

CASE ANALYSIS ON B.P. SINGHAL VS UNION OF INDIA: A CHECK ON ABSOLUTE POWER OF EXECUTIVE

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ABSTRACT

The Constitution of India embraces the principle of separation of power under the idea of constitutionalism which grants limited power to each functionary of the government. Upon the principle of constitutionalism, there is a doctrine of checks and balances which is operational in India, and it facilitates the smooth functioning of the system, as each organ of the government can act as a watchdog to confirm that constitutionalism is the basic structure of the country is followed in its letter and spirit.

In light of B.P. Singhal vs. Union of India, the paper grants deep insight into how this principle of checks and balances is working in the Indian constitution. Firstly, the paper offers a brief explanation of the facts, and then it highlights the issues raised. It then discusses the clashing arguments presented by both the petitioner and the respondent. The paper further expounds on what all laws have applied to this landmark judgment, beginning with Articles 155, 156, and 74 of the Indian Constitution. Also, the paper presents the high points of the judgment. Towards the end, the paper presents a proper conclusion and critical analysis of the whole judgment.

The expected outcomes of this paper are-

1. Accentuating the presence of checks and balances in the Indian constitutional system.
2. Underlining the nature of the doctrine of pleasure under Article 156(1) of the constitution.
3. Critically addressing and scrutinizing the judgment.

Keywords- B.P. Singhal vs. Union of India, Doctrine of Checks and Balances, Doctrine of Pleasure, Indian Constitution, Article 155, Article 156, Article 74, Executive, Judiciary, Governor.

FACTS OF THE CASE

This case is a writ petition under Article 32 of the Indian Constitution. It is a landmark case because of the public importance it holds and because it involves a comprehensive interpretation of Article 156 of the Constitution.

A Governor of a State is chosen by the President of India and serves ‘during the pleasure of the President,’ according to Articles 155 and 156 of The Constitution of India, 1949. In most cases, a Governor can stay in office for a maximum tenure of five years. Under Article 74 of the Indian Constitution, the President of India while working upon the aid and advice of the Council of Ministers, removed the Governors of Gujarat, Goa, Haryana, and Uttar Pradesh on 2nd July 2004. In response to the same action, a writ petition was filed in the form of public interest litigation on the lookout for the reinstatement of the said Governors of the States. The two-judge bench handed over the matter to the constitutional bench.

ISSUES RAISED

1. What is the scope of the ‘Doctrine of Pleasure’ under The Constitution of India, 1949?
2. What is the standing of a Governor underneath The Constitution of India, 1949?
3. Whether Article 156 clause (1) of The Constitution of India, 1949 is exposed to any expressed limitations or hindrance and what is the possibility of judicial review in this case.

ARGUMENTS ADVANCED BY THE PETITIONER

- 1) The petitioner set up that due to the fact a Governor holds high constitutional accountability which comes in conjunction with a few indispensable legitimate

responsibilities. Therefore, merely for the cause that the Governor is chosen through the President and upholds to preserve his position as rendering to the 'Doctrine of Pleasure' does not make the Governor, a servant of the Union Government.

- 2) The elimination cannot be chiefly founded completely on the ideologies or options the Governor holds or associates herself or himself with. The elimination of the governor must be only done in extraordinary and rare occurrences.
- 3) Even though an appropriate expression will not be given upon the termination of the Governor, but he must be given some reasons as this will ensure transparency.
- 4) The petitioner furthermore said that the Doctrine of Pleasure cannot be summoned in a random and irrational method.
- 5) It was also argued by the petitioner, that when a Governor faces his elimination, he should be made aware of the causes, and he should be allowed to present himself and provide an explanation for the grounds.

ARGUMENTS ADVANCED BY THE RESPONDENT

- 1) Primarily, the flexibility of the President to remove any Governor is unobstructed and absolute under Article 156(1) of the Indian constitution, 1949. Therefore, as there are no protocols positioned upon the Doctrine of Pleasure in The Constitution of India, 1949, any step to put a bar on it is forbidden.
- 2) Furthermore, the respondent supported his argument by submitting that under Article 74(2) of The Constitution of India, 1949, which bars any court to encroach on any advice provided through the Union of Ministers to the President.
- 3) He likewise argued that the Governors that have been removed at the order dated 2nd July 2004, through the President did now no longer have trouble, with the identical making it not possible for any member of the overall public to bring about a Public Interest Litigation (PIL) so one can revive the stated Governors in their duties.
- 4) It became moreover reasoned that the 'Doctrine of Pleasure' is not needed to always be applied to any mistake made through the Governor however it can be summoned simply if the President feels that the Governor is incompetent for the office. Also, in a country

like India where people choose their representative, it will become vital to dispose of a Governor who is out of sync with the ideology and standards shared through the masses.

APPLICATION OF LAWS

1. *Article 155 of the Indian Constitution*- The Governor of a State shall be elected or appointed by the President by permit under his hand and seal.

2. *Article 156 (1) of the Indian Constitution*- The Governor shall clasp his office during the pleasure of the President.

3. *Article 156 (3) of the Indian Constitution*- A Governor under the light of Article 156(1) and Article 156(2), shall embrace office for a tenure of five years on or after the date on which he enters upon his office. Provided that a Governor shall, notwithstanding the expiration of his stretch, endure to hold office until his successor arrives upon his office.

4. *Article 74 (1) of the Indian Constitution*- there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his purposes, act following such advice.

5. *Doctrine of Pleasure*- The roots of the doctrine of pleasure can be traced back to English law. In England, the application of this doctrine was absolute in nature as an authority's services could be concluded at any time by the Crown, without conveying any justification. But in the Indian scenario, this doctrine is restrictive in its application.

