

News

What's wrong with the president asking the court for opinions? Supreme Court on Presidential referral in Governors' case



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In reference to the verdict that established deadlines for governors and the president to give their approval to measures enacted by legislatures, the Supreme Court on Tuesday issued a favorable opinion about the maintainability of the reference made by President **Droupadi Murmu** under Article 143.

There is nothing improper with the President asking the Court for its opinion on the matter, according to a Constitution Bench that included Chief Justice of India BR Gavai and Justices

Surya Kant, Vikram Nath, PS Narasimha, and **Atul S. Chandurkar**.

In response to criticism from states including as Tamil Nadu and Kerala, which have questioned the reference's maintainability, the Court issued the comment.

"What is wrong with the Hon'ble President asking this court for its opinions? **"Are you serious about [preliminary objections]?"** asked CJI Gavai.

Additionally, the Court made it clear that it was sitting in advisory rather than appellate authority. It further said that although the Court may express an opinion that a certain decision is incorrect, it will not supersede the current ruling.

However, Solicitor General Tushar Mehta used a precedent to argue that the Court can even reject a judgment in advisory jurisdiction. At this point, CJI Gavai said,

"A view can be overruled, not decision."

The April ruling by the top court, which established deadlines for the President and the Governor to decide on bills and held that the Governor's failure to act under Article 200 (the Governor's authority to assent to bills passed by the State Legislature) was subject to judicial review, is contested in the Presidential reference.

In *State of Tamil Nadu v. The Governor of Tamil Nadu & Anr*, a bench of Justices JB Pardiwala and R Mahadevan ruled that the governor must take action within a reasonable amount of time and that constitutional silence could not be used to impede the democratic process.

The Court ruled that although while Article 200 does not provide a deadline, it cannot be understood to permit the Governor to take an endless amount of time to act on bills that have been enacted by the State assembly.

The Court ruled that the President's decision-making is subject to judicial review and must be made within three months in accordance with Article 201. It said that if there is a delay after that time, the reasons must be noted and shared with the relevant State.

Concerning the Supreme Court's interpretation of Articles 200 and 201, the President sent fourteen queries to the court after the decision. Among the issues raised are whether the Supreme Court can establish procedural rules in areas where the Constitution is silent and

whether setting deadlines infringes on the President's and Governors' constitutionally permitted authority.

In response, the State of Kerala filed a motion disputing the maintainability of the reference. It called the reference an effort to subtly overturn legally binding rulings without transparency and requested the Supreme Court to return it unanswered.

Additionally, the State of Tamil Nadu filed a motion contesting the Presidential reference's maintainability. According to the same argument, the reference aims to reopen and subtly challenge a Supreme Court ruling that thoroughly examined the constitutional position under Articles 200 and 201.

However, the Central government backed the reference, claiming that the President's and Governors' authority to act on bills is a "high prerogative" duty that is unconstrained by judicial deadlines.

The Kerala government's senior advocate, KK Venugopal, started the case's submissions today. He said that the Tamil Nadu case addressed the President's questions.

"Once a judgment covers the issues, the issues are no longer res integra," he stated.

Venugopal went on to say that the Court must abide by the previous ruling. CJI Gavi, however, questioned whether a decision made by a two-judge bench bound the five-judge bench.

The answer from Venugopal was, **"Unless you overrule it,"**

Additionally, he said that the President serves as the exclusive referring authority and that the Government of India makes the reference. The president must follow the council of ministers' directives and is constrained by their assistance and counsel, Venugopal added.

"It is an attempt by the Government of India without filing review to overturn the judgment of Supreme Court," he stated.

Senior Advocate Abhishek Manu Singhvi, speaking on behalf of the Tamil Nadu government, similarly contended that the ruling rendered by the bench led by Justice Pardiwala addresses all of the President's questions—with the exception of three.

"Substantially every issue para-wise is covered," reported Singhvi.

Singhvi referred to the reference as an intra-court appeal and stated that a review plea cannot be replaced by the President's advisory jurisdiction. Singhvi went on to say that the Constitution Bench was being requested to modify the ruling in the Tamil Nadu case, including its merits and substance.

"No matter how elegantly you phrase it, it is entirely appellate. According to the senior lawyer, it is a violation of the Supreme Court's institutional integrity.

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