Sukriti Yagyasen et al. International Journal of Institutional & Industrial Research ISSN: 2456-1274, Vol. 1, Issue 2, May-August 2016, pp. 50-55

Role of Governor and Federal Setup With respect To *B. P. Singhal's* Case: A Critical Study

Sukriti Yagyasen

Assistant Professor, School of Law, Galgotias University

***Abstract*: The role of the Governor has emerged as one of the key issues in Union-State relations. It has been controversial for times that what the position of the governor is. How the governor should discharge his functions. There has been then formulation of multiple committees which enunciated this proposition and tried to explain the "role" and the "position" of governor. Sarkaria commission has been the eminent one. This report contained a full chapter on the role of governor.**

***Keywords:* Governor and Federal Setup, B. P. Singhal's Case**

1. Introduction

Article 153 of the Constitution requires that 'there shall be a Governor for each State.' One person can be appointed as Governor for two or more States. Article 154 vests the executive power of the State in the Governor. Article 155 says that "The Governor of a State shall be appointed by the President by warrant under his hand and seal". Article 156 provides that "The Governor shall hold office during the pleasure of the President". The term of the Governor is prescribed as five years. The only qualifications for appointment as Governor are that he should be a citizen of India and must have completed the age of thirty-five years. Article 159 prescribes the oath, which a Governor has to take before entering upon his office.[1]

The position of governor has already been in question that is the governor an agent of the union acting in state, this has always been a matter of debate. The present judgement tried to justify the position of the governor and gave various elaborate points that on what grounds he could be represented. The pleasure of the president, what does this word gives impression, the real understanding of this term was provided in this case. When a governor is removed from his post then is there any scope for judicial review and is it a justified way to have judicial review on this point. All these points were discussed elaborately in this case.

2. Content Analysis of the Case:

The present case's *Ratio decidendi*

"Power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner and only in rare and exceptional circumstances for valid and compelling reasons."

"Court can call upon the Union Government to disclose, the material upon which the President had taken the decision to withdraw the pleasure if prima facie the removal was either arbitrary, mala fide, capricious or whimsical."

The main points of contention in the present case were the same as has been already discussed in the analytical analysis of the case. The judgement elaborately explained all the points and gave proper reasoning on each of the points.

FIRST CONTENTION:

The first contention was that whether the petition is maintainable or not. On this point the court decided that "the petitioner has no locus to maintain the petition in regard to the prayers claiming relief for the benefit of the individual Governors.[2] At all events, such prayers no longer survive on account of passage of time. However, with regard to the general question of public importance referred to the Constitution Bench, touching upon the scope of Article 156 (1) and the limitations upon the doctrine of pleasure, the petitioner has necessary locus.[3] The other point which was referred to constitutional bench was related to public importance as to what is the scope of "Doctrine of Pleasure".

[1] National Commission to review the working of the Constitution, 2010 (22nd February).

[2] The petition asked for the relief that the individual governors who were removed should be placed back to the position from where they were removed. Their position must be restored. On this point the governors themselves did not raised any contention so it was decided that the petitioner by the way of public interest litigation does not have any *locus standi*.

[3] *Supra* note 3.

So the petitioner has locus standi as far as this point was concerned.

COMMENT:

As the governor themselves did not went to Supreme Court for taking relief then the decided that the petitioner did not have locus standi on this point. The decision of court on this point seems to be appropriate and apt. Then the petitioner were allowed to be heard on the point of that what the scope of doctrine of pleasure is. As this point was a matter of public importance so it was allowed.

SECOND CONTENTION:

The next contention which the court decided was related to the "scope of doctrine of pleasure". The Pleasure Doctrine has its origin in English law, with reference to the tenure of public servants under the Crown. The rule that a civil servant holds office at the pleasure of the Crown has its origin in the Latin phrase "durante bene placito" ("during pleasure") meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to dismissal without notice and there is no right of action for wrongful dismissal, that is, that they cannot claim damages for premature termination of their services.[4]

The court took support from Black's Dictionary, this defines 'Pleasure Appointment' as the assignment of someone to employment that can be taken away at any time, with no requirement for notice or hearing. Then court cited many of the cases which defined what the doctrine of pleasure is as per those judgements. It observed:

Constitution of India thus provides for three different types of tenure: (i) Those who hold office during the pleasure of the President (or Governor); (ii) Those who hold office during the pleasure of the President (or Governor), subject to restrictions; (iii) Those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure. Constitutional Assembly debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. We may conveniently enumerate them: (i) Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and Advocate General); (ii) Offices to which doctrine of pleasure applied with restrictions (Members of defence service, Members of civil service of the Union, Member of an All-India service, holders of posts connected with defence or any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and (iii) Offices to which the doctrine of pleasure does not apply at all (President, Judges of Supreme Court, Comptroller & Auditor General of India, Judges of the High Court, and Election Commissioners). Having regard to the constitutional scheme, it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category.[5]

On 'doctrine of pleasure' court also observed:

The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. But where rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an Authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons.[6]

COMMENT:

The 'scope of doctrine of pleasure' is explained very elaborately and the instances discussed are really the instances deserving applaud. The reasoning of the court on this point is very clear and there could not be any ground for ambiguity. The court has very categorically defined the other offices and there what is the meaning of 'doctrine of pleasure' making it more lucid to understand.

