STATE OF PUNJAB

v.

PRINCIPAL SECRETARY TO THE GOVERNOR OF PUNJAB AND ANOTHER

(Writ Petition (Civil) No. 302 of 2023)

FEBRUARY 28, 2023

[DR. DHANANJAYA Y CHANDRACHUD*, CJI AND PAMIDIGHANTAM SRI NARASIMHA, J.]

Constitution of India – Art.174 – Governor addressed a communication (dated 13.02.2023) to the Chief Minister (CM) highlighting his concern on certain issues to which the CM had responded through a letter and a 'tweet' (not furnished the relevant information sought) – The Governor noted that the CM in his correspondence underscored the mandate of Art. 167 of the Constitution as per which the CM is bound to furnish full details and information sought by the Governor – On 22.02.2023, the Council of Ministers of the Government of Punjab recommended the summoning of the Budget Session of the Vidhan Sabha on 03.03.2023 under Art. 174(1) – The Governor of Punjab addressed a communication to the CM, which referred to the prior exchange of correspondence between them and stated that only after taking legal advice on the prior exchange between them, he will take a decision on the recommendation – State filed a writ petition u/Art.32 on the inaction of the Governor in summoning the Assembly for the Budget Session – Held: In terms of the order dated 28.02.2023 (after the institution of petition), the Governor had summoned the Vidhan Sabha to meet for its Fourth (Budget) Session on 03.03.2023, thus the reliefs sought have been substantially fulfilled – Further, that there was no occasion to seek legal advice on whether or not the Budget Session of the Legislative Assembly should be convened, as per the constitutional provision the Governor was plainly bound by the advice tendered to him by the Council of Ministers.

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STATE OF PUNJAB v. PRINCIPAL SECRETARY TO THE GOVERNOR OF PUNJAB AND ANOTHER

Constitution of India – Art.167 – Scope of – Held: The Chief Minister has the duty to communicate and duty to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may require – The information that the Governor seeks under Art. 167 would enable them to effectively discharge their duties – The Chief Minister is required to discharge their duties under Art. 167 to enable the Governor to effectively discharge their duties stipulated in the Constitution.

Disposing of the petition, the Court

HELD:

1. **The Governor of Punjab has summoned the Sixteenth Vidhan Sabha of the State of Punjab to meet for its Fourth (Budget) Session at 10 am on 3 March 2023. With the issuance of the above order by the Governor, the reliefs which have been sought in the petition have been substantially fulfilled. [Paras 15,16]**

2. **The Chief Minister has the duty to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation. Going beyond the duty to communicate, the Chief Minister has a duty to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may require. Moreover, if the Governor so requires, the Chief Minister is duty bound to submit for consideration to the Council of Ministers any matter on which the decision is taken by a Minister which has not been considered by the Council of Ministers. [Para 18]**

3. **The power of the Governor to seek information under Article 167 must be read holistically with reference to their duties as constitutional head under the Constitution. The information that the Governor seeks under Article 167 would enable them to effectively discharge their duties. To illustrate, the Governor has the power to direct reconsideration of bills that are passed in the assembly. For the Governor to make**

this decision, it is necessary that all the relevant information that would aid them in making the said decision must be made available. Similarly, the governor requires all relevant information to identify if a decision has been taken by a Minister individually without the consideration of the council. The Governor might be unable to discharge their duty under Article 167(c) if the Chief Minister does not discharge their duty under Article 167(a) and Article 167 (b) by providing the Governor with relevant information as requested. Thus, the Chief Minister is required to discharge their duties under Article 167 to enable the Governor to effectively discharge their duties stipulated in the Constitution. [Para 19]

4. **While responding to the request by the Council of Ministers for summoning the House, the communication of the Governor dated 23 February 2023 referred to the Cabinet decision. However, the Governor also referred to the tweet of the Chief Minister and to his letter dated 14 February 2023 and then proceeded to state that since both the tweet and the letter were "patently unconstitutional" and "extremely derogatory", he was compelled to take legal advice "on this issue" and that he would decide on the request thereafter. There was no occasion to seek legal advice on whether or not the Budget Session of the Legislative Assembly should be convened. The Governor was plainly bound by the advice tendered to him by the Council of Ministers. [Para 23]**

