B.P. SINGHAL

v.

UNION OF INDIA AND ANR.

(Writ Petition (C) No. 296 of 2004)

MAY 7, 2010

[K.G.BALAKRISHNAN, CJI, S.H. KAPADIA, R.V. RAVEENDRAN, B. SUDERSHAN REDDY AND P. SATHASIVAM, JJ.]

Constitution of India, 1950:

Article 156 – Removal of Governor on withdrawal of President's pleasure – Judicial review – Scope – Limitations upon power of removal of Governors under Article 156(1) – Held: The President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause – However, power under Article 156(1) to be exercised in rare and exceptional circumstances for valid and compelling reasons – What would be compelling reasons would depend upon the facts and circumstances of each case – A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre – Change in government at Centre is not a ground for removal of Governors holding office – As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review – If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, malafide, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure – If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the court will interfere –

A *However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.*

Articles 154 and 155 – Position of Governor under the Constitution – Discussed.

B

Article 32 – Writ petition by way of PIL, to secure relief for Governors who had been removed from office – Maintainability of the writ petition – Locus of the Petitioner – Public Interest Litigation.

C

Doctrines – Doctrine of "pleasure" – Origin, scope and applicability of – Discussed – Constitution of India,1950 – Article 310 r/w Article 311.

The Governors of the States of Uttar Pradesh, D **Gujarat, Haryana and Goa on 2-7-2004 were removed by the President of India on the advice of the Union Council of Ministers.**

In the wake of removal of the Governors, writ petition E **was filed before this Court, raising a question of public importance involving the interpretation of Article 156 of the Constitution.**

The petitioner submitted that to ensure the independence and effective functioning of Governors, F **certain safeguards have to be read as limitations upon the power of removal of Governors under Article 156(1) [which provides that a Governor shall hold office during the pleasure of the President]; that there should be some certainty of tenure so that the Governor can discharge** G **the duties and functions of his constitutional office effectively and independently; that certainty of tenure will be achieved by fixing the norms for removal, while recognizing an unfettered discretion will subject a Governor to a constant threat of removal and make him** H **subservient to the Union Government, apart from**

demoralizing him, and therefore, the removal should conform to the constitutional norms viz. i) removal of the Governor to be in rare and exceptional circumstances, for compelling reasons which make him unfit to continue in office; ii) the Governor to be apprised of the reasons for removal; and iii) the order of removal to be subject to judicial review. A B

The Attorney General appearing on behalf of the respondents raised a preliminary objection to the maintainability of the writ petition. He submitted that if the four Governors who were removed, do not wish to seek any relief and have accepted their removal without protest, no member of the public can bring a public interest litigation for grant of relief to them. C

On merits, the Attorney General submitted that the removal should be for a reason, but such reason need not be communicated and also that removal by applying the doctrine of pleasure need not necessarily relate to any act or omission or fault on the part of the Governor. He submitted that in essence, the object of providing that the Governor shall hold office during the pleasure of the President was that if the President lost faith in the Governor or found him unfit for whatever reason, he can withdraw the presidential pleasure resulting in removal; that the pleasure doctrine cannot be denuded of its width, by restricting its applications to specific instances of fault or misbehaviour on the part of the Governor, or by implying an obligation to assign or communicate any reason for the removal. The Attorney General submitted that in a democracy, political parties are formed on shared beliefs and they contest election with a declared agenda; and if a party which comes to power with a particular social and economic agenda, finds that a Governor is out of sync with its policies, then it should be able to remove such a Governor. The Attorney General submitted that the Union Government has the D E F G H

A right to remove a Governor without attributing any fault to him, if the President loses confidence in a Governor or finds that the Governor is out of sync with democratic and electoral mandate.

B The questions which thus arose for consideration were i) whether the writ petition was maintainable; ii) what is the scope of "doctrine of pleasure" ; iii) what is the position of a Governor under the Constitution; iv) whether there are any express or implied limitations/restrictions upon the power under Article 156(1) of the Constitution C and v) whether the removal of Governors in exercise of the doctrine of pleasure is open to judicial review.

Disposing of the writ petition and the transfer petition, the Court

D HELD: i) Maintainability of the writ petition

1. The petitioner has no locus to maintain the petition in regard to the prayers claiming relief for the benefit of the individual Governors. At all events, such prayers no E 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. F [Para 11] [617-D]

Ranji Thomas v. Union of India - 2000 (2) SCC 81, relied on.

S.P. Gupta vs. Union of India – 1981 (Supp) SCC 87, G referred to.

(ii) Scope of doctrine of pleasure

2.1. The Pleasure Doctrine has its origin in English law, with reference to the tenure of public servants under H the Crown. [Para 12] [617-F]

2.2. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good. [Para 13] [620-D-F]

2.3. The 'Doctrine of Pleasure' in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. Article 310 read with Article 311 provide an example of the application of 'at pleasure' doctrine subject to restrictions. Clause (1) of Article 310 relates to tenure of office of persons serving the Union or a State, being subject to doctrine of pleasure. However, clause (2) of Article 310 and Article 311 restricts the operation of the 'at pleasure' doctrine contained in Article 310(1). [Paras 15 and 19] [621-G; 623-D]

2.4. The Constitution of India 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

A clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices viz. (i) Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and B 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 All-India service, holders of posts connected with defence or any civil post under the Union, Member of a C 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 D possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category. [Para 21] [625-D-H; 626-A]

2.5. The doctrine of pleasure as originally envisaged E in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where rule of law prevails, there is F nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be G held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the H pleasure of any Authority, and if no limitations or

restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause. 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. However, the withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons. [Para 22] [626-B-G]

State of Bihar v. Abdul Majid, **1954 SCR 786;** *P.L. Dhingra v. Union of India* **- AIR 1958 SC 36 and** *Moti Ram v. N.E. Frontier Railway* **AIR 1964 SC 600, relied on.**

Union of India v. Tulsiram Patel **(1985) 3 SCC 398, referred to.**

Dunn v. Queen **- 1896 (1) QB 116;** *Shenton v. Smith,* **1895 AC 229 and** *Well v. Newfound land* **[1999 (177) DL (4th) 73(SCC)], referred to.**

'Constitutional law of India' **(4th Ed., Vol. 3, pp.2989-90) by H.M. Seervai;** *Black's Dictionary* **and** *Administrative Law* **by HWR Wade & CF Forsyth (9th Ed.; pp.354-355), referred to.**

(iii) Position of a Governor under the Constitution

3.1. The Governor constitutes an integral part of the legislature of a State. He is vested with the legislative power to promulgate ordinances while the Houses of the

A legislature are not in session. The executive power of the State is vested in him and every executive action of the Government is taken in his name. He exercises the sovereign power to grant pardons, reprieves, respites or remissions of punishment. He is vested with the power B to summon each House of the Legislature or to prorogue either House or to dissolve the legislative assembly. No Bill passed by the Houses of the Legislature can become law unless it is assented to by him. He has to make a report where he finds that a situation has arisen in which C the Government of the State cannot be carried on in accordance with the Constitution. He thus occupies a high constitutional office with important constitutional functions and duties. [Para 23] [626-H; 627-A-C]

3.2. It is evident that a Governor has a dual role. The D first is that of a constitutional Head of the State, bound by the advice of his Council of Ministers. The second is to function as a vital link between the Union Government and the State Government. In certain special/emergent situations, he may also act as a special representative of E the Union Government. He is required to discharge the functions related to his different roles harmoniously, assessing the scope and ambit of each role properly. He is not an employee of the Union Government, nor the agent of the party in power nor required to act under the F dictates of political parties. There may be occasions when he may have to be an impartial or neutral Umpire where the views of the Union Government and State Governments are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasi-federal G in character. [Para 25] [630-F-H; 631-A]

3.3. In the early days of Indian democracy, the same political party was in power both at the Centre and the States. The position has changed with passage of time. Now different political parties, some national and some H regional, are in power in the States. Further one single

party may not be in power either in the Centre or in the State. Different parties with distinct ideologies may constitute a front, to form a Government. On account of emergence of coalition politics, many regional parties have started sharing power in the Centre. Many a time there may not even be a common programme, manifesto or agenda among the parties sharing power. As a result, the agenda or ideology of a political party in power in the State may not be in sync with the agenda or ideology of the political parties in the ruling coalition at the Centre, or may not be in sync with the agenda or ideology of some of the political parties in the ruling coalition at the Centre, but may be in sync with some other political parties forming part of the ruling coalition at the Centre. Further the compulsions of coalition politics may require the parties sharing power, to frequently change their policies and agendas. In such a scenario of myriad policies, ideologies, agendas in the shifting sands of political coalitions, there is no question of the Union Government having Governors who are in sync with its mandate and policies. 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. 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). Reputed elder statesmen, able administrators and eminent personalities, with maturity and experience are expected to be appointed as Governors. While some of them may come from a political background, once they are appointed as Governors, they owe their allegiance and loyalty to the Constitution and not to any political party and are required to preserve, protect and defend the

