has no constitutional space to 'decide not to decide'.

Further, the expression 'as soon as possible' in Article 200 of the Constitution has been interpreted by the Court in a manner consistent with similar phrases found elsewhere in the Constitution, such as 'as soon as may be' under Article 22(5), which has been understood to require prompt action without avoidable delay. Relying on precedents like *Durga Pada Ghosh v State of W.B.* and *Keisham Meghachandra Singh v Speaker*, the Court reaffirmed that constitutional authorities, even when vested with discretion, must act within a reasonable period. Courts may intervene through judicial review if such authorities fail to act, particularly when the delay is unreasonable or without justification.

In the context of Article 200, which deals with the Governor's assent to bills, the Court emphasised that inaction or excessive delay by the Governor can obstruct the legislative process and undermine the principles of parliamentary democracy. Although the Constitution does not prescribe specific timelines for action under Article 200, the Court, taking guidance from the Sarkaria and Punchhi Commissions, laid down reasonable outer time-limits to guide the exercise of the Governor's discretion. These timelines are: (i) in cases where the Governor withholds assent or reserves a bill based on the advice of the Council of Ministers, action must be taken within one month; (ii) if the Governor withholds assent contrary to such advice, the bill must be returned with a message within three months; (iii) if the Governor reserves the bill for the President's consideration contrary to the advice, such reservation must also be made within three months; and (iv) if a bill is re-presented after reconsideration under the first proviso to Article 200, the Governor must grant assent within one month.

The Court made it clear that failure to act within these judicially prescribed timeframes, unless justified by exceptional circumstances would make the Governor's inaction subject to judicial scrutiny. This approach seeks to prevent the misuse of the Governor's powers, such as through an informal 'pocket veto,' and ensures accountability and the smooth functioning of the law-making process in a federal democracy.

- IV. Whether the Governor in the exercise of his powers under Article 200 of the Constitution can only act in accordance with the aid and advice tendered to him by the State Council of Ministers? If not, whether the constitutional scheme has vested the Governor with some discretion in discharge of his functions under Article 200?
- (i) How has the role of the Governor been envisaged under the constitutional scheme?
 - (ii) Whether the Governor enjoys a certain degree of discretion in discharge of his functions in contrast to the President? What is the source of such discretion, if any?
 - (iii) Whether the deletion of the expression ‘in his discretion’ from Article 175 of the Draft Constitution imply that the Governor has no discretion available in the exercise of his powers under Article 200?
 - (iv) Whether the observations of this Court in *B K Pavitra v Union of India*¹⁰ that ‘a discretion is conferred upon the Governor to follow one of the courses of action enunciated in the substantive part of Article 200’ could be said to be per incuriam for having failed to notice the position of law as laid down by the larger Benches of this Court?

The Supreme Court, while addressing the role of the Governor, traced its evolution from the colonial framework under the Government of India Acts of 1858 and 1935 to the post-Independence constitutional order. The 1935 Act had introduced provincial autonomy but retained discretionary powers with the Governor, a practice altered by the Adaptation Order of 1947, which omitted terms like ‘in his discretion,’ signalling a shift toward responsible government. During the Constituent Assembly Debates, Pandit Nehru argued against an elected Governor, warning that it could foster separatism and strain Centre-State relations, instead advocating for a nominated Governor aligned with the parliamentary system. Dr. B. R. Ambedkar, defending the limited discretionary powers of the Governor, emphasised that such powers did not negate responsible governance but were essential for maintaining constitutional balance. This dual role of the Governor, as a constitutional head of the State and a link to the Centre was acknowledged in reports like the Punchhi and Sarkaria Commissions. The Court emphasised that interpreting gubernatorial powers requires drawing

10. (2019) 16 SCC 129.

from the Constitution's founding vision, not rigid federal classifications, and must be mindful of the dangers of excessive centralisation undermining State autonomy.

The Court, in the present judgment, held that its earlier decision in *B K Pavitra* was rendered *per incuriam*, as it incorrectly attributed a discretionary power to the Governor under Article 200 of the Constitution to reserve bills for the President's consideration, even contrary to the advice of the Council of Ministers. This view was found inconsistent with both the text and the intent of the Constitution, particularly in light of the deliberate omission of the phrase 'in his discretion' from Section 75 of the Government of India Act, 1935 when it was adapted as Article 200. The Court emphasised that this omission, supported by Constituent Assembly Debates and scholarly commentary (e.g., D.D. Basu), reflects a clear constitutional mandate that the Governor ordinarily acts on ministerial advice, barring narrowly defined exceptions. These exceptions include: (a) where the Constitution expressly confers discretion, such as in the second proviso to Article 200; (b) where Presidential assent is constitutionally mandated, as under Articles 31A, 31C, 254(2), 288(2), and 360(4)(a)(ii); and (c) in rare and exceptional circumstances - such as those recognised in *M.P. Special Police* - where legislation threatens the constitutional order or democratic principles. The Court criticised *B K Pavitra* for overlooking binding precedents such as *Samsher Singh* and for misreading *Nabam Rebia*. It clarified that the Governor's role is that of a constitutional advisor, not a parallel executive authority, and that his engagement with legislative proposals should occur before the introduction of a bill, not after its passage. Ultimately, once a bill is passed by the legislature, the Governor must act in accordance with the Council of Ministers advice unless one of the limited exceptions applies. To construe otherwise, the Court warned, would risk transforming the Governor into a 'super-constitutional authority,' undermining the principles of parliamentary democracy and federalism.

- V. Whether the exercise of discretion by the Governor in discharge of his functions under Article 200 could be said to be subject to judicial review? If yes, what are the parameters for such judicial review?
 - (i) Whether the discharge of functions by the Governor under Article 200 of the Constitution in his discretion could be said to be immune from judicial review?

- (ii) Whether the withholding of assent by the President under Article 201 of the Constitution could also be said to be beyond the scope of judicial scrutiny?
- (iii) If the aforesaid discharge of functions is subject to judicial review, whether such discharge of functions could be said to be nonjusticiable in light of the decisions of this Court in *Hoechst Pharmaceuticals v State of Bihar*,¹¹ *Kaiser-I-Hind (P) Ltd v National Textile Corpn (Maharashtra North) Ltd*,¹² and *B K Pavitra*?

The court held that the judicial review of the exercise of power by the Governor under Article 200 and by the President under Article 201 of the Constitution can be invoked by the State Government under specific circumstances:-

- (a) When the Governor reserves a bill for the President's consideration contrary to the aid and advice of the State Council of Ministers, such action is open to challenge on grounds mentioned herein:
 - (i) If the reservation is under the Second Proviso to Article 200, it may be assailed on the ground that the bill does not derogate from the High Court's powers to an extent that endangers its constitutional role. This is a purely legal issue and is fully justiciable, potentially resulting in a writ of mandamus if upheld. (ii) If reservation is made due to the need for Presidential assent under Articles like 31A, 254(2), or 364A2, the Governor must provide clear reasons. Failure to do so, or reliance on arbitrary or mala fide grounds, renders the reservation invalid and subject to judicial review. (iii) If the reservation is based on perceived threats to democracy or constitutional principles, the Governor must clearly justify his subjective satisfaction and reasons. Courts can review such grounds for irrelevance or bad faith. (iv) Reservations based on personal dissatisfaction, political motives, or extraneous grounds are unconstitutional and liable to be struck down, including cases where the Governor has already withheld assent under Article 200, except in rare exceptions. (v) Where the Governor remains inactive beyond the time limit

11. (1983) 4 SCC 45.

12. (2002) 8 SCC 182.

prescribed in paragraph 250, the State Government may seek a writ of mandamus unless justified by sufficient explanation.

- (b) Similarly, if the President withholds assent after the Governor reserves the bill, such action may also be challenged on the grounds as:- (i) If the bill required Presidential assent for enforceability or immunity, the President's decision is justiciable to the limited extent of arbitrariness or mala fides, though courts exercise restraint due to the political nature of such assent. (ii) If the bill appears patently unconstitutional and threatens democratic principles, the President's action is fully justiciable, and it is advisable for the President to seek the Supreme Court's advisory opinion under Article 143. (iii) If the President shows inaction beyond the limit set in paragraph 391, the State may approach the Court for a writ of mandamus.

The judicial review of the President's power under Article 201 to withhold assent to a bill is permissible on limited grounds:- (a) Where the bill concerns a constitutional provision in which the Union Government holds primacy — particularly to maintain uniform national policy — judicial review is confined to assessing arbitrariness, mala fides, or other improper considerations. (b) Where the bill pertains to a domain in which the State Legislature holds primacy, and the Governor has reserved the bill contrary to the aid and advice of the State Council of Ministers, courts may examine not only issues of mala fides and arbitrariness but also the legal tenability of the reasons for withholding assent. These categories are illustrative and not exhaustive; courts may, based on the specific facts of each case, develop new standards of judicial scrutiny to ensure full adherence to the constitutional procedure in both letter and spirit.

VI. What is the manner in which the President under Article 201 of the Constitution is required to act once a bill has been reserved for his consideration by the Governor under Article 200 of the Constitution?

- (i) Whether the decision of the President to withhold assent under Article 201 of the Constitution could be said to be justiciable? If yes, what is the extent of justiciability that the courts can embark upon while undertaking judicial review of the exercise of powers by the President under Article 201 of the Constitution?

While decided the question no. 6, the court held that the Article 201 of the Indian Constitution governs the procedure following a Governor's reservation of a bill for the President's consideration, granting the President three options: to assent, withhold assent, or, in the case of non-money bills, return the bill to the State Legislature with suggested amendments. Unlike Articles 111 and 200, Article 201 provides broader Presidential discretion, evident from the language 'for his consideration' and the absence of any mandate requiring assent after reconsideration. Moreover, while Article 200 binds the State Legislature to act within six months upon a bill's return, Article 201 imposes no corresponding timeline on the President, enabling prolonged delays that strain Centre-State relations and disrupt the legislative process.

Recognising the procedural gap, the Sarkaria and Punchhi Commissions, along with the judiciary, have called for clear timelines and structured communication to uphold federal principles. Central guidelines emphasize accountability in inter-governmental coordination. The Supreme Court has clarified that neither the Governor nor the President holds an absolute veto; withholding assent must be constitutionally justified and formally communicated, especially under Article 201. Informal consultations, such as Office Memorandums, cannot replace the constitutional requirement of a formal message outlining objections and proposed amendments - essential for enabling proper legislative reconsideration and preserving cooperative federalism.

In *A.G. Perarivalan*, the Supreme Court exercised its powers under Article 142 due to the Governor's inordinate delay in deciding a remission petition, despite the State Cabinet's recommendation. The Governor's referral of the matter to the President was held to be without constitutional basis, prompting the Court to deem the sentence served and order the petitioner's release. This precedent affirms that constitutional authorities must act within their defined limits and cannot obstruct governance through inaction. In the present case, the conduct of the Governor was held to be both unconstitutional and obstructive to the democratic process. After initially withholding assent to ten bills and failing to communicate any message to the Legislative Assembly, as required under the first proviso to Article 200 of the Constitution of India, the Assembly duly reconsidered and re-enacted the said bills in their original form. Upon such reconsideration, the Governor was constitutionally obligated to accord assent to the legislation. Contravening this mandate, the Governor chose instead to reserve the bills for the consideration of the President - a course

of action constitutionally permissible only in exceptional circumstances. The Supreme Court found that this step, in conjunction with substantial and unexplained delays (with certain bills pending since 2020), amounted to a violation of constitutional procedure and a serious impairment of democratic governance.

The Court found the Governor's actions to be lacking in bona fides and in clear violation of constitutional duties and judicial directions. Noting the serious threat such conduct posed to representative democracy and the fixed tenure of elected legislatures, the Court exercised its powers under Article 142 to deem assent as granted. It underscored that constitutional authorities must act within their prescribed limits, and where those limits are breached in ways that endanger democratic governance, the judiciary is both empowered and duty-bound to uphold constitutional order and ensure complete justice.