6. *Doctrine of Checks and Balance*- French philosopher Montesquieu proposed the idea of separation of power which forms the base of the doctrine of checks and balances. This is a doctrine that states that one branch of the government can keep a check on the other branch of the government to create a balance in the system so that no authority performs its functions in a draconian and arbitrary manner.

A BRIEF EXPLANATION OF JUDGMENT

A governor has a twin position, the chief being that of a constitutional head of a state bound with the aid of using the advice of his council minister. The governor constitutes an indispensable part of the legislature of a state. He is vested with the legislative power to promulgate ordinances whilst the council of the legislature is not in function. The executive power of the state is vested in him, and each executive deed of the authorities is taken in his designation.

The additional situation of the governor is to function as a critical link between the union administration and the state authorities. It was said while explaining his position that “he isn't an employee of the union authorities, nor the manager of the party in power nor required to act below the commands of political parties.” There can be events whilst he can also additionally need to be an independent or impartial umpire in which the perspectives of the Union authorities and the state authorities are in a fight. His peculiar role arises from the reality that the Indian charter is quasi-federal in nature.

At par with Article 151(1) of the Indian Constitution, the Governor holds the position at some point to the pleasure of the President. Therefore, the President can remove the Governor from his position at any time without assigning any cause and without giving any chance to demonstrate the reason. Article 156(3) is not given to place an obstruction upon the power to cast off the Governor at any time below article 156(1). Article 156(3) only shows the tenure that is subject to the President's pleasure. If the President does not cast off him from his position and if the governor does not resign, the period of the governor will end at the expiry of five years from the date on which he arrives at the office. Article 156(1) is not exposed to an express limit or obstacle below Article 156(3). In contrast, the doctrine of pleasure is simple and for the sure difficult to restrict under Articles 310 and 311 of the Constitution. The supremely important constraint is mentioned in Article 311(2). Nevertheless, no reason needs to be allocated for discontinuation of the pleasure ensuing in exclusion, the power under Article 156(1) cannot be exercised in a random, capricious, or unreasonable manner.

The power under Article 156 (1) needs to be exercised rarely and exceptionally for legitimate and compelling motives. While an order below Article 156 is justiciable, no reason needs to be assigned and no cause needs to be proven and no notice needs to be issued to the governor

earlier than removing him. The power below article 156(1) to remove the governor at the pleasure of the President is exercisable at any time, without assigning or disclosing any motive. But a motive must exist. There is a difference between the want for a motive for the removal, and the need to reveal the motive for removal.

CONCLUSION

The court with this landmark judgment clarified the fact that the Governor is a constitutional head of the State which is a significant one and is not liable to work towards the ideology of a particular political party and he shall work independently.

The president under Article 156 (1) is not required to give any excuse or justification. The governor is supposed to run and hold the office instead of the pleasure of the president and not the ruling party. Though This judgment explained that though the president can remove the governor at any point, this power cannot be unreasonable and arbitrary. The removal can be done only in rare and exceptional circumstances in a justified manner and not in a capricious manner.

The court upheld the constitutional position of the governor and said even if the cabinet does not have any faith in the governor still it cannot be a sole reason for his removal. Thus, it proves the point of fact that the governor's post is a non-political post, and he is expected to complete his constitutional duties without any pressure.

CRITICAL ANALYSIS

The critical analysis of this judgment made the researcher realize that the judgment was overall a good decision where the judges looked at both sides of the coin. However, after the critical analysis, the author found certain flaws in the judgment which it would like to discuss.

The judgment although taking cognizance of various aspects but remained salient, or we can say '*sub silentio*' on various aspects which can be considered as loopholes and these gaps led to several open-ended aspects which were left for the future to interpret in diverse ways.

On one hand, we see that the President is not required to share with the governor the reason for his removal, on the other hand, the judgment makes it clear that such a *decision cannot be arbitrary or unreasonable*, this is quite vague. When we critically analyze this statement then we conclude that here the president might under significant circumstances provide any ground for the removal which might not be correct and get away with the situation.

Here we also see that this is to a major extent violation of the Principles of Natural Justice. The *Right to be Heard* is not only one of the principles of natural justice but also a cardinal principle of the fair trial which seems to be getting violated here. Also, the court widened the scope of justified reason and brought the *principle of checks and balances*. The court also held that these reasons cannot be solely based on corruption or misbehavior but should be dependent on the facts and circumstances of the case.

The president has the power to not provide any reason to the governor for his removal may entice the governor to be always under the fear of the president. This might also *lead to corruption* where the governor instead of doing his work fearlessly is busy satisfying the president. Here we see that the judgment lags to clear this gap and only restrict the government in the party though there are more places which the judgment should have put light to.

Another gap that the judgment made was that it remained salient on the Burden of Proof. It will be with the suffering party. According to my critical analysis, the Burden of Proof should lie with the president, and he should be the one to reflect that he had valid and justified reason to remove the governor from the office under the Doctrine of Pleasure. It should be the President to prove that his decision was not based on any biases towards a political party, caste, etc. In such a case, another flaw is that the governor does not know the reason for his removal and now is he is expected to show that the president acted in a malafide manner, and his decision was based on some whimsical reason.

The judicial review power of the court gets reduced which is given under Article 13, Part 3 of the Indian Constitution. Here we see that since the president is not required to present the reason for his decision the power of Judicial Review gets narrowed to a great extent.

Thus, we understand that these loopholes allow the government to intervene whose restrictions were the prime moto of the judgment. Here we see that since the president works on the advice

of the governor, we conclude that this gives enough place to put the governor in a compromising situation where the governor can be inspected any time with the change in government. Hence through this judgment was taken in lines to restrict the government it implicitly allowed the government.