A B C D E F G H

A **Constitution (reference may be made to the terms of oath or affirmation by the Governor, under Article 159 of the Constitution). Like the President, Governors are expected to be apolitical, discharging purely constitutional functions, irrespective of their earlier political**
B **background. Governors cannot be politically active. This Court therefore rejects 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. As the**
C **Governor is neither the employee nor the agent of the Union Government, this Court also rejects the contention that a Governor can be removed if the Union Government or party in power loses 'confidence' in him. [Para 26] [631-E-H; 632-A-G]**

D *State of Rajasthan vs. Union of India,* **1977 (3) SCC 592;** *State of Karnataka v. Union of India,* **1977 (4) SCC 608 and** *Hargovind Pant v. Raghukul Tilak* (Dr.), **1979 (3) SCC 458, followed.**

E *Rameshwar Prasad (VI) vs. Union of India,* **2006 (2) SCC 1, relied on.**

'Constitutional Law of India' **[4th Ed., Vol.II, at p.2065] by H. M. Seervai and** *Constituent Assembly Debates,* **(Volume III pages 455 and 469) – referred to.**

F

(iv) Limitations/restrictions upon the power under Article 156(1) of the Constitution

4.1. A plain reading of Article 156 shows that when a Governor is appointed, he holds the office during the
G **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**
H **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) of Article 156 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. In contrast, in case of Articles 310 and 311 the doctrine of pleasure is clearly and indisputably subjected to restriction. Clause (1) of Article 310 provides that a person serving the Union Government holds office during the pleasure of the President and a person serving a state government holds office during the pleasure of the Governor. The 'doctrine of pleasure' is subjected to a restriction in Article 310(2) and the restrictions in Article 311(1) and (2). The most significant restriction is contained in clause (2) of Article 311 which provides that no such employee shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges levelled against him and given a reasonable opportunity of being heard in respect of those charges. Clause (1) of Article 310 begins with the words "Except as expressly provided by the Constitution". Therefore, Article 310 itself makes it clear that though a person serves the Union or a State during the pleasure of the President/Governor, the power of removal at pleasure is subject to the other express provisions of the Constitution; and Article 311 contains such express provision which places limitations upon the power of removal at pleasure. By contrast, clause (1) of Article 156 is not 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. [Para 30] [634-E-H; 635-A-E]

A B C D E F G H

A 4.2. The petitioner relied upon the Report of the Sarkaria Commission on Centre-State Relations and the Report of the National Commission to Review the working of the Constitution in support of his contention that removal of a Governor should be by an order disclosing
B reasons, that the Governor should be given an opportunity to explain his position and that the removal should be only for compelling reasons, thereby stressing the need to provide security of tenure for the Governors. In this regard the Petitioner also placed reliance upon the
C Consultation Paper on "Institution of Governor under the Constitution" published by the National Commission to Review the Working of the Constitution. The recommendations made in the said Reports/Consultation Paper, howsoever logical, or deserving consideration and
D acceptance, remain recommendations. They cannot override the express provisions of the Constitution as they stand. Nor can they assist in interpreting Article 156. The very fact that such recommendations are made, shows that the position under the existing Constitutional provisions is otherwise. They are suggestions to be
E considered by those who can amend the Constitution. They do not assist in interpreting the existing provisions of the Constitution. [Para 31, 33 and 34] [635-F-G; 639-A; 640-F-H]

F 4.3. The Constituent Assembly Debates show that several alternatives were considered and ultimately Article 156 in its present form was adopted. The debates disclose that (i) the intention of the founding fathers was to adopt the route of Doctrine of Pleasure, instead of
G impeachment or enquiry, with regard to removal of Governors; and that (ii) it was assumed that withdrawal of pleasure resulting in removal of the Governor will be on valid grounds but there was no need to enumerate them in the Article. [Para 37] [645-D-G]

H

4.4. The provision for removal at the pleasure of an authority without any restriction applies to Ministers as also the Attorney General apart from Governors. Persons of calibre, experience, and distinction are chosen to fill these posts. Such persons are chosen not to enable them to earn their livelihood but to serve the society. It is wrong to assume that such persons having been chosen on account of their stature, maturity and experience will be demoralized or be in constant fear of removal, unless there is security of tenure. They know when they accept these offices that they will be holding the office during the pleasure of the President. [Para 39] [646-E-G]

4.5. There is a consensus between the petitioner and the respondent to the extent that a Governor can be removed only for a valid reason, and that physical and mental incapacity, corruption and behaviour unbecoming of a Governor are valid grounds for removal. There is however disagreement as to what else can be grounds for removal. This Court is of the view that there can be other grounds also. It is not possible to put the reasons under any specific heads. The only limitation on the exercise of the power is that it should be for valid reasons. What constitute valid reasons would depend upon the facts and circumstances of each case. [Para 40] [647-D, E]

4.6. A Governor cannot be removed on the ground that he is not sync or refuses to act as an agent of the party in power at the Centre. 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. [Para 41] [647-F-H; 648-A]

Gompers vs. United States, **233 US 603, referred to.**

Constitutional Law of India **(4th Ed.,Vol.2, page 2066) by H.M. Seervai;** *Report of the Sarkaria Commission on Centre-State Relations; Report of the National Commission to Review the working of the Constitution; Consultation Paper on "Institution of Governor under the Constitution", by the National Commission to Review the Working of the Constitution* and *Constituent Assembly Debates*, **referred to.**

(v) Judicial review of withdrawal of President's pleasure

5.1. When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any conditions or restrictions, it follows that the power is exercisable at any time, without assigning any cause. 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 one does 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 *malafide*. 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 the contention that an order under Article 156 is not justiciable cannot be accepted, 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 is acceptable. [Para 42] [648-C-E]

5.2. Exercise of power under Article 156(1) is an executive power exercised on the advice tendered by the Council of Ministers. Though clause (2) of Article 74 provides that the question whether any, and if so what, advice was tendered, shall not be enquired into by any court; the bar contained in Article 74(2) will not come in the way of the court inquiring whether there was any material on the basis of which such advice was given, whether such material was relevant for such advice and whether the material was such that a reasonable man could have come to the conclusion which was under challenge. Therefore, though the sufficiency of the material could not be questioned, legitimacy of the inference drawn from such material was open to judicial review. [Para 47] [653-E-H; 654-A-B]

5.3. The extent and depth of judicial review will depend upon and vary with reference to the matter under review. In law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. *Malafides* may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss of confidence may be a relevant

A ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync
B with that the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney-General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of
C a Governor whereas virtually nil in the case of a Minister or an Attorney General. [Para 48] [654-C-G]

5.4. Even though under Article 156(1), the removal is at the pleasure of the President, the exercise of such pleasure is restricted by the requirement that it should be
D on the advice of the Council of Ministers. What Article 156(1) dispenses with is the need to assign reasons or the need to give notice but the need to act fairly and reasonably cannot be dispensed with by Article 156(1). The President in exercising power under Article 156(1)
E should act in a manner which is not arbitrary, capricious or unreasonable. In the event of challenge of withdrawal of the pleasure, the court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a *prima facie*
F instance of arbitrariness or *malafides*, in his removal, the court will refuse to interfere. However, where a *prima facie* case of arbitrariness or *malafides* is made out, the Court can require the Union Government to produce records/ materials to satisfy itself that the withdrawal of pleasure
G was for good and compelling reasons. What will constitute good and compelling reasons would depend upon the facts of the case. The position, therefore, is that the decision is open to judicial review but in a very limited extent. [Para 49] [654-H; 655-A-E]

H

S.R. Bommai v. Union of India **[1994 (3) SCC 1], relied on.**

State of Rajasthan v. Union of India **1977 (3) SCC 592;** *Kihota Hollohon v. Zachilhu* **1992 [Supp. (2) SCC 651];** *R.C. Poudyal v. Union of India* **[1994 Supp (1) SCC 324];** *Maru Ram v. Union of India* **[1981 (1) SCC 107];** *Kehar Singh v. Union of India* **[1989 (1) SCC 204] etc.] and** *Epuru Sudhakar v. Government of Andhra Pradesh* **[2006 (8) SCC 161], referred to.**

Council of Civil Service Unions v. Minister for the Civil Service **- 1985 AC 374;** *R (Bancoult) vs. Foreign Secretary* **– 2009 (1) AC 453);** *Baker v. Carr*, **369 US 186;** *Powell v. McCormack*, **395 US 486 and** *Ex parte Daly*, **2001 (3) All ER 433 – referred to.**

De Smith's Judicial Review **(6th Ed. 2007 Page 15), referred to.**

vi) <u>Conclusions</u>

6.1. Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause. [Para 50] [655-F]

6.2. Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and

A circumstances of each case. [Para 50] [655-H; 656-A]

6.3. A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union B Government has lost confidence in him. It follows therefore that change in government at Centre is not a ground for removal of Governors holding office to make way for others favoured by the new government. [Para 50] [656-B, C]

C

6.4. As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to D demonstrate *prima facie* that his removal was either arbitrary, malafide, capricious or whimsical, the court will call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union E Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons F are insufficient. [Para 50] [656-D-F]

Case Law Reference:

1981 (Supp) SCC 87	referred to	Para 10
2000 (2) SCC 81	relied on	Para 10
1896 (1) QB 116	referred to	Para 12
1895 AC 229	referred to	Para 12.1
(1985) 3 SCC 398	referred to	Para 12.2

G

H

1954 SCR 786	**relied on**	**Para 12.3**	A
1999 (177) DL (4th) 73(SCC)	**referred to**	**Para 15**	
AIR 1958 SC 36	**relied on**	**Para 19**	
AIR 1964 SC 600	**relied on**	**Para 19**	B
1977 (3) SCC 592	**followed**	**Para 24**	
1977 (4) SCC 608	**followed**	**Para 24**	
1979 (3) SCC 458	**followed**	**Para 24**	
2006 (2) SCC 1	**relied on**	**Para 24**	C
233 US 603	**referred to**	**Para 28**	
1985 AC 374	**referred to**	**Para 43**	
2009 (1) AC 453	**referred to**	**Para 43**	D
1977 (3) SCC 592	**referred to**	**Para 44**	
1992 [Supp. (2) SCC 651	**referred to**	**Para 44**	
1994 Supp (1) SCC 324	**referred to**	**Para 45**	E
369 US 186	**referred to**	**Para 45**	
395 US 486	**referred to**	**Para 45**	
1981 (1) SCC 107	**referred to**	**Para 46**	F
1989 (1) SCC 204	**referred to**	**Para 46**	
2006 (8) SCC 161	**referred to**	**Para 46**	
1994 (3) SCC 1	**relied on**	**Para 47**	
2001 (3) All ER 433	**referred to**	**Para 48**	G

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 296 of 2004.

Under Article 32 of the Constitution of India. H

A WITH

T.P. (C) No. 663 of 2004

G.E. Vahanvati, AG, Indira Jaisingh, ASG, Soli J. Sorabjee, K.V. Viswanathan, H.P. Sharma, Vivek Bhati, B Ranjeet V. Sangle (for K.S. Rana), Devdatt Kamat, Chinmoy Pradip Sharma. T.A. Khan, Rohit Sharma, Mihir Chatterji, Nishant Patil (for Sushma Suri, Anil Katiyar, P. Parmeswaran), B. Raghunath, Abhishek K. (for K.V. Venkataraman) for the appearing parties

C

The Judgment of the Court was delivered by

R. V. RAVEENDRAN, J. 1. This writ petition under Article 32 of the Constitution of India, raising a question of public importance involving the interpretation of Article 156 of the D Constitution, has been referred to the Constitution Bench, by a two Judge Bench of this Court on 24.1.2005.

2. The writ petition is filed as a public interest litigation in the wake of the removal of the Governors of the States of Uttar E Pradesh, Gujarat, Haryana and Goa on 2.7.2004 by the President of India on the advice of the Union Council of Ministers. The petitioner sought : (a) a direction to the Union of India to produce the entire files, documents and facts which formed the basis of the order dated 2.7.2004 of the President F of India; (b) a writ of certiorari, quashing the removal of the four Governors; and (c) a writ of mandamus to respondents to allow the said four Governors to complete their remaining term of five years.

G **The relevant constitutional provisions**

3. Article 153 of the Constitution provides that there shall be a Governor for each State. Article 154 vests the executive power of the state in the Governor. Article 155 provides that the Governor of a State shall be appointed by the President,

H

by warrant under his hand and seal. Article 156 relates to term of office of Governor and is extracted below:

> *"156. Term of office of Governor.—(1) The Governor shall hold office during the pleasure of the President.*
>
> (2) The Governor may, by writing under his hand addressed to the President, resign his office.
>
> *(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:*
>
> Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office."
>
> (emphasis supplied)

Submissions of Petitioner

4. The petitioner submits that a Governor, as the Head of the State, holds a high constitutional office which carries with it important constitutional functions and duties; that the fact that the Governor is appointed by the President and that he holds office during the pleasure of the President does not make the Governor an employee or a servant or agent of the Union Government; and that his independent constitutional office is not subordinate or subservient to the Union Government and he is not accountable to them for the manner in which he carries out his functions and duties as Governor. It is contended that a Governor should ordinarily be permitted to continue in office for the full term of five years; and though he holds office during the pleasure of the President, he could be removed before the expiry of the term of five years, only in rare and exceptional circumstances, by observing the following constitutional norms and requirements :

(a) The withdrawal of presidential pleasure under Article

156, cannot be an unfettered discretion, nor can it be arbitrary, capricious, unreasonable or malafide. The power of removal should be used only if there is material to demonstrate misbehaviour, impropriety or incapacity. In other words, that removal should be only on existence of grounds which are similar to those prescribed for impeachment in the case of other constitutional functionaries.

(b) Before a Governor is removed in exercise of power under clause (1) of Article 156, principles of natural justice will have to be followed. He should be issued a show cause notice setting out the reasons for the proposed removal and be given an opportunity of being heard in respect of those reasons.

(c) The removal should be by a speaking order so as to apprise him and the public, of the reasons for considering him unfit to be continued as a Governor.

It is also contended that the withdrawal of presidential pleasure resulting in removal of a Governor is justiciable, by way of judicial review.

5. During the hearing, the petitioner slightly shifted his stand. Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the petitioner, submitted that to ensure the independence and effective functioning of Governors, certain safeguards will have to be read as limitations upon the power of removal of Governors under Article 156(1) having regard to the basic structure of the Constitution. He clarified that the petitioner's submission is not that a Governor has a fixed irremovable tenure of five years, but that there should be some certainty of tenure so that he can discharge the duties and functions of his constitutional office effectively and independently. Certainty of tenure will be achieved by fixing the norms for removal. On the other hand, recognizing an unfettered discretion will subject a Governor to a constant threat of removal

and make him subservient to the Union Government, apart from demoralizing him. Therefore, the removal should conform to the following constitutional norms :

Norm 1 – Removal of Governor to be in rare and exceptional circumstances, for compelling reasons which make him unfit to continue in office: The tenure of a Governor is five years under clause (3) of Article 156. But clause (3) is subject to clause (1) of Article 156 which provides that a Governor holds office during the pleasure of the President. This only means that he could be removed any time during the said period of five years, for compelling reasons which are germane to, and having a nexus with, the nature of his office and functions performed by him, as for example, (a) physical or mental disability; (b) corruption; (c) violation of Constitution; and (d) misbehaviour or behaviour unbecoming of a Governor rendering him unfit to hold the office (that is indulging in active politics or regularly addressing political rallies, or having links with anti-national or subversive elements, etc.). The removal of a Governor under Article 156 cannot be with reference to the ideology or personal preferences of the Governor. Nor can such removal be with any ulterior motives, as for example, to make place for another person who is perceived to be more amenable to the central government's wishes and directions, or to make room for a politician who could not be accommodated or continued in the Council of Ministers.

Norm 2 – A Governor should be apprised of the reasons for removal : Though there is no need for a formal show cause notice or an enquiry, principles of fair play requires that when a high constitutional functionary like the Governor is sought to be removed, he should be apprised of the reasons therefor.

Norm 3 – The order of removal is subject to judicial review: In a democracy based on Rule of Law, no authority has any unfettered and unreviewable discretion. All powers vested in all public authorities, are intended to be used only for public

good. Therefore, any order of premature removal of a Governor will be open to judicial review.

Submissions of respondents

6. The respondents in their counter affidavit have contended that the power of the President to remove a Governor under Article 156(1) is absolute and unfettered. The term of five years provided in Article 156(3) is subject to the doctrine of pleasure contained in Article 156(1). The Constitution does not place any restrictions or limitations upon the doctrine of pleasure. Therefore, it is impermissible to read any kind of limitations into the power under Article 156(1). The power of removal is exercised by the President on the advice of the Council of Ministers. The advice tendered by the Council of Ministers cannot be inquired into by any court, having regard to the bar contained in Article 74(2). It was therefore urged that on both these grounds, the removal of Governor is not justiciable.

7. The learned Attorney General appearing on behalf of the respondents raised a preliminary objection to the maintainability of the writ petition. He submitted that if the four Governors who were removed, do not wish to seek any relief and have accepted their removal without protest, no member of the public can bring a public interest litigation for grant of relief to them. On merits, he submitted that the provision that the Governor shall hold office during the pleasure of the Government meant that the President's pleasure can be withdrawn at any time resulting in the removal of the Governor, without assigning any reason. He submitted that the founding fathers had specifically provided that Governors will hold office during the pleasure of the President, so as to provide to the Union Government, the flexibility of removal if it lost confidence in a Governor or if he was unfit to continue as Governor. He shifted from the stand in the counter that the power under Article 156(1) is an unfettered discretion. He submitted that a provision that the Governor shall hold office during the pleasure

of the President, is not a licence to act arbitrarily, whimsically or capriciously. The Union Government did not claim any right to do what it pleases, as Constitution abhors arbitrariness and unfettered discretion. He stated that the removal should be for a reason, but such reason need not be communicated. He also submitted that removal by applying the doctrine of pleasure need not necessarily relate to any act or omission or fault on the part of the Governor. He submitted that in essence, the object of providing that the Governor shall hold office during the pleasure of the President was that if the President lost faith in the Governor or found him unfit for whatever reason, he can withdraw the presidential pleasure resulting in removal. He submitted that the pleasure doctrine cannot be denuded of its width, by restricting its applications to specific instances of fault or misbehaviour on the part of the Governor, or by implying an obligation to assign or communicate any reason for the removal.

