

ITEM NO.3+7

COURT NO.1

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 (Civil) No.1264/2023

THE STATE OF KERALA & ANR.

Petitioner(s)

VERSUS

HONBLE GOVERNOR FOR STATE OF KERALA & ORS.

Respondent(s)

WITH S.L.P.(C) Diary No.46812/2023

(With I.R. and IA No.236015/2023 - CONDONATION OF DELAY IN FILING SLP, IA No.236014/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No.236023/2023 - INTERVENTION/IMPLEADMENT, IA No.236018/2023 - PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS, IA No.237488/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ ANNEXURES and IA No.236017/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 29-11-2023 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s)

Mr. K.K. Venugopal, Sr. Adv.
Mr. Gopalakrishna Kurup, Adv. Gen., Kerala
Mr. C.K. Sasi, AOR
Mr. Manu V., Adv.
Mr. Sidhant Kohli, Adv.
Ms. Meena K Poullose, Adv.

For Respondent(s)

Mr. R. Venkataramni, AG
Mr. Tushar Mehta, SG
Mr. Kanu Agarwal, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Padmesh Mishra, Adv.
Mr. Abhishek Kumar Pandey, Adv.
Mr. Raman Yadav, Adv.
Mr. Kartikey Aggarwal, Adv.
Ms. Sonali Jain, Adv.
Mr. Chitvan Singhal, Adv.
Mr. Arvind Kumar Sharma, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The State of Kerala and a Member of the Legislative Assembly have invoked the jurisdiction of this Court under Article 32 of the Constitution seeking the following reliefs:

- “(a) Declare that the Governor is bound to dispose of every bill presented to him within a reasonable time, which considering the democratic process and the needs of the people to have welfare measures and other laws affecting public interest, means to be disposed of “forthwith” or without any delay whatsoever;
- (b) Declare that the above being the Constitutional position, in this case the Governor has failed in the exercise of his constitutional powers and duties; and
- (c) Pass a writ in the nature of mandamus or any other appropriate writ, direction or order directing the Governor to dispose of the pending bills without any further delay whatsoever.”

- 2 This Court issued notice in the proceedings on 20 November 2023. While doing so, this Court recorded the following three submissions which were urged on behalf of the petitioners:

- “(i) The Governor is a part of the legislature under Article 168 of the Constitution;
- (ii) The Governor had promulgated three Ordinances which were later converted into Bills, which were passed by the Legislative Assembly; and
- (iii) As many as eight Bills are pending assent of the Governor for periods ranging between seven months and twenty three months.”

- 3 On the return of notice, the second and third respondents, namely, the

Additional Chief Secretary to Governor and the Union of India have been represented by Mr R Venkataramani, Attorney General for India.

- 4 During the course of the hearing, the Attorney General has placed on the record a communication dated 28 November 2023 of the second respondent indicating the status of the eight Bills which form the subject matter of the petition in the following terms:

“Out of eight Bills, the Hon’ble Governor has ordered on 28.11.2023 to reserve the below mentioned seven Bills for the consideration of the Hon’ble President of India under Article 200 of the Constitution of India:

1. University Laws Amendment Bill, 2021
(State Government File No.13633/Leg.G2/2020/Law)
2. University Laws Amendment Bill, 2021 (Bill No.2)
(State Government File No.3776/Leg.G2/2021/Law)
3. Kerala Co-operative Societies Amendment Bill, 2022
(State Government File No.Leg 112/16/2022/Law)
4. University Law Amendment Bill, 2022
(State Government File No.30/Leg.G2/2022/Law)
5. Kerala Lok Ayukta Amendment Bill, 2022
(State Government File No.Leg.E2/1482/2022/Law)
6. Kerala University Laws (Amendment) (No.2) Bill, 2022
(State Government File No.46/Leg.G2/2022/Law)
7. Kerala University Laws (Amendment) (No.3) Bill, 2022
(State Government File No.46/Leg.G2/2022/Law)

The Hon’ble Governor has assented to the remaining one below mentioned Bill on 28.11.2023:

1. Kerala Public Health Bill, 2021
(State Government File No.354/Leg.H1/2021/Law)”

- 5 The above statement indicates that out of the eight Bills which were

submitted to the Governor for assent, seven have been reserved for the consideration of the President on 28 November 2023, while one has been assented to by the Governor.