5. **The genesis of the controversy has required the intervention of this Court at two distinct levels: first, to ensure that the constitutional duty of the Governor to act on the aid and advice of the Council of Ministers to summon the Legislative Assembly is fulfilled without delay or demur; and second, to ensure that the obligation of the Chief Minister to furnish information to the Governor in terms of Article 167(b) of the Constitution is fulfilled. There are two equally important aspects for the functioning of a parliamentary democracy. First, the failure of a constitutional authority to fulfill its obligation under a distinct provision of the Constitution does not furnish a justification**

to another to decline to fulfill its own constitutional obligation. Second, while this Court is cognizant of the importance of free speech and expression and the fundamental value embodied in Article 19(1)(a), it becomes necessary to emphasize that constitutional discourse has to be conducted with a sense of decorum and mature statesmanship. [Para 25]

Shamsher Singh v. State of Punjab **(1974) 2 SCC 831 : [1975] 1 SCR 814;** *Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly* **(2016) 8 SCC 1: [2016] 6 SCR 1 – followed.**

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 302 of 2023.

Under Article 32 of The Constitution of India

Shadan Farasat, AAG, Dr. Abhishek Manu Singhvi, Sr. Adv., Amit Bhandari, Shourya Dasgupta, Ms. Hrishika Jain, Ms. Mreganka Kukreja, Aman Naqvi, Advs. for the Petitioner.

Tushar Mehta, SG, Satya Pal Jain, ASG, Kanu Agrawal, Madhav Sinhal, Kartikay Aggarwal, Ajay Pal, Karan Sharma, Mayank Dahiya, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

1. On 22 February 2023, the Council of Ministers of the Government of Punjab recommended the summoning of the Budget Session of the Sixteenth Punjab Vidhan Sabha on 3 March 2023 under Article 174(1) of the Constitution.

2. On 23 February 2023, the Governor of Punjab addressed a communication to the Chief Minister of the State. The subject of the letter was:

   "Cabinet decision on summoning of the house of the legislature of the State on 3rd March 2023."

3. The letter of the Governor refers to a prior exchange of correspondence between the Governor and the Chief Minister; the Governor having addressed an earlier communication of 13 February 2023 to which the Chief Minister had responded through a letter dated 14 February 2023 and a 'tweet' of the same date.

4. In his communication of 13 February 2023 to the Chief Minister, the Governor highlighted his concern on certain specific issues, namely:

   (i) The basis on which Principals were selected for being sent to Singapore for training; and

   (ii) The appointment of the Chairman of the Punjab Information and Communication Technology Corporation Limited.

5. The Governor noted that while the Chief Minister had in his previous correspondence underscored the mandate with which he has assumed the office of Chief Minister, in terms of Article 167 of the Constitution, the Chief Minister is bound to furnish full details and information sought by the Governor.

6. Besides the above two issues, the Governor sought a clarification on the following matters:

   "(a) About two lacs Scheduled Castes students were compelled to discontinue their studies due to non disbursal of scholarship by the Government. (letter No.Spl.Secy.Gov/2022/95 dated 21-07-2022).

   (b) To remove the illegally appointed Vice Chancellor of PAU vide letter No.5/1/2021-PRB-PAU-2G/6904 dated 23-11-22.

   (c) Inspite of my detailed letter dated 14-12-2022 you chose to ignore all misdeeds of Sh. Kuldeep Singh Chahal, IPS. You have not only promoted him but also posted him as Commissioner of Jalandhar and that too the orders being issued just before 26th January, knowing very well that Governor is to unfurl the national flag at Jalandhar. I had to instruct the DGP that concerned officer should maintain distance during ceremony. On this issue it seems that this officer was your blue eyed boy and you chose to ignore facts that were brought to your notice by this office.

   (d) Vide letter dated 4-1-2023 I wrote about the presence of Sh. Naval Aggarwal in meetings of senior officers, where sensitive and confidential matters of security of the country are discussed. I have not received any reply till date.

   (e) My letters asking for details of advertisements where you were asked for complete details, is also perhaps lying in cold storage."

7. Responding to the above communication, the Chief Minister (@ Bhagwant Mann) issued a tweet in the following terms:

"Hon'ble Governor Sir, your letter was received through the media.. all the subjects mentioned in the letter are all state subjects...I and my government are accountable to 3 crore Punjabis according to the Constitution and not to any Governor appointed by the Central Government. Consider this as my reply."

8. This was followed by another communication of the Chief Minister dated 14 February 2023, in which he stated thus:

"DO No.CMO/CONFI-2023/132 Dated:14.02.2023

Honorable Governor Sahib,

I have received your letter No.Spl.Secy.Gov/2023/34 dated 13th February, 2023.

All the subjects mentioned in your letter are the subjects of the state government. In this regard, I would like to clarify that according to the Indian Constitution, I and my government are answerable to 3 crore Punjabis.

You have asked me, on what basis the principals are selected for training in Singapore. The people of Punjab want to ask, on what basis are the Governors in different states elected by the Central Government in the absence of any specific qualification in the Indian Constitution?

Please increase the knowledge of Punjabis by telling this."

9. In the backdrop of the aforesaid communication by the Chief Minister and his tweet, the Governor while responding to the request of the Cabinet for summoning the Budget Session of the Vidhan Sabha from 3 March 2023 stated that:

"Since your tweet and letter, both are not only patently unconstitutional but extremely derogatory also, therefore, I am compelled to take legal advice on this issue. Only after getting legal advice, I will take decision on your request".

10. The inaction of the Governor in summoning the Assembly for the Budget Session has led to the invocation of the jurisdiction of this Court under Article 32 of the Constitution by the State of Punjab.

11. The Government of Punjab seeks (a) a declaration that the Governor of Punjab is duty bound to act on the aid and advice of the Council of Ministers in matters of summoning or proroguing of the Vidhan Sabha of the State of Punjab; (b) a writ of *certiorari* quashing the communication of the Governor dated 23 February 2023 stating that a decision on the recommendation of the Council of Ministers for summoning the Vidhan Sabha for its Budget Session would be taken only after obtaining legal advice; and (c) a direction to the Principal Secretary to the Governor of Punjab to facilitate the issuance of appropriate orders for summoning the Legislative Assembly for its Budget Session at 10 am on 3 March 2023.

12. Since the date for the convening of the Budget Session is barely three days away, the petition was mentioned for urgent orders, on which it was directed to be listed at 3.50 pm today.

13. Dr Abhishek Manu Singhvi, senior counsel has appeared on behalf of the petitioner. Mr Tushar Mehta, Solicitor General of India appears on behalf of the first respondent. Mr Ajay Pal, counsel has appeared for the second respondent.

14. At the outset, the Solicitor General has placed on the record an order dated 28 February 2023 of the Governor of Punjab. For convenience of reference, the order is extracted below:

> "In exercise of the powers conferred upon me by virtue of Clause(1) of Article 174 of the Constitution of India, I, Banwarilal Purohit, Governor of Punjab, hereby summon the Sixteenth Vidhan Sabha of the State of Punjab to meet for its Fourth (Budget) Session at 10.00 am on Friday, the 3rd March 2023 in the Punjab Vidhan Sabha Hall, Vidhan Bhavan, Chandigarh."

15. In terms of the above order, the Governor of Punjab has summoned the Sixteenth Vidhan Sabha of the State of Punjab to meet for its Fourth (Budget) Session at 10 am on 3 March 2023.

16. With the issuance of the above order by the Governor, the reliefs which have been sought in the petition have been substantially fulfilled. However, before disposing of the petition, there are certain facets which must be highlighted by this Court in the exercise of its constitutional duty.

17. The institution of these proceedings has its genesis in the communications issued by the Governor for the disclosure of information by the State government. Article 167 of the Constitution enunciates the duty of the Chief Minister to furnish information to the Governor. The provision is in the following terms:

> "167. **Duties of Chief Minister as respects the furnishing of information to Governor, etc–** It shall be the duty of the Chief Minister of each State–
>
> (a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;
>
> (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
>
> (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

18. The Chief Minister has the duty to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation. Going beyond the duty to communicate, the Chief Minister has a duty to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may require. Moreover, if the Governor so requires, the Chief Minister is duty bound to submit for consideration to the Council of Ministers any matter on which the decision is taken by a Minister which has not been considered by the Council of Ministers.

19. The power of the Governor to seek information under Article 167 must be read holistically with reference to their duties as constitutional head under the Constitution. The information that the Governor seeks under Article 167 would enable them to effectively discharge their duties. To illustrate, the Governor has the power to direct reconsideration of bills that are passed in the assembly. For the Governor to make this decision, it is necessary that all the relevant information that would aid them in making the said decision must be made available. Similarly,

the governor requires all relevant information to identify if a decision has been taken by a Minister individually without the consideration of the council. The Governor might be unable to discharge their duty under Article 167(c) if the Chief Minister does not discharge their duty under Article 167(a) and Article 167 (b) by providing the Governor with relevant information as requested. Thus, the Chief Minister is required to discharge their duties under Article 167 to enable the Governor to effectively discharge their duties stipulated in the Constitution. The framers of the Constitution were prescient in incorporating the above provisions. They ensure that while on the one hand the administration of the State is entrusted to a democratically elected Chief Minister who heads the Council of Ministers, which in turn, owes collective responsibility to the state legislature, the Governor as a constitutional authority appointed by the President is entrusted with the duty to ensure a just, fair, and honest administration. In this context, it is important to refer to the speech of Dr. BR Ambedkar on Article 167 (draft Article 147) in the Constitution Assembly:[1]

"A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary: no good at all: He is the representative not of a party, he is representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on a level which may be

1 Dr BR Ambedkar in response to Biswanath Das, Constituent Assembly of India Debates (Proceedings)-Volume VIII (2 June 1949)

regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has namely, to see that the administration is kept pure, without corruption, impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider-I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information."

20. The power to summon, prorogue and dissolve the legislative assembly is enshrined in Article 174 of the Constitution which is extracted below:

"174. Sessions of the State Legislature, prorogation and dissolution.–

(1) The Governor shall form time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time–

(a) prorogue the House or either House;

(b) dissolve the Legislative Assembly."

21. The decision of a seven-Judge Constitution Bench in ***Shamsher Singh vs State of Punjab***[2] has laid down that the Governor is a constitutional or formal Head of the State and exercises powers and functions on the aid and advice of the Council of Ministers. The relevant extracts from the decision make the position of law clear:

"28. Under the Cabinet system of Government as embodied in our Constitution **the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers** save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

2 (1974) 2 SCC 831

32. It is a fundamental principle of English Constitutional law that Ministers must accept responsibility for every executive act. In England the Sovereign never acts on his own responsibility. The power of the Sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action. Those advisers must have the confidence of the House of Commons. This rule of English Constitutional law is incorporated in our Constitution. **The Indian Constitution envisages a Parliamentary and responsible form of Government at the Centre and in the States and not a Presidential form of Government. The powers of the Governor as the constitutional head are not different.**

142. The extraordinary powers of legislation by ordinances, dispensing with enquiries against public servants before dismissal, declaration of emergency and imposition of President's rule by proclamation upon States, are vast powers of profound significance. **Indeed, even the power of summoning and proroguing and dissolving the House of the People and returning Bills passed by the Parliament belongs to him. If only we expand the *ratio* of *Sardari Lal* and *Jayantilal* to every function which the various articles of the Constitution confer on the President or the Governor, Parliamentary democracy will become a dope and national elections a numerical exercise in expensive futility.** We will be compelled to hold that there are two parallel authorities exercising powers of governance of the country, as in the dyarchy days, except that Whitehall is substituted by Rashtrapati Bhavan and Raj Bhavan. The Cabinet will shrink at Union and State levels in political and administrative authority and, having solemn regard to the gamut of his powers and responsibilities, the Head of State will be reincarnation of Her Majesty's Secretary of State for India, untroubled by even the British Parliament — a little taller in power than the American President. Such a distortion, by interpretation, it appears to us, would virtually amount to a subversion of the structure, substance and vitality of our Republic, particularly when we remember that Governors are but appointed functionaries and the President himself is elected on a limited indirect basis. As we have already indicated, the overwhelming catena of authorities of this Court have established over the decades that the cabinet form of Government and the Parliamentary system have been adopted in

India and the contrary concept must be rejected as incredibly allergic to our political genius, constitutional creed and culture."

(emphasis supplied)

22. This position was reiterated by a Constitution Bench in **Nabam Rebia v. Dy. Speaker, Arunachal Pradesh Legislative Assembly**[3]**.** In view of the constitutional provision and the judgments of this Court, there can be no manner of doubt that the authority which is entrusted to the Governor to summon the House or each House of the Legislature of the State is to be exercised on the aid and advice of the Council of Minsters. This is not a constitutional arena in which the Governor is entitled to exercise his own discretion. In the present case, the Governor was not summoning the House for the first time following a general election, but was advised by the Council of Ministers to convene the Budget Session, at the behest of a government which has been duly elected in the general election. Plainly, the Governor was duty bound to do so.

23. While responding to the request by the Council of Ministers for summoning the House, the communication of the Governor dated 23 February 2023 referred to the Cabinet decision. However, the Governor also referred to the tweet of the Chief Minister and to his letter dated 14 February 2023 and then proceeded to state that since both the tweet and the letter were "patently unconstitutional" and "extremely derogatory", he was compelled to take legal advice "on this issue" and that he would decide on the request thereafter. There was no occasion to seek legal advice on whether or not the Budget Session of the Legislative Assembly should be convened. The Governor was plainly bound by the advice tendered to him by the Council of Ministers.

24. Having said this, it would also be necessary to underscore that both the Chief Minister and the Governor are constitutional functionaries who have specified roles and obligations earmarked by the Constitution. The Governor has a right to seek information from the Chief Minister in terms of Article 167(b) on matters relating to the administration of the affairs of the State and proposals for legislation. Once such information is sought, the Chief Minister is duty bound to furnish it. The tone and tenor of the

3 (2016) 8 SCC 1

tweet and the letter by the Chief Minister leave much to be desired. Not furnishing the information which was sought by the Governor would be plainly in dereliction of the constitutional duty which is imposed on the Chief Minister in terms of Article 167(b). Yet on the other hand, the dereliction of the Chief Minister to do so would not furnish a justification for the Governor not to comply with the constitutional obligation to summon the House for its Budget Session in terms of the advice which was tendered by the Council of Ministers. It was after the institution of the petition under Article 32 that the Assembly was summoned.

25. The genesis of the controversy has required the intervention of this Court at two distinct levels: first, to ensure that the constitutional duty of the Governor to act on the aid and advice of the Council of Ministers to summon the Legislative Assembly is fulfilled without delay or demur; and second, to ensure that the obligation of the Chief Minister to furnish information to the Governor in terms of Article 167(b) of the Constitution is fulfilled. There are two equally important aspects for the functioning of a parliamentary democracy. First, the failure of a constitutional authority to fulfill its obligation under a distinct provision of the Constitution does not furnish a justification to another to decline to fulfill its own constitutional obligation. Second, while this Court is cognizant of the importance of free speech and expression and the fundamental value embodied in Article 19(1)(a), it becomes necessary to emphasize that constitutional discourse has to be conducted with a sense of decorum and mature statesmanship.

26. Political differences in a democratic polity have to be worked upon and sorted out with a sense of sobriety and maturity. The dialogue between constitutional functionaries cannot degenerate into a race to the bottom. Unless these principles were to be borne in mind, the realization of constitutional values may be placed in jeopardy. Such a situation emerged before this Court, leading to the institution of a petition under Article 32 of the Constitution for a direction to the Governor to summon the Legislative Assembly. It is inconceivable that the Budget Session of the Legislative Assembly would not be convened. We can only hope that mature constitutional statesmanship will ensure that such instances do not occur in the future as much as we reiterate our expectation that constitutional functionaries must be cognizant of the public trust in the

offices which they occupy. The public trust which is entrusted to them is intended to sub-serve the cause of our citizens and to ensure that the affairs of the nation are conducted with a sense of equanimity so as to accomplish the objects of the Preamble to the Constitution.

27. With these observations, the Petition shall stand disposed of.

28. Pending applications, if any, stand disposed of.

Headnotes prepared by: Ankit Gyan (*Assisted by :* Aarsh Choudhary, LCRA)

Result of the case: Petition disposed of.