8. The learned Attorney General submitted that in a democracy, political parties are formed on shared beliefs and they contest election with a declared agenda. If a party which comes to power with a particular social and economic agenda, finds that a Governor is out of sync with its policies, then it should be able to remove such a Governor. The learned Attorney General was categorical in his submission that the Union Government will have the right to remove a Governor without attributing any fault to him, if the President loses confidence in a Governor or finds that the Governor is out of sync with democratic and electoral mandate.

Questions for consideration

9. The contentions raised give rise to the following questions:

(i) Whether the petition is maintainable?

(ii) What is the scope of "doctrine of pleasure"?

(iii) What is the position of a Governor under the

A Constitution?

(iv) Whether there are any express or implied limitations/restrictions upon the power under Article 156(1) of the Constitution of India?

B (v) Whether the removal of Governors in exercise of the doctrine of pleasure is open to judicial review?

We will consider each of these issues separately.

C **(i) Maintainability of the writ petition**

10. The respondents submitted that a writ petition by way of PIL, to secure relief for the Governors who have been removed from office, is not maintainable as none of the aggrieved persons had approached the court for relief and the D writ petitioner has no locus to maintain a petition seeking relief on their behalf. It is pointed out that Governors do not belong to a helpless section of society which by reason of poverty, ignorance, disability or other disadvantage, is not capable of seeking relief. Reliance is placed on the following observations E of this Court in *S.P. Gupta vs. Union of India* – 1981 (Supp) SCC 87 :

" .....cases may arise where there is undoubtedly public injury by the act or omission of the State or a public F authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person on specific class or group of persons who are G primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protect, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the H instance of such member of the public would be to foist a

relief on the person or specific class or group of persons primarily injured, which they do not want." A

The petitioner, by way of reply, merely pointed out another observation in *S.P. Gupta :*

"But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed..... B C D

If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power E F G H

A or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that B whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong C or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a D meddlesome interloper but who has sufficient interest in the proceeding."

11. A similar public interest litigation came up before a Constitution Bench of this Court in *Ranji Thomas v. Union of India* - 2000 (2) SCC 81, seeking intervention of this court to E restrain the President of India from "forcibly" extracting resignations from various Governors and Lt. Governors. Prayer (a) therein sought quashing of the resignations of certain Governors and Lt. Governors and prayer (b) sought a direction restraining the President from accepting the "involuntary and F forced" resignation of Governors and Lt. Governors. Prayer (c) was a general prayer for a declaration that communication of the President seeking the resignation of Governors and Lt. Governors was ultra vires the Constitution. Dealing with the contention that such a petition was not maintainable this Court G observed:

"The learned Attorney General appearing for the Union of India submits that this public interest litigation is not maintainable at the instance of the petitioner, since none of the Governors or Lt. Governors have approached this H

Court or protested against their being asked to resign and that the petitioner cannot challenge an act which the party affected does not wish to nor intend to challenge. He relies upon the observations made by this Court in the case of *S.P. Gupta v. Union of India* [1981 (Supp) SCC 87].

Insofar as prayers (a) and (b) in the writ petition are concerned, we find force in the submission of the learned Attorney General. But, insofar as prayer (c) of the writ petition is concerned, it raises an important public issue and involves the interpretation of Article 156 of the Constitution of India. As at present advised, we do not think that we can deny locus to the petitioner for raising that issue."

The petitioner has no locus to maintain the petition in regard to the prayers claiming relief for the benefit of the individual Governors. 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.

(ii) Scope of doctrine of pleasure

12. The Pleasure Doctrine has its origin in English law, with reference to the tenure of public servants under the Crown. In *Dunn v. Queen* - 1896 (1) QB 116, the Court of Appeal referred to the old common law rule that a public servant under the British Crown had no tenure but held his position at the absolute discretion of the Crown. It was observed:

"I take it that persons employed as the petitioner was in the service of the Crown, except in cases where there is some statutory provision for a higher tenure of office, are ordinarily engaged on the understanding that they hold their employment *at the pleasure of the Crown*. So I think that

A there must be imported into the contract for the employment of the petitioner, the term which is applicable to civil servants in general, namely, *that the Crown may put an end to the employment at its pleasure. It seems to me that it is the public interest which has led to the term which* B *I have mentioned being imported into contracts for employment in the service of the Crown.* The cases cited show that, such employment being for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, C except in certain exceptional cases where it has been deemed to be more for the public good that some restrictions should be imposed on the power of the Crown to dismiss its servants."

(emphasis supplied)

D

(12.1) In *Shenton v. Smith* [1895 AC 229], the Privy Council explained that the pleasure doctrine was a necessity because, the difficulty of dismissing those servants whose continuance in office was detrimental to the State would, if it E were necessary to prove some offence to the satisfaction of a jury (or court) be such, as to seriously impede the working of the public service.

(12.2) A Constitution Bench of this Court in *Union of India* F *v. Tulsiram Patel* - (1985) 3 SCC 398 explained the origin of the doctrine thus:

"In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or *durante* G *bene placito* ("during good pleasure" or "during the pleasure of the appointor") as opposed to an office held *dum bene se gesserit* ("during good conduct"), also called *quadiu se bene gesserit* ("as long as he shall behave himself well"). *When a person holds office during the* H *pleasure of the Crown, his appointment can be*

terminated at any time without assigning cause. The exercise of pleasure by the Crown can, however, be restricted by legislation enacted by Parliament because in the United Kingdom Parliament is sovereign. ....."

(emphasis supplied)

(12.3) In *State of Bihar v. Abdul Majid* – 1954 SCR 786, another Constitution Bench explained the doctrine of pleasure thus:

"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."

(12.4) H.M. Seervai, in his treatise 'Constitutional law of India' (4th Ed., Vol. 3, pp.2989-90) explains this English Crown's power to dismiss at pleasure in the following terms:

"In a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at pleasure....Where the general rule prevails, the Crown is not bound to show good cause for dismissal, and if a servant has a grievance that he has been dismissed unjustly, his remedy is not by a law suit but by an appeal of an official or political kind.....If any authority representing the Crown were to exclude the power of the

A Crown to dismiss at pleasure by express stipulation, that would be a violation of public policy and the stipulation cannot derogate from the power of the Crown to dismiss at pleasure, and this would apply to a stipulation that the service was to be terminated by a notice of a specified B period of time. Where, however, the law authorizes the making of a fixed term contract, or subjects the pleasure of the Crown to certain restrictions, the pleasure is pro tanto curtailed and effect must be given to such law."

(12.5) Black's Dictionary defines 'Pleasure Appointment' C as the assignment of someone to employment that can be taken away at any time, with no requirement for notice or hearing.

13. There is a distinction between the doctrine of pleasure D as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no E Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised F reasonably and for public good.

14. The following classic statement from Administrative Law (*HWR Wade & CF Forsyth* – 9th Ed. – Pages 354-355) is relevant in this context :

G "The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way H which Parliament when conferring it is presumed to have

intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered government discretion is a contradiction in terms. *The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.*

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or where the law permits, to evict a tenant, regardless of his motive. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest..... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed."

(emphasis supplied)

15. It is of some relevance to note that the 'Doctrine of Pleasure' in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. The Canadian

A Supreme Court in *Wells v. Newfound land* [1999 (177) DL (4th) 73(SCC)] has concluded that "at pleasure" doctrine is no longer justifiable in the context of modern employment relationship.

16. In *Abdul Majid* (supra), this Court considered the scope of the doctrine of pleasure, when examining whether the rule B of English Law that a civil servant cannot maintain a suit against the State or against the Crown for the recovery of arrears of salary as he held office during the pleasure of the crown, applied in India. This Court held that the English principle did not apply in India. This Court observed : C

> "It was suggested that the true view to take is that when the statute says that the office is to be held at pleasure, it means "at pleasure", and no rules or regulations can alter or modify that; nor can section 60 of the Code of Civil D Procedure, enacted by a subordinate legislature be used to construe an Act of a superior legislature. It was further suggested that some meaning must be given to the words "holds office during His Majesty's pleasure" as these words cannot be ignored and that they bear the meaning given E to them by the Privy Council in I.M. Lall's case. [75 I.A.225]
>
> In our judgment, these suggestions are based on a misconception of the scope of this expression. *The expression concerns itself with the tenure of office of the civil servant* and it is not implicit in it that a civil servant F serves the Crown *ex gratia* or that his salary is in the nature of a bounty. It has again no relation or connection with the question whether an action can be filed to recover arrears of salary against the Crown. The origin of the two rules is different and they operate on two different fields."