6 Mr K K Venugopal, senior counsel appearing on behalf of the petitioners submits that:

- (i) Eight Bills were sent for consideration of the Governor after being passed by the Legislative Assembly of the State of Kerala between 2021 and 2022;
- (ii) Of the seven Bills which have been reserved for consideration of the President, three, namely, the Bills set out at serial Nos 1, 2 and 5 of the first statement extracted above, were initially introduced in the form of Ordinances to which the Governor had granted his assent;
- (iii) The proviso to Article 213(1) of the Constitution stipulates that the Governor shall not promulgate any Ordinance without instructions from the President, if the Ordinance fulfills the description set out at clauses (a), (b) and (c) of the proviso;
- (iv) The Governor himself having assented to the Ordinances before they were introduced in the Legislative Assembly as Bills, this is a clear indicator that the Governor did not find anything unconstitutional in terms of the legislative competence of the State legislature to enact the Bills;
- (v) Apart from the eight Bills which have been submitted to the Governor, there are seven other Bills which were passed by the Legislative Assembly in August and September 2023 while one Bill required the approval of the Governor for being introduced in the Legislative Assembly since it is a Money Bill; and

(vi) Guidelines should be formulated by this Court on the power of the Governor under Article 200 including (a) when a Bill can be reserved for the consideration of the President; (b) when the Governor is authorized to return the Bill to the Legislative Assembly with a message; and (c) under what circumstances the Governor may grant his assent to the Bills so presented.

7 It has been urged on behalf of the petitioners that it has become necessary for the Court to lay down guidelines, particularly having regard to the manner in which recent events indicate such powers are being exercised.

8 Mr R Venkataramani, Attorney General for India, on the other hand, submits that the frame of the petition is confined to a direction for the disposal of the Bills by the Governor. Hence, the Governor having done so, the broader issues which have been raised by the petitioners would not arise for consideration in these proceedings.

9 In a recent judgment in ***State of Punjab vs Union of India***¹, this Court has had occasion to deliberate upon the nature of the power which is vested in the Governor under Article 200 of the Constitution. The State of Kerala and the co-petitioner seek:

- (i) A declaration that the Governor is bound to dispose of every Bill presented within a reasonable time;
- (ii) A declaration that the Governor has failed in the exercise of constitutional powers and duties; and
- (iii) A mandamus directing the Governor to dispose of the pending Bills without any further delay.

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- 10 The eight Bills, which formed the subject matter of the grievance before this Court when notice was issued, were presented to the Governor for assent between 2021 and 2022. No reason or justification has been adduced before this Court as to why the Governor kept the Bills pending for an inordinately long period of time before exercising the power under Article 200.
- 11 We have observed in the decision in the ***State of Punjab*** (*supra*), that the power of the Governor cannot be utilized to thwart the normal process of law making by the legislatures. It is only after the Court had issued notice in the proceeding under Article 32 of the Constitution that the Governor has acted by reserving seven Bills for the consideration of the President and granting assent to one of the Bills.
- 12 The state of matter as it stands at present is that the Governor has, *albeit* after the institution of the proceedings under Article 32 of the Constitution, exercised his constitutional power by granting assent to one of the Bills and by reserving the seven other Bills for the consideration of the President. The reliefs which have been sought in the petition under Article 32 of the Constitution, therefore stand addressed with the Governor having exercised his constitutional powers.
- 13 As regards the Bills which are pending before the Governor, it is common ground that the Bills have been passed by the Legislative Assembly recently in the months of August and September 2023. As regards the Money Bill which has been placed before the Governor for assent, Mr R Venkataramani, Attorney General for India assures the Court that the Governor would take necessary action in terms of the constitutional position.
- 14 At this stage, Mr K K Venugopal, senior counsel seeks an adjournment in order to move an amendment to the petition under Article 32. We adjourn the proceedings.

15 List the Petition in the second week of January 2024.

SLP (C) Diary No 46812 of 2023

1 Tag with Writ Petition (Civil) No 1264 of 2023.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar