

ITEM NO.63

COURT NO.13

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 1239/2023

THE STATE OF TAMIL NADU

Petitioner(s)

VERSUS

THE GOVERNOR OF TAMILNADU & ANR.

Respondent(s)

[TO BE TAKEN UP AT 10:30 A.M.]

IA No. 69967/2024 - AMENDMENT OF THE PETITION

IA No. 259020/2023 - AMENDMENT OF THE PETITION

IA No. 216164/2024 - PERMISSION TO FILE AMENDED WRIT PETITION

WITH

W.P.(C) No. 1271/2023 (X)

FOR

FOR impleading party ON IA 56962/2024

FOR INTERVENTION/IMPLEADMENT ON IA 56962/2024

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 56963/2024

IA No. 56962/2024 - INTERVENTION/IMPLEADMENT

IA No. 56963/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 10-02-2025 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.

Mr. Mukul Rohatgi, Sr. Adv.

Mr. Rakesh Dwivedi, Sr. Adv.

Ms. Preetika Dwivedi, Adv.

Mr. Mohd. Yasir, Adv.

Mr. P.wilson, Sr. Adv.

Ms. Jahnavi Taneja, Adv.

Mr. Sabarish Subramanian, AOR

Mr. Poornachandiran R, Adv.

Mr. Siddarth Seema, Adv.

Mr. Vishnu Unnikrishnan, Adv.

Mr. Apoorv Malhotra, Adv.

Mr. Lokesh Krishna, Adv.

Mr. Danish Saifi, Adv.

Mr. Aravind A, Adv.

Mr. Saran Raghunadhan S, Adv.

For Respondent(s) Mr. R Venkatramani, Attorney General for India

Mr. Vikramjit Banerjee, ASG
 Mr. Prashant Rawat, Adv.
 Ms. Rashmi Mangal, Adv.
 Mr. Kartik Dey, Adv.
 Mr. Abhishek Goel, Adv.
 Mr. Kanu Agarwal, Adv.
 Mr. Padmesh Mishra, Adv.
 Mr. Arkaj Kumar, Adv.
 Mr. Chitvan Singhal, Adv.
 Mr. Raman Yadav, Adv.
 Mr. Abhishek Kumar Pandey, Adv.
 Mr. Kartikay Aggarwal, Adv.
 Ms. Ameya Vikrama Thanvi, Adv.
 Ms. Sonali Jain, Adv.
 Mr. Arvind Kumar Sharma, AOR

Mr. Manoj Ranjan Sinha, Adv.
 Mr. Mrigank Prabhakar, AOR
 Mr. Vishal Agrawal, Adv.
 Mr. Siddharth Sahu, Adv.

Ms. Madhavi Goradia Divan, Sr. Adv.
 Mr. Nl Rajah, Sr. Adv.
 Mr. S. Santanam Swaminadhan, Adv.
 Ms. Abhilasha Shrawat, Adv.
 Mr. T. Bhaskar Gowtham, Adv.
 Mr. D. Bharat Kumar, Adv.
 Mrs. Aarthi Rajan, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. Having heard the learned counsel appearing for the parties and having gone through the materials on record, broadly the following questions fall for our consideration: -

1. Where the Legislative Assembly of a State has passed a Bill and presented it before the Governor for his assent, and the Governor withholds his

assent thereto, and as a result thereof the Legislative Assembly passes the Bill again with or without amendment, and presents it before the Governor again, whether it would be open for the Governor to reserve the Bill for the consideration of the President, more particularly, when he had not reserved it for the consideration of the President when it was presented before him in the first instance?

2. Whether the discretion of the Governor in reserving a Bill for the consideration of the President is exercisable upon any Bill, or is it limited to certain specific categories of Bills, such as those wherein the subject matter appears to be beyond the competence of the State Legislature or is repugnant to a central legislation? In this regard, what is the significance of paragraph 71 of the decision in *B.K. Pavitra v. Union of India* reported in (2019) 16 SCC 129?
3. Whether the power of the Governor under Article 200 is to be exercised only on the aid & advice of the Council of Ministers of the State Government or does the Governor enjoy a certain degree of individual discretion in making such a reference?
4. What is the concept of "pocket veto"? Whether it has been envisaged by the constitutional scheme

flowing in Articles 111, 200 and 201 of the Constitution?

5. What is the effect of the expression "shall declare" used in the substantive part of Article 200? Whether a time period can be read into Article 200 within which the Governor is required to make such a declaration?
6. How is Article 200 to be construed in the following two scenarios: -
 - a. First, a Bill is presented before the Governor for his assent and upon consideration of the Bill, the Governor returns the Bill together with a message requesting the Legislature to reconsider certain aspects of the Bill in terms of the first proviso to Article 200.
 - b. Secondly, a Bill is presented before the Governor for his assent but in this case, upon consideration of the Bill, the Governor declares that he withholds assent in terms of the substantive part of Article 200.

Thereupon, the legislature, in both the aforesaid scenarios, passes the Bill once again and presents it before the Governor for his assent. Whether the Governor shall be bound to give his assent to the Bill in both the situations or only in the first case. Whether the expression

"and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom" used in the latter half of the first proviso is confined only to the first proviso or it applies to the substantive part of Article 200 as well?

7. Why does the last line of the first proviso to Article 200 use the expression "shall not withhold assent therefrom" instead of the expression "shall assent thereto", more particularly in light of the fact that the substantive part of Article 200 provides three options - "shall assent", "shall withhold assent" and "shall reserve for the consideration of the President".

Does this imply that both the other options, namely - to either assent or to reserve the Bill for the consideration of the President - would still be open to the Governor even after the legislature reconsiders the Bill and presents it again before the Governor in accordance with the first proviso to Article 200?

Further, whether a parallel can be drawn between Articles 111 and 200 in this regard, more particularly, in light of the fact that Article 111 only provides two options to the President, that is, to either assent or to withhold assent, and thus the exclusion of the latter option means

that the only course of action which remains for the President is to assent. However, as Article 200 provides three options to the Governor, whether the exclusion of the option of withholding assent would necessarily imply that the other two options remain open for the Governor to choose from?

8. Whether Article 200 envisages four courses of action that would be available to the Governor to choose from when a Bill is presented before him by the State Legislature? In other words, whether the first proviso is to be construed as an independent fourth course of action distinct from the first three specified in the substantive part of Article 200, more particularly, in light of the observations made by this Court in paragraph 24 of *The State of Punjab v. Principal Secretary to the Governor* reported in (2024) 1 SCC 384?
9. Whether the first proviso to Article 200 can be split in two parts - wherein the first part can be construed as providing a discretion to the Governor and the second part can be construed as a recourse available to the State Legislature where the exercise of such a recourse is independent of the exercise of discretion by the Governor as provided in the first part.

In other words, whether the second part of the first proviso, which reads "[...] if the Bill

is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom", could be said to be mandatory in nature, in the sense that even if the Governor withholds assent simpliciter without sending such a message as is mentioned in the first proviso to Article 200 to the State Legislature, it would still be open to the State Legislature to reconsider the Bill and present it before the Governor again for his assent, and the Governor would be bound to not withhold assent therefrom in such a scenario?

10. The Constitution Bench in paragraph 19 of *Union of India v. Valluri Basavaiah Chowdhary* reported in (1979) 3 SCC 324 observed thus: -

"19. [...] Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may except in the case of a 'Money Bill' withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated in the first proviso is followed, i.e., return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Art. 201. [...]"

Whether the observations made in the aforesaid paragraph, more particularly - *"in which case the Bill falls through unless the procedure indicated in the first proviso is followed"* - can be construed to mean that it is open to the Governor to withhold assent to a Bill simpliciter without taking recourse to the first proviso and in such a scenario the Bill would fall through. In other words, if the Governor declares withholding of assent simpliciter without opting for the recourse available under the first proviso, then it would not be open to the State Legislature to reconsider the Bill and present it again before the Governor?

As a corollary to the aforesaid, could it also be said that the State Legislature reconsidering and passing a Bill after the Governor has declared the withholding of assent simpliciter in fact tantamounts to a fresh enactment of the Bill. Thus, when the Bill is thereafter presented before the Governor for his assent and he reserves it for the consideration of the President, as in the present case, could it be said that he is exercising one of the three options available to him when considering a Bill for the first time?

11. Where the President, in terms of Article 201, directs the Governor to return the Bill to the State Legislature, and the Bill is passed and

presented again before the President for his consideration, in what manner is the President expected to act thereafter? Is the President required to mandatorily assent to the Bill when it is placed before him for reconsideration or could it be said that there is a constitutional silence in the scheme of Article 201 on this aspect? If yes, how is this silence to be construed?

12. If the Governor could be said to be duty bound to assent to a Bill which has been re-considered and presented again before him by the State Legislature, for the reason that he is bound to act on the aid & advice of the Council of Ministers of the State Government in terms of Article 163, conversely whether the President could be said to be not bound to assent to the Bill in the second instance of its presentation before him, for the reason that he is only bound to act on the aid & advice of the Council of Ministers of the Central Government in terms of Article 74?

In other words, whether the President, in exercise of the powers under Article 201, could be said to be acting upon the aid & advice of the Council of Ministers of the Central Government? If yes, then if the Council of Ministers of the Central Government advise the President against assenting to the Bill even after the reconsideration by the State Legislature, how is

the resolution of such a scenario envisaged under the constitutional scheme?

2. The learned counsel appearing for the parties shall file their written submissions within a period of one week from today and also forward a soft copy of the same to writtensubmissions.jbp@gmail.com.
3. It would be open to the parties to address other aspects of the matter in addition to the broad questions framed by us.
4. Arguments concluded.
5. Judgment reserved.

(VARSHA MENDIRATTA)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)