G

[emphasis supplied]

17. This shows the 'absoluteness' attached to the words 'at pleasure' is in regard to tenure of the office and does not

H

affect any constitutional or statutory restrictions/limitations which may apply. A

18. The Constitution refers to offices held during the pleasure of the President (without restrictions), offices held during the pleasure of the President (with restrictions) and also appointments to which the said doctrine is not applicable. The Articles in the Constitution of India which refer to the holding of office during the pleasure of the President without any restrictions or limitations are Article 75(2) relating to ministers, Article 76 (4) relating to Attorney General and Article 156(1) relating to Governors. Similarly Article 164(1) and 165(3) provides that the Ministers (in the States) and Advocate General for the State shall hold office during the pleasure of the Governor. B C

19. Article 310 read with Article 311 provide an example of the application of 'at pleasure' doctrine subject to restrictions. Clause (1) of Article 310 relates to tenure of office of persons serving the Union or a State, being subject to doctrine of pleasure. However, clause (2) of Article 310 and Article 311 restricts the operation of the 'at pleasure' doctrine contained in Article 310(1). For convenience, we extract below clause (1) of Article 310 referring to pleasure doctrine and clause (2) of Article 311 containing the restriction on the pleasure doctrine : D E

> *"310. Tenure of office of persons serving the Union or a State* – (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State. F G

xxxxxx H

A 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State : -

(1) xxxxxxx

B (2) - No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

C This Court in *P.L. Dhingra v. Union of India* - AIR 1958 SC 36, referred to the qualifications on the pleasure doctrine under Article 310:

"Subject to these exceptions our Constitution, by Art. 310(1), has adopted the English Common Law rule that D public servants hold office during the pleasure of the President or Governor, as the case may be and has, by Art. 311, imposed two qualifications on the exercise of such pleasure. Though the two qualifications are set out in a separate Article, they quite clearly restrict the E operation of the rule embodied in Art. 310(1). In other words the provisions of Art. 311 operate as a proviso to Art. 310(1)."

Again, in *Moti Ram v. N.E. Frontier Railway* - AIR 1964 SC F 600, this Court referred to the qualifications to which pleasure doctrine was subjected in the case of government servants, as follows :

"The rule of English law pithily expressed in the latin phrase '*durante bene placito* ("during pleasure") has not G been fully adopted either by S. 240 of the Government of India Act, 1935 or by Art. 310(1) of the Constitution. The pleasure of the President is clearly controlled by the provisions of Art. 311, and so, the field that is covered by Art. 311 on a fair and reasonable construction of the H relevant words used in that article, would be excluded from

the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirements of Art. 311." A

20. The Constitution of India also refers to other offices whose holders do not hold office during the pleasure of the President or any other authority. They are: President under Article 56; Judges of the Supreme Court under Article 124; Comptroller & Auditor General of India under Article 148; High Court Judges under Article 218; and Election Commissioners under Article 324 of the Constitution of India. In the case of these constitutional functionaries, it is specifically provided that they shall not be removed from office except by impeachment, as provided in the respective provisions. B C

21. 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, D E F G H

A it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category.

22. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the pleasure of any Authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause. 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.

(iii) Position of a Governor under the Constitution

23. The Governor constitutes an integral part of the legislature of a State. He is vested with the legislative power

to promulgate ordinances while the Houses of the legislature are not in session. The executive power of the State is vested in him and every executive action of the Government is taken in his name. He exercises the sovereign power to grant pardons, reprieves, respites or remissions of punishment. He is vested with the power to summon each House of the Legislature or to prorogue either House or to dissolve the legislative assembly. No Bill passed by the Houses of the Legislature can become law unless it is assented to by him. He has to make a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the Constitution. He thus occupies a high constitutional office with important constitutional functions and duties.

24. In *State of Rajasthan vs. Union of India* – 1977 (3) SCC 592, a Constitution Bench of this Court described the position of Governor thus:

> "67. *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,"* was also touched in the course of arguments before us. On the one hand, as the Constitutional head of the State, he is ordinarily bound, by reason of a constitutional convention, by the advice of his Council of Ministers conveyed to him through the Chief Minister barring very exceptional circumstances among which may be as pointed out by my learned brothers Bhagwati and Iyer, JJ., in Shamsher Singh's case, (1974 (2) SCC 31), a situation in which an appeal to the electorate by a dissolution is called for. On the other hand, as the defender of "the Constitution and the law" and the watch-dog of the interests of the whole country and well-being of the people of his State in particular, the Governor

A is vested with certain discretionary powers in the exercise of which he can act independently. One of his independent functions is the making of the report to the Union Government on the strength of which Presidential power under Article 356(1) of the Constitution could be exercised. In so far as he acts in the larger interests of the people, appointed by the President "to defend the constitution and the Law" he acts as an observer on behalf of the Union and has to keep a watch on how the administrative machinery and each organ of constitutional government is working in the state. Unless he keeps such a watch over all governmental activities and the state of public feelings about them, he cannot satisfactorily discharge his function of making the report which may form the basis of the Presidential satisfaction under Article 356(1) of the Constitution."

(emphasis supplied)

In *State of Karnataka v. Union of India* [1977 (4) SCC 608], a seven-Judge Bench of this Court held :

"The Governor of a State is appointed by the President and holds office at his pleasure. Only in some matters he has got a discretionary power but in all others the 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."

Another Constitution Bench of this Court in *Hargovind Pant vs. Raghukul Tilak* (Dr.) – 1979 (3) SCC 458], explained the status of the Governor thus:

"It will be seen from this enumeration of the constitutional

powers and functions of the Governor that *he is not an employee or servant in any sense of the term.* It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. *So also it is not material that the Governor holds office during the pleasure of the President : it is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language to a breaking point, be regarded as an employee or servant of the Government of India.* He is not amenable to the directions of the Government of India, nor is he accountable for them for the manner in which he carries out his functions and duties. He is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. There can, therefore, be no doubt that the office of Governor is not an employment under the Government of India and it does not come within the prohibition of clause (d) of Article 319. .....it is impossible to hold that the Governor is under the control of the Government of India. His office is not sub-ordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties."

(emphasis supplied)

A In *Rameshwar Prasad (VI) vs. Union of India* – 2006 (2) SCC 1 this Court reiterated the status of Governor as explained in *Hargovind Pant,* and also noted the remark of Sri G.S. Pathak, a former Vice-President that "in the sphere which is bound by the advice of the Council of Ministers, for obvious reasons, *the* B *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." We may also refer C to the following observations of H. M. Seervai, in his treatise 'Constitutional Law of India' [4th Ed., Vol.II, at p.2065]

> *"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 D 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* E *overwhelming part of his executive power – the question of his being the President's agent cannot arise."*

25. It is thus evident that a Governor has a dual role. The first is that of a constitutional Head of the State, bound by the F advice of his Council of Ministers. The second is to function as a vital link between the Union Government and the State Government. In certain special/emergent situations, he may also act as a special representative of the Union Government. He is required to discharge the functions related to his different G roles harmoniously, assessing the scope and ambit of each role properly. He is not an employee of the Union Government, nor the agent of the party in power nor required to act under the dictates of political parties. There may be occasions when he may have to be an impartial or neutral Umpire where the views of the Union Government and State Governments are in conflict. H

His peculiar position arises from the fact that the Indian Constitution is quasi-federal in character. In *State of Karnataka (supra)*, this Court observed :

> "Strictly speaking, our Constitution is not of a federal character where separate, independent and sovereign States could be said to have joined to form a nation as in the United States of America or as may be the position in some other countries of the world. It is because of that reason that sometimes it has been characterized as quasi-federal in nature. Leaving the functions of the judiciary apart, by and large the legislative and the executive functions of the Centre and the States have been defined and distributed, but, even so, through it all runs an overall thread or rein in the hands of the Centre in both the fields."

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 leaning more towards the latter.

26. In the early days of Indian democracy, the same political party was in power both at the Centre and the States. The position has changed with passage of time. Now different political parties, some national and some regional, are in power in the States. Further one single party may not be in power either in the Centre or in the State. Different parties with distinct ideologies may constitute a front, to form a Government. On account of emergence of coalition politics, many regional parties have started sharing power in the Centre. Many a time there may not even be a common programme, manifesto or agenda among the parties sharing power. As a result, the agenda or ideology of a political party in power in the State may not be in sync with the agenda or ideology of the political parties in the ruling coalition at the Centre, or may not be in sync with the agenda or ideology of some of the political parties in the ruling coalition at the Centre, but may be in sync with some other political parties forming part of the ruling coalition at the

A Centre. Further the compulsions of coalition politics may require the parties sharing power, to frequently change their policies and agendas. In such a scenario of myriad policies, ideologies, agendas in the shifting sands of political coalitions, there is no question of the Union Government having Governors who are
B in sync with its mandate and policies. 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
C 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). Reputed elder statesmen,
D able administrators and eminent personalities, with maturity and experience are expected to be appointed as Governors. While some of them may come from a political background, once they are appointed as Governors, they owe their allegiance and loyalty to the Constitution and not to any political party and are required to preserve, protect and defend the Constitution (see
E the terms of oath or affirmation by the Governor, under Article 159 of the Constitution). Like the President, Governors are expected to be apolitical, discharging purely constitutional functions, irrespective of their earlier political background. Governors cannot be politically active. We therefore reject the
F 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. As the Governor is neither the employee nor the agent of the Union Government, we also reject the contention that a
G Governor can be removed if the Union Government or party in power loses 'confidence' in him.

27. We may conclude this issue by referring to the vision of Sri Jawaharlal Nehru and Dr. B. R. Ambedkar expressed
H during the Constituent Assembly Debates, in regard to the

office of Governor (Volume III Pages 455 and 469). Sri Nehru said :

> "But on the whole it probably would be desirable to have people from outside – eminent people, sometimes people who have not taken too great a part in politics ..... he would nevertheless represent before the public someone slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine."

Dr. B. R. Ambedkar stated :

> "If the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with no power of interference in the administration of the province....."

(iv) Limitations/restrictions upon the power under Article 156(1) of the Constitution of India

28. We may now examine whether there are any express or implied limitations or restrictions on the power of removal of Governors under Article 156(1). We do so keeping in mind the following words of Justice Holmes : "the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic, living institutions..... The significance is vital, nor formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth" (see : *Gompers vs. United States* – 233 US 603).

Effect of clause (3) of Article 156

29. It was submitted on behalf of the petitioners that the doctrine of pleasure under Article 156(1) is subject to the express restriction under clause (3) of Article 156. It was submitted that there is a significant difference between Articles 75(2) and 76 (4) which provide for an unrestricted application

A of the doctrine, and Article 156(1) which provided for application of the doctrine subject to a restriction under Article 156(3). It is pointed out that in the case of Ministers and the Attorney General, Articles 75 and 76 do not provide any period of tenure, whereas clause (3) of Article 156 provides that in the B case of Governors, the term of office will be five years. It is submitted that Clause (1) of Article 156 providing that the Governor shall hold office during the pleasure of the President, should be read in consonance with Clause (3) of Article 156 which provides that subject to clause (1) and subject to the C Governor's right to resign from his office, a Governor shall hold office for a term of five years from the date on which he enters office. The petitioner interprets these two clauses of Article 156 thus: The tenure of office of the Governor is five years. However, before the expiry of that period the Governor may resign from D office, or the President may, for good and valid reasons relating to his physical/mental inability, integrity, and behaviour, withdraw his pleasure thereby removing him from office.

30. A plain reading of Article 156 shows that when a Governor is appointed, he holds the office during the pleasure E 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 F 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 G to the President's pleasure. In contrast, we can refer to Articles 310 and 311 where the doctrine of pleasure is clearly and indisputably subjected to restriction. Clause (1) of Article 310 provides that a person serving the Union Government holds office during the pleasure of the President and a person serving H a state government holds office during the pleasure of the

Governor. The 'doctrine of pleasure' is subjected to a restriction in Article 310(2) and the restrictions in Article 311(1) and (2). The most significant restriction is contained in clause (2) of Article 311 which provides that no such employee shall be dismissed or removed from service except after an inquiry in which he has been informed of the charges levelled against him and given a reasonable opportunity of being heard in respect of those charges. Clause (1) of Article 310 begins with the words "Except as expressly provided by the Constitution". Therefore, Article 310 itself makes it clear that though a person serves the Union or a State during the pleasure of the President/Governor, the power of removal at pleasure is subject to the other express provisions of the Constitution; and Article 311 contains such express provision which places limitations upon the power of removal at pleasure. By contrast, clause (1) of Article 156 is not 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.

Reports of Commissions

31. The petitioner relied upon the *Report of the Sarkaria Commission on Centre-State Relations* and *the Report of the National Commission to Review the working of the Constitution* in support of his contention that removal of a Governor should be by an order disclosing reasons, that the Governor should be given an opportunity to explain his position and that the removal should be only for compelling reasons, thereby stressing the need to provide security of tenure for the Governors.

32. The Report of the *Sarkaria Commission on Centre State Relations* (Vol.1 Chapter IV) dealt with the role of a

A Governor and made the following recommendations with regard to his term of office:

> "4.7.08..... We recommend that the Governors tenure of office of five years in a State should not be disturbed except very rarely and that too for some extremely
B compelling reason. It is indeed very necessary to assure a measure of security of tenure to the Governor's office."

The reason assigned by the Commission for the said recommendation was as follows:

C

> "Further, the ever-present possibility of the tenure being terminated before the full term of 5 years, can create considerable insecurity in the mind of the Governor and impair his capacity to withstand pressures, resist
D extraneous influences and act impartially in the discharge of his discretionary functions. Repeated shifting of Governors from one State to another can lower the prestige of this office to the detriment of both the Union and the State concerned. As a few State Governments
E have pointed out. Governors should not be shifted or transferred from one State to another by the Union as if they were civil servants. The five year term of Governor's office prescribed by the Constitution in that case loses much of its significance."

F The Commission also noted the following suggestions received in favour of and against the suggestion for providing security of tenure (para 4.8.01):

> Suggestions for security of tenure
G Suggestions against security of tenure
>
> (i) A Governor should have a guaranteed tenure so that he can function impartially. The different procedures suggested for Governor's removal, are—
>
H (a) The same procedure as for a Supreme Court Judge.

(b) An investigation into the Governor's conduct by a parliamentary Committee.

(c) Impeachment by the State Legislature.

(d) Inquiry by the Supreme Court.

(e) Written request from the Chief Minister, followed by a resolution of the Legislative Assembly.

(f) Recommendation of the Inter-State Council.

(ii) Tenures should not be guaranteed to a Governor because—

(a) the nature of his duties and functions and the manner of their performance are fundamentally different from those of a Judge. The former has a multi-faceted role and his duties are mainly non-judicial, while those of a Judge are entirely judicial to be discharged in his own independent judgment;

(b) it will be difficult to remove a Governor who is not of the requisite ability and impartiality, or who is not able to function smoothly with the Chief Minister or who does not function in coordination with the Union.

The Commission after considering the matter in detail, made the following recommendations regarding security of tenure:

> "4.8.07. While it is not advisable to give the same security of tenure to a Governor as has been assured to a Judge of the Supreme Court, some safeguard has to be devised against arbitrary withdrawal of President's pleasure, putting a premature end to the Governor's tenure. The intention of the Constitution makers in prescribing a five-year term for this office appears to be that the President's pleasure on which the Governor's tenure is dependent, will not be withdrawn without cause shown. Any other inference would render clause (3) of Article 156 largely otiose. It will be but

A fair that the Governor's removal is based on procedure which affords him an opportunity of explaining his conduct in question and ensures fair consideration of his explanation, if any.

B 4.8.08. Save where the President is satisfied that, in the interest of the security of the State, is it not expedient to do so, as a matter of healthy practice, whenever it is proposed to terminate the tenure of a Governor before the expiry of the normal terms of five years, he should be informally apprised of the grounds of the proposed action C and afforded a reasonable opportunity for showing cause against it. It is desirable that the President (which, in effect, means the Union Council of Ministers) should get the explanation, if any, submitted by the Governor against his proposed removal from office, examined by an Advisory D Group consisting of the Vice-President of India and the Speaker of the Lok Sabha or a retired Chief Justice of India. After receiving the recommendations of this Group, the President may pass such orders in the case as he may deem fit.

E

4.8.09. We recommend that when a Governor, before the expiry of the normal term of five years, resigns or is appointed Governor in another State, or his tenure is terminated, the Union Government may lay a statement F before both Houses of Parliament explaining the circumstances leading to the ending of his tenure. Where a Governor has been given an opportunity to show cause against the premature termination of his tenure, the statement may also include the explanation given by him in reply. This procedure would strengthen the control of G Parliament and the Union Executive's accountability to it."

The Inter State Council accepted the said recommendation of the *Sarkaria Commission*. It is stated that the matter is thereafter pending consideration before the Central H Government.

33. Reference was next made to a Consultation Paper on "Institution of Governor under the Constitution" published by the *National Commission to Review the Working of the Constitution*, to elicit public opinion and generate public debate. The recommendations proposed were as under :

> "Accordingly, we recommend that Articles 155 and 156 of the Constitution be amended to provide for the following:
>
> (a) the appointment of the Governor should be entrusted to a committee comprising the Prime Minister of India, Union Minister for Home affairs, the Speaker of the Lok Sabha and the Chief Minister of the concerned State. (Of course, the composition of the committee is a matter of detail which can always be settled once the principal idea is accepted;
>
> (b) the term of office, viz., five years, should be made a fixed tenure;
>
> (c) the provision that the Governor holds office 'during the pleasure of the President' be deleted:
>
> (d) provision be made for the impeachment of the Governor by the State Legislature on the same lines as the impeachment of the President by the Parliament. (The procedure for impeachment of the President is set out in Article 61). Of course, where there is no Upper House of Legislature in any State, appropriate changes may have to be made in the proposed Article since Article 61 is premised upon the existence of two Houses of Parliament."

We extract below the relevant portions of the recommendations made by the National Commission (different from what was proposed), after considering the responses received:

> "8.14.2 After carefully considering the public responses and

A after full deliberations, the Commission does not agree to dilute the powers of the President in the matter of selection and appointment of Governors. However, the Commission feels that the Governor of a State should be appointed by the President, after consultation with the Chief Minister of
B that State. Normally the five year term should be adhered to and removal or transfer of the Governor should be by following a similar procedure as for appointment i.e. after consultation with the Chief Minister of the concerned State.

C 8.14.3 The Commission recommends that in the matter of selection of a Governor, the following maters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:

- He should be eminent in some walk of life.

D

- He should be a person from outside the State.
- He should be a detached figure and not too intimately connected with the local politics of the State.

E

- He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.

F 34. These recommendations howsoever logical, or deserving consideration and acceptance, remain recommendations. They cannot override the express provisions of the Constitution as they stand. Nor can they assist in interpreting Article 156. The very fact that such recommendations are made, shows that the position under the
G existing Constitutional provisions is otherwise. They are suggestions to be considered by those who can amend the Constitution. They do not assist in interpreting the existing provisions of the Constitution.

H

Constituent Assembly Debates

35. Both sides relied upon the Constituent Assembly Debates to support their respective interpretation of Article 156(1). 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.

36. The Constitutional Assembly debates shows that Mr. K.T. Shah had proposed an amendment that "the Governor shall hold office for a term of five years from the date on which he enters upon his office, and shall during that term be irremovable from his office." He moved another amendment for addition of a clause that a Governor may be removed from office by reason of physical or mental incapacity duly certified, or if found guilty of bribery or corruption. He stated :

> "This is, as I conceive it, different fundamentally from the appointment during the pleasure of the President. The House, I am aware, has just passed a proposition by which the Governor is to be appointed by the President and it would be now impossible for any one to question that proposition. I would like, however to point out, that having regard to the appointment as against the elective principle, we must not leave the Governor to be entirely at the mercy or the pleasure of the President. We should see to it, at any rate that if he is to be a constitutional head of the province, if he is to be acting in accordance with the advice of his ministers, if we desire to remove any objection that might possibly be there to the principle of nomination, we should see to it that at least while he is acting correctly, in accordance with the Constitution following the advice of his ministers, he should not be at the mercy of the President

A who is away from the Province and who is a national and not a local authority. This is all the more important pending the evolution of a convention, such as was suggested by one of the previous speakers, that the appointment, even if agreed to, should be on the advice of the local Ministry. B I do not know if such a convention can grow up in India, but even if it grows up, and particularly if it grows up, it would be of the utmost importance that no non-provincial authority from the Centre should have the power to say that the Governor should be removable by that authority; So C long as he acts in accordance with the advice of the constitutional advisers of the province, he should I think be irremovable during his term of office, that is, five years according to this article.

There is of course a certain provision with regard to D resignation voluntarily or other contingencies occurring whereby the Governor may be removed. But, subject to that, and therefore to the entire Constitution, the period should be the whole period and not at the pleasure of the President."

E

Prof. Shibban Lal Saksena also objected to the proposed Article (in the present form). He said :

"Just now we have accepted a provision whereby the Governor shall be nominated by the President. Already we F feel that there democracy has been abandoned. Now, Sir, comes this provision whereby the Governor shall hold office only at the pleasure of the President. Even in the case of the Supreme Court, we have provided that once the Judges of the Supreme Court has been appointed, they G will be removable only after an address presented by both the Houses of Parliament, and by two-thirds majority of the members present and voting. In the case of the Governor, you want to make a different provision. It seems to me, Sir, to be an extraordinary procedure and it completely takes H away the independence of the Governor. He will be purely

a creature of the President, that is to say, the Prime Minister and the party in power at the Centre. When once a Governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the President at his whim. It only means that he must look to the President for continuing in office and so continue to be subservient to him. He cannot be independent. He will then have no respect. Sir, Dr. Ambedkar has not given any reasons why he has made this change. Of course, the election of the Governors has been done away with, but why makes him removable by the President at his pleasure? The original article says: "A governor may, for violation of the Constitution, be removed from office by impeachment ..... It means that a Governor can only be removed by impeachment by both the Houses. Now, he will be there only at the pleasure of the President. Such a Governor will have no independence and my point is that the Centre might try to do some mischief through that man. Even if he is nominated, he can at least be independent if after he is appointed he is irremovable. Now, by making him continue in office at the pleasure of the President, you are taking away his independence altogether. This is a serious deviation and I hope the House will consider it very carefully. Unless he is able to give strong reasons for making this change, I hope Dr. Ambedkar will withdraw his amendment."

Sri Lokanath Misra expressed a slightly different point of view:

"Mr. President, Sir, after having made the decision that Governors shall be appointed by the President, it naturally follows that the connected provisions in the Draft Constitution should accordingly be amended, and in that view, I accept the amendment that has now been moved by Dr. Ambedkar. That amendment suggests that the Governor shall be removable as the President pleases, that

A is, a Governor shall hold office during the pleasure of the President and that whenever he incurs the displeasure of the President, he will be out. When the President has appointed a man, in the fitness of things the President must have the right to remove him when he is displeased, but
B to remove the evil that has now crept in by doing away with election for the office of the Governor, it would have been much better if the State legislature too had been given the power to impeach him not only for violation of the Constitution but also for misbehaviour. I use the word
C 'misbehaviour' deliberately because, when a Governor who is not necessarily a man of that province is appointed to his office, it is but natural that the people of the province should have at least the power to watch him, to criticize him, through their chosen representatives. If that right had
D been given, in other words, if the provision for the impeachment of the Governors by the State legislatures had been there, it would have been a safeguard against improper appointment of Governor by the President. One of the main objections to the appointment of the Governor
E by the President has been that he will be a man who has no roots in the province and no stake, that he will be a man who will have no connection with the people, that he will be a man beyond their reach and therefore can go on merrily so long as he pleases the President, the Prime Minister of the Union and the Premier of the Province. But
F they are not all. It would have been much better if the Governor's removal had been made dependent not only on the displeasure of the President but on the displeasure of the State legislature also which represents the people and that would have been a safeguard against the evil that
G has been caused by the provision for the appointment of Governor by the President."

Dr. B.R. Ambedkar replied thus:

H "Sir, the position is this: this power of removal is given to

the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor. It seems, therefore, quite unnecessary to burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unnecessary to categorize the conditions under which the President may undertake the removal of the Governor." A B C

37. Thereafter the Article in the present form was adopted, rejecting the suggestions/amendments proposed by Mr. K.T. Shah, Prof. Shibban Lal Saksena and Mr. Lokanath Mishra. The debates show that several alternatives were considered and ultimately the Article in its present form was adopted. The debates however disclose the following: D E

(i) The intention of the founding fathers was to adopt the route of Doctrine of Pleasure, instead of impeachment or enquiry, with regard to removal of Governors. F

(ii) It was assumed that withdrawal of pleasure resulting in removal of the Governor will be on valid grounds but there was no need to enumerate them in the Article. G

38. In Constitutional Law of India (4th Ed.,Vol.2, page 2066) H.M. Seervai refers to the scope of Article 156(1) thus:

"A difficulty, however, arises from the fact that the Governor holds office during the pleasure of the President and can H

A be removed by him. As the President acts on the advice of his ministry, it may be contended that if the Governor takes action contrary to the policy of the Union Ministry he would risk being removed from his post as Governor, and, therefore, he is likely to follow the advice of the Union Govt. B Whilst not denying the force of this contention, it is submitted that Article 156(1) has a very different purpose. It is submitted that a responsible Union Ministry would not advise, and would not be justified in advising the removal of a Governor because in the honest discharge of his duty, C the Governor takes action which does not fall in line with the policy of the Union Ministry. To hold otherwise would mean that the Union executive would effectively control the State executive which is opposed to the basic scheme of our federal Constitution. Article 156(1) is designed to secure that if the Governor is pursuing courses which are D 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."

E

39. The provision for removal at the pleasure of an authority without any restriction, as noticed above, applies to Ministers as also the Attorney General apart from Governors. Persons of calibre, experience, and distinction are chosen to F fill these posts. Such persons are chosen not to enable them to earn their livelihood but to serve the society. It is wrong to assume that such persons having been chosen on account of their stature, maturity and experience will be demoralized or be in constant fear of removal, unless there is security of tenure. G They know when they accept these offices that they will be holding the office during the pleasure of the President.

Need for reasons

40. The petitioner contends that the removal of a Governor H can only be for compelling reasons which is something to do

with his capacity to function as a Governor. According to the petitioner, physical or mental disability, acts of corruption or moral turpitude or behaviour unbecoming of a Governor like being involved in active politics, or indulging in subversive activities are valid reasons for removal. 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. There is thus a consensus to the extent that a Governor can be removed only for a valid reason, and that physical and mental incapacity, corruption and behaviour unbecoming of a Governor are valid grounds for removal. There is however disagreement as to what else can be grounds for removal. We are of the view that there can be other grounds also. It is not possible to put the reasons under any specific heads. The only limitation on the exercise of the power is that it should be for valid reasons. What constitute valid reasons would depend upon the facts and circumstances of each case.

41. We have however already rejected the contention that the Governor should be in sync with the ideologies of the Union Government. Therefore, a Governor cannot be removed on the ground that he is not sync or refuses to act as an agent of the party in power at the Centre. 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

A 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.

B

(v) Judicial review of withdrawal of President's pleasure

42. When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any conditions or C restrictions, it follows that the power is exercisable at any time, without assigning any cause. 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 D 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 E 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 justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the F Governor before removing a Governor.