Thus on the second contention while redefining the "scope of doctrine of pleasure" court basically relied on the point that although the person who is enjoying the office in the pleasure of president could be removed by him without giving notice of his removal but it is also mandatory that the removal should not be arbitrary and whimsically. It should be justified and should be based on natural justice.

[4] *State of Bihar* v. *Abdul Majid* [(1954) SCR 786].

[5] *Supra* note 3 para no.21.

[6] *Supra* note 3 Para no.22.

THIRD CONTENTION:

The other issue which the court decided in this case was "the position of governor in the constitution". The court held that the governor is the constitutional head of the state and could not be considered as the agent of the president. The court with the help of the various judgements reiterated the fact that the governor should be independent and should be free from all kinds of political influences. They went on extending this thought and said that the governor may ignore the advice of the centre and act on the advice of his council of ministers.

Sri G.S. Pathak, a former Vice-President said that "in the sphere which is bound by the advice of the Council of Ministers, for obvious reasons, the Governor must be independent of the centre" as there may be cases "where the advice of the centre may clash with advice of the State Council of Ministers" and that "in such cases the Governor must ignore the centre's 'advice' and act on the advice of his Council of Ministers."[7]

The position of the Governor as the Constitutional head of State as a unit of the Indian Union as well as the formal channel of communication between the Union and the State Government, who is appointed under Article 155 of the Constitution "by the President by Warrant under his hand and seal".[8] It was also decided that the Governor should function independently in some of the discretionary functions which are specified to him. He is considered as the watch dog of the interest of the state and he should work accordingly. Governor should not be considered as the agent of the Union.

Then court gave the observation made by court in a case in which the judgement was delivered by a seven judge bench.

The Governor of a State is appointed by the President and holds office at his pleasure. State administration is carried on by him or in his name by or with the aid and advice of the Ministers. Every action, even of an individual Minister, is the action of the whole Council and is governed by the theory of joint and collective responsibility. But the Governor is there, as the head of the State, the Executive and the Legislature, to report to the Centre about the administration of the State.[9]

It is clear from our Constitution that the Governor is not the agent of the President, because when it was intended to make the Governor an agent of the President it was expressly provided - as in Para 18(2), Schedule VI (repealed in 1972). It is equally clear from our Constitution that the Governor is entrusted with the discharge of his constitutional duties. In matters on which he must act on the advice of his Ministers and they constitute an overwhelming part of his executive power the question of his being the President's agent cannot arise?[10] Court finally concluded that the Governor has dual role firstly as the constitutional head of the state and secondly, he acts as a vital link between the union and the state. Thus is not an agent of the union and his peculiar character arises due to the quasi federal structure of the constitution.

In *S.R. Bommai* v. *Union of India* 1994 (3) SCC 1 a nine-Judge Bench of this Court described the Constitution of India as quasi-federal, being a mixture of federal and unitary elements .Governors are not expected or required to implement the policies of the government or popular mandates. Their constitutional role is clearly defined and bears very limited political overtones. We have already noted that the Governor is not the agent or the employee of the Union Government. As the constitutional head of the State, many a time he may be expressing views of the State Government, which may be neither his own nor that of the Centre (for example, when he delivers the special address under Article 176 of the Constitution).It was also said that although some of the governor come from political background but after becoming governor of a state they should not owe their allegiance to any political party. They should be unbiased and thus the court rejected the contention of the respondents that Governors should be in "sync" with the policies of the Union Government or should subscribe to the ideology of the party in power at the Centre. Governors have to decide on its own but not on the just basis of centre's directions. Lastly, the court supported his arguments by the way of giving the statements made by Shri Jawahar lal Nehru and B. R. Ambedkar that the governor should be a person outside from the politics and he should be left independent. The administration of union should not interfere in the functioning of the governor then he can perform his duties effectively.

COMMENT:

The position of governor in the constitution was also dealt with caution. Court took the help of the constitutional assembly debates and various other cases. Then court further went on giving judgement that the Governor is considered as

[7] *Supra* note 3 para no.24.
[8] *State of Rajasthan* v. *Union of India* [(1977) 3 SCC 592].
[9] *State of Karnataka* v.*Union of India* [(1977) 4 SCC 608].
[10] H. M. Seervai, *Constitutional Law of India*2065 (4th Ed., Vol.II).

the constitutional head of the state. He is not the agent of the union. It is not required for him to work in 'sync' with the union. He is independent and may act as per he wants but that should necessarily be for the welfare of the state.

FOURTH CONTENTION:

The court further concluded on the issue of limitation of power under the article 156(1). A plain reading of Article 156 shows that when a Governor is appointed, he holds the office during the pleasure of the President, which means that the Governor can be removed from office at any time without notice and without assigning any cause. It is also open to the Governor to resign from office at any time. If the President does not remove him from office and if the Governor does not resign, the term of the Governor will come to an end on the expiry of five years from the date on which he enters office. Clause (3) is not intended to be a restriction or limitation upon the power to remove the Governor at any time, under Clause (1) of Article 156. Clause (3) of Article 156 only indicates the tenure which is subjected to the President's pleasure.[11] Thus the court read clause(3) as not the limitation but it only indicated to the tenure of the governor which is subject to the president's pleasure. So the contention of the petitioner was not maintainable that clause (1) of Article 156 is made subject to any other provision of the Constitution nor subjected to any exception. Clause (3) prescribing a tenure of five years for the office of a Governor, is made subject to Clause (1) which provides that the Governor shall hold office during the pleasure of the President. Therefore, it is not possible to accept the contention that Clause (1) of Article 156 is subjected to an express restriction or limitation under Clause (3) of Article 156. The petitioner relied on the recommendation made by Sarkaria commission that the governor should be given reasonable notice and that notice should contain the reasons that why he is being removed. The governor should also be given opportunity to be heard. The court held on these recommendation that although these recommendation are logical but yet these recommendations are only recommendations. They cannot override the statutory provision. These recommendations are the suggestions which could help the law makers while amending the constitution. These recommendation play no role while the court has to interpret the constitutional provision. The constitutional assembly debates were discussed regarding this point. They were taken by both the respondent and the petitioner. The petitioners contended that the founding fathers proceeded on the assumption that the removal will only be on the ground of bribery and corruption, violation of the Constitution, or any other legitimate ground attributable to an act or omission on the part of the Governor. The respondents point out that security of tenure and other alternatives were considered and consciously rejected to opt for Governors holding office during the pleasure of the President. The debate shows that certain alternatives were considered and then after all these consideration this article was adopted in its present form. There was also a consideration made for categorical removal of the governor in certain condition but that was rejected. Thus the intention of the constitution framers is manifested in the present article itself.

Article 156(1) does not intend to remove the governor if he does not go in accordance with the Union. It is entrusted with a different function that if the Governor is pursuing courses which are detrimental to the State or to India, the President can remove the Governor from his office and appoint another Governor. This power takes the place of an impeachment which clearly is a power to be exercised in rare and exceptional circumstances.

In other words, it is contended that there should be some fault or draw back in the Governor or in his actions before he could be removed from office. On the other hand, it is contended by the respondents that removal need not only be for the reasons mentioned by the petitioner but can also be on two other grounds, namely, loss of confidence in the Governor or the Governor being out of sync with the policies and ideologies of the Union Government. Then on these points court held that they have already rejected the contention that the Governor should be in 'sync' with the union. So the first contention could not be maintained. Though the Governors, Ministers and Attorney General, all hold office during the pleasure of the President, there is an intrinsic difference between the office of a Governor and the offices of Ministers and Attorney General. Governor is the Constitutional Head of the State. He is not an employee or an agent of the Union Government nor a part of any political team. On the other hand, a Minister is hand-picked member of the Prime Minister's team. The relationship between the Prime Minister and a Minister is purely political. Though the Attorney General holds a public office, there is an element of lawyer-client relationship between the Union Government and the Attorney General. Loss of confidence will therefore be very relevant criterion for withdrawal of pleasure, in the case of a Minister or the Attorney General, but not a relevant ground in the case of a Governor.[12]

COMMENT:

[11] *Supra* note 3 Para no.30.

[12] *Supra* note 3 Para no.41.

On this issue also court decided accordingly and the reasoning does nowhere stand distorted.

FIFTH CONTENTION:

The last issue which was taken by the court was related to judicial review. However, there is a distinction between the need for a cause for the removal, and the need to disclose the cause for removal. While the President need not disclose or inform the cause for his removal to the Governor, it is imperative that a cause must exist. If we do not proceed on that premise, it would mean that the President on the advice of the Council of Ministers, may make any order which may be manifestly arbitrary or whimsical or mala fide.