43. The traditional English view was that prerogative powers of the Crown conferred unfettered discretion which could not be questioned in courts. Lord Ruskill attempted to enumerate such prerogative powers in *Council of Civil Service* G *Unions v. Minister for the Civil Service* - 1985 AC 374 :

> "Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament H and the appointment of ministers as well as others are not,

I think susceptible to judicial review because their nature and subject matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another." A B

However, the contemporary English view is that in principle even such 'political questions' and exercise of prerogative power will be subject to judicial review on principles of legality, rationality or procedural impropriety. (See decision of House of Lords in : *R (Bancoult) vs. Foreign Secretary* – 2009 (1) AC 453). In fact, *De Smith's Judicial Review* (6th Ed. 2007 Page 15) states : C

"Judicial review has developed to the point where it is possible to say that no power — whether statutory or under the prerogative — is any longer inherently unreviewable. Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power, its scope and its substance. As we shall see, even when discretionary powers are engaged, they are not immune from judicial review." D E

44. In *State of Rajasthan v. Union of India* 1977 (3) SCC 592 , this Court (Bhagwati J., as he then was) held:

"But merely because a question has a political complexion that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination..... the Court cannot fold its hands in despair and declare 'Judicial hands off'. *So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so.* ...This Court is the ultimate interpreter of the Constitution F G H

A and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. *It is for this Court to uphold the*
B *constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law. ... Where there is manifestly unauthorized exercise of power under the Constitution, it is the duty of the Court to intervene.* Let it not be forgotten, that to this Court as much
C as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court. ... The Court cannot and should not shirk this
D responsibility...."

In the said decision, Chandrachud, J. (as he then was) observed thus :

"They may not choose to disclose them but if they do so,
E as they have done now, they cannot prevent a judicial scrutiny thereof for the limited purpose of seeing whether the reasons bear any rational nexus with the action proposed. I am inclined to the opinion that the Government cannot claim the credit at the people's bar for fairness in
F disclosing the reasons for the proposed action and at the same time deny to this Court the limited power of finding whether the reasons bear the necessary nexus or are wholly extraneous to the proposed action. The argument that "if the Minister need not give reasons, what does it
G matter if he gives bad ones" overlooks that bad reasons can destroy a possible nexus and may vitiate the order on the ground of mala fides."

In *Kihota Hollohon v. Zachilhu* 1992 [Supp. (2) SCC 651] this Court held:

H

"The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by mala fides or is colorable exercise of power based on extraneous and irrelevant considerations."

45. In *R.C. Poudyal v. Union of India* [1994 Supp (1) SCC 324], in the context of Article 371-F, it was contended on behalf of Union of India that the terms and conditions of the admission of a new territory into the Union are eminently political questions which the Court should decline to decide as these questions lack adjudicative disposition. A Constitution Bench of this Court referred to various decisions of the American Supreme Court including *Baker v. Carr*, 369 US 186 and *Powell v. McCormack*, 395 US 486 where the question whether the 'political thickets' docrine was a restraint on judicial power, was considered, and held that certain controversies previously immune from adjudication, were justiciable, apart from narrowing the operation of the doctrine in other areas. This Court held :

"The power to admit new States into the Union under Article 2 is, no doubt, in the very nature of the power, very wide and its exercise necessarily guided by political issues of considerable complexity many of which may not be judicial manageable. But for that reason, it cannot be predicated that Article 2 confers on the Parliament an unreviewable and unfettered power immune from judicial scrutiny. *The power is limited by the fundamentals of the Indian constitutionalism and those terms and conditions which the Parliament may deem fit to impose*, cannot be inconsistent and irreconcilable with the foundational

A principles of the Constitution and cannot violate or subvert the constitutional scheme."

[emphasis supplied]

46. This Court has examined in several cases, the scope B of judicial review with reference to another prerogative power – power of the President/Governor to grant pardon etc., and to suspend, remit or commute sentences. The view of this Court is that the power to pardon is a part of the constitutional scheme, and not an act of grace as in England. It is a C constitutional responsibility to be exercised in accordance with the discretion contemplated by the context. It is not a matter of privilege but a matter of performance of official duty. All public power including constitutional power, shall never be exercisable arbitrarily or *mala fide*. While the President or the Governor D may be the sole Judge of the sufficiency of facts and the propriety of granting pardons and reprieves, the power being an enumerated power in the Constitution, its limitations must be found in the Constitution itself. Courts exercise a limited power of judicial review to ensure that the President considers E all relevant materials before coming to his decision. As the exercise of such power is of the widest amplitude, whenever such power is exercised, it is presumed that the President acted properly and carefully after an objective consideration of all aspects of the matter. Where reasons are given, court may F interfere if the reasons are found to be irrelevant. However, when reasons are not given, court may interfere only where the exercise of power is vitiated by self-denial on wrong appreciation of the full amplitude of the power under Article 72 or where the decision is arbitrary, discriminatory or mala fide G [vide *Maru Ram v. Union of India* [1981 (1) SCC 107], *Kehar Singh v. Union of India* [1989 (1) SCC 204] etc.]. In *Epuru Sudhakar v. Government of Andhra Pradesh* [2006 (8) SCC 161], one of us (Kapadia J.) balanced the exercise of prerogative power and judicial review of such exercise thus:

H "The controlling factor in determining whether the exercise

of prerogative power is subject to judicial review is not its source but its subject matter. It can no longer be said that prerogative power is ipso facto immune from judicial review. .....Rule of Law is the basis for evaluation of all decisions. The supreme quality of the Rule of Law is fairness and legal certainty. The principle of legality occupies a central plan in the Rule of Law. Every prerogative has to be the subject to the Rule of Law. That rule cannot be compromised on the grounds of political expediency. To go by such considerations would be subversive of the fundamental principles of the Rule of Law and it would amount to setting a dangerous precedent. The Rule of Law principle comprises a requirement of "Government according to law". The ethos of "Government according to law" requires the prerogative to be exercised in a manner which is consistent with the basic principle of fairness and certainty."

47. Exercise of power under Article 156(1) being an executive power exercised on the advice tendered by the Council of Ministers, the question is whether the bar contained in clause (2) of Article 74 will apply. The said clause provides that the question whether any, and if so what, advice was tendered, shall not be enquired into by any court. This clause has been the subject- matter of a nine-Judge Bench decision in *S.R. Bommai v. Union of India* [1994 (3) SCC 1]. This Court has held that Article 74(2) merely bars an inquiry into the question whether any, and if so what, advice was tendered by the Council of Ministers to the President but does not bar the scrutiny of the material on the basis of which the President has made the order. This Court also held that while an order issued in the name of the President could not be challenged on the ground that it was contrary to the advice tendered by the Council of Ministers or was issued without obtaining the advice from the Ministers, it does not bar the court from calling upon the Union of India to disclose to the court the material on which the President has formed the requisite satisfaction. The bar

A contained in Article 74(2) will not come in the way of the court inquiring whether there was any material on the basis of which such advice was given, whether such material was relevant for such advice and whether the material was such that a reasonable man could have come to the conclusion which was
B under challenge. Therefore, though the sufficiency of the material could not be questioned, legitimacy of the inference drawn from such material was open to judicial review.

48. The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed
C by Lord Steyn in *Ex parte Daly* [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial
D review for one will be different from the scope of judicial review for other. *Mala fides* may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss
E of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync
F with that the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney-General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor
G whereas virtually nil in the case of a Minister or an Attorney General.

49. Article 156(1) provides that a Governor shall hold office during the pleasure of the President. Having regard to Article 74, the President is bound to act in accordance with the advice
H of the Council of Ministers. Therefore, even though under Article

156(1) the removal is at the pleasure of the President, the exercise of such pleasure is restricted by the requirement that it should be on the advice of the Council of Ministers. Whether the removal of Governor is open to judicial review? What Article 156(1) dispenses with is the need to assign reasons or the need to give notice but the need to act fairly and reasonably cannot be dispensed with by Article 156(1). The President in exercising power under Article 156(1) should act in a manner which is not arbitrary, capricious or unreasonable. In the event of challenge of withdrawal of the pleasure, the court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a *prima facie* instance of arbitrariness or malafides, in his removal, the court will refuse to interfere. However, where a prima facie case of arbitrariness or malafides is made out, the Court can require the Union Government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What will constitute good and compelling reasons would depend upon the facts of the case. Having regard to the nature of functions of the Governor in maintaining centre-state relations, and the flexibility available to the Government in such matters, it is needless to say that there will be no interference unless a very strong case is made out. The position, therefore, is that the decision is open to judicial review but in a very limited extent.

50. We summarise our conclusions as under :

(i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.

(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for

A valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the
B facts and circumstances of each case.

(iii) A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government
C has lost confidence in him. It follows therefore that change in government at Centre is not a ground for removal of Governors holding office to make way for others favoured by the new government.

D (iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, malafide, capricious or whimsical, the court will
E call upon the Union Government to disclose to the court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide,
F the court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.

51. The writ petition is disposed of accordingly.

G **TP (C) No.663 of 2004**

52. In view of our decision in WP(C) No.296 of 2004, this Transfer Petition is dismissed.

B.B.B. Petitions disposed of.

H