Therefore, while no cause or reason be disclosed or assigned for removal by exercise of such prerogative power, some valid cause should exist for the removal. Therefore, while we do not accept the contention that an order under Article 156 is not justifiable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the Governor before removing a Governor.[13]

Thus court held the above point and also held that the court is entrusted with the responsibility to look into the matters where the decision is arbitrary. Court will look into the matters where it is for the public importance. Thus the court in the above case will have judicial review and if there is violation of natural justice, then court will look into the matter and will decide accordingly.

COMMENT:

The reasoning asserted by the court is just and proper but even then I believe that it could have been better if judiciary should not be made to intervene. As this intervention will result into the violation of independence of each of the organ of state machinery. Judiciary by this kind of intervention could not remain independent. Although the court has specifically stated that the ground for the intervention would not be easy. It would be strict grounds only on which the judiciary could intervene.

3. Conclusion and Amendment proposed:

The court concluded that the Governor can be removed from his office without giving him reasons that why he is getting removed. On the other hand court also held that the removal should not be arbitrary and whimsical. It should be just then a Governor can be removed from his office. The other point which the court held in the case was that what would be compelling reasons for the removal of the Governor would definitely depend upon the circumstances. Court also held that the governor cannot be removed when he is not in 'sync' with the union. As the president will assign no reason for the removal then it is open to judicial review. The scope of judicial review is limited here. The court may as the Union to produce the document on which the Governor is removed.

This judgement clearly held that the governors are not the agent of the Union; they themselves are the constitutional head of the state. Article 156 as adopted is in conformity with the present scenario and as a quasi-federal character it should be interpreted with the caution. The court has in this case interpreted this article effectively. The explanation provided by the court is apt and sufficient. The role of the governor although has been in controversy and there has been many cases deciding on this point this judgement has although provided a just reasoning to all the questions.

Sarkaria commission has given some recommendation and if these recommendations are made effective then it may improvise the institution of Governor. The commission has held that the governor should be given reasons that why is getting removed from the office. There are other recommendations also. It could be also suggested that the governor should be impartial thus he should be a person outside from the politics. If the person so appointed then he will have ales inclination towards any political party and he could be more independent.

The governor should be appointed more cautiously and the Vice president should consult the Speaker while appointing. In my opinion and I would like to propose the amendment that there should be committee for the appointment of the governor at the states. The constitution of committee may be of the President, Prime minister, Law minister and the leader of opposition. This may further decrease the biasness in appointment and then it could be further said that the governor is no more acting as an agent of the union.

Hence the amended provision would constitute the above said elements of committee appointing the governor. The article 155 and 156 would then consist of as follows:

"Article 155- The Governor of a State shall be appointed by the President by warrant under his hand and seal *by the recommendation of committee,that would consist of Prime minister, Law minister and the leader of opposition*[14]."

"Article 156- The Governor shall hold office during the pleasure of the President.

[13] *Supra* note 3 Para no.42.

[14] The words in italics are the recommended amendment.

Explanation- The pleasure does not means that at the whims and fancies of President but it should be reasonable and a notice to the governor to be given that why he is getting removed. "

REFERENCES

[1]. Coenraad Visser, *Nintendo goes to the movies*, 5 Juta's Bus. L. 128 (1997)

[2]. Tana Pistorius, *New Technologies and Old Copyrights –The Protection of Video Games as Cinematograph Films*, 7 S. Afr. Mercantile L.J. 112 (1995)

[3]. F. Willem Grosheide, Herwin Roerdink and Karianne Thomas, *Intellectual Property Protection for Video Games: A View from the European Union*, 9 J. Int't Com. L. & Tech. 1 (2014)

[4]. Bree A. Segel, *Federal District Court for California grants a permanent injunction prohibiting copying of Sega video games on electronic bulletin boards*, 9 Loy. Consumer L. Rep. 215 (1996-1997)

[5]. Kevin M. Hales, *A Trivial Pursuit: Scrabbling for a Board Game Copyright Rationale*, 22 Seton Hall J. Sports & Ent. L. 241 (2012)

[6]. Brian Casilla, *Attack of the Clones: Copyright Protection for Video Game Developers*, 33 Loy. L.A. Ent. L. Rev. 137 2012-2013

[7]. Steven G. Mcknight, *Substantial Similarity Between Video Games: An Old Copyright Problem in a New Medium*, 36 V and. L. Rev. 1277 (1983)

[8]. *Jihan Joo, Public Video Gaming as Copyright Infringement*, 39 AIPLA Q. J. 563 (2011)

[9]. Irini A. Stamatoudi, *Are Sophisticated Multimedia Works Comparable to Video G*ames?, 48 J. Copyright Soc'y U.S.A. 467 (2000-2001)

[10]. Andrew W. Eichner, Game Over, Insert Coin to Continue: Entering a New Era of Video Game Intellectual Property Enforcement, 53 IDEA 101 (2013).

