Reportable

2023 INSC 1017

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No 1224 of 2023

State of Punjab **…Petitioner**

Versus

Principal Secretary to the Governor of Punjab and Another **…Respondents**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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1. The jurisdiction of this Court under Article 32 of the Constitution has been invoked by the State of Punjab. The Government of Punjab is aggrieved on the ground that the Governor did not (i) assent to four Bills which were passed by the Vidhan Sabha nor have they been returned; and (ii) furnish a recommendation for the introduction of certain Money Bills in the Vidhan Sabha.

I. Factual background

2. On 22 February 2023, the Council of Ministers of the Government of Punjab forwarded a recommendation to the Governor of Punjab seeking the summoning of the Punjab Vidhan Sabha for its Budget Session commencing on 3 March 2023. The Governor's refusal to do so, on the ground that he was seeking legal advice, led to the institution of a petition before this Court on 25 February 2023. On 28 February 2023, this Court delivered its judgment in the **State of Punjab v. Principal Secretary to the Governor of Punjab**[1]. This Court observed that:

> "There was no occasion to seek legal advice on whether or not the Budget Session of the Legislative Assembly should be convened. The Governor was plainly bound by the advice tendered to him by the Council of Ministers."

3. While concluding its judgment, this Court had the following observations on the broader aspects of mature political governance in a democracy:

> "Political differences in a democratic polity have to be worked upon and sorted out with a sense of sobriety and maturity. The dialogue between constitutional functionaries cannot degenerate into a race to the bottom. Unless these principles were to be borne in mind, the realization of constitutional values may be placed in jeopardy. Such a situation emerged before this Court, leading to the institution of a petition under

[1] Writ Petition (Civil) No 302 of 2023

> Article 32 of the Constitution for a direction to the Governor to summon the Legislative Assembly. It is inconceivable that the Budget Session of the Legislative Assembly would not be convened. We can only hope that mature constitutional statesmanship will ensure that such instances do not occur in the future as much as we reiterate our expectation that constitutional functionaries must be cognizant of the public trust in the offices which they occupy. The public trust which is entrusted to them is intended to sub-serve the cause of our citizens and to ensure that the affairs of the nation are conducted with a sense of equanimity so as to accomplish the objects of the Preamble to the Constitution."

4. Following the decision of this Court, the Sixteenth Punjab Vidhan Sabha was summoned on 3 March 2023. The Speaker adjourned the session *sine die* on 22 March 2023. On 12 June 2023, acting in pursuance of the powers conferred by the second proviso to Rule 16 of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly)[2], the Speaker reconvened the sitting of the session of the Vidhan Sabha on 19 and 20 June 2023. During the course of the session, the Vidhan Sabha passed four Bills, namely:

(i) The Sikh Gurdwaras (Amendment) Bill 2023;
(ii) Punjab Affiliated Colleges (Security of Service) (Amendment) Bill 2023;
(iii) Punjab Universities Law (Amendment) Bill 2023; and
(iv) Punjab Police (Amendment) Bill 2023

No action was taken by the Governor on these Bills.

5. Thereafter, the session of the Vidhan Sabha was sought to be reconvened on 19 October 2023 since the following three Money Bills were to be introduced :

(i) The Punjab Fiscal Responsibility and Budget Management (Amendment) Bill, 2023;
(ii) The Punjab Goods and Services Tax (Amendment) Bill 2023; and

[2] "Rules of Procedure"

(iii) The Indian Stamp (Punjab Amendment) Bill 2023

The recommendation of the Governor was required in terms of the provisions of Article 207(1) of the Constitution for the introduction of the Bill in the Vidhan Sabha.

6. Correspondence was exchanged between the Chief Minister and the Governor. On 15 July 2023, the Chief Minister addressed a communication to the Governor noting that though the Sikh Gurudwaras (Amendment) Bill 2023 was submitted for assent on 26 June 2023, it had not been assented to till then. In his response dated 17 July 2023, the Governor stated that:

> "I have proceeded to receive legal advice which gives me to believe that your calling of Vidhan Sabha session on 19-6-2023 and 20-6-2023 when these four Bills were passed was in breach of law and procedure"

The Governor thereby cast doubt on the legitimacy and legality of those Bills. The Governor stated that "in the background of the legal advice received" he was actively considering whether to obtain the legal opinion of the Attorney General for India "or as per the Constitution, to reserve these Bills for the consideration and consent of the President of India". The Governor stated that he would take action according to law after the legality of the Vidhan Sabha session which was held on 19 and 20 June 2023 is first examined.

7. The Governor addressed another letter on 24 July 2023 to the Chief Minister annexing a "crux of legal opinion" obtained from a "constitutional expert", according to which "the House so summoned was patiently (sic) illegal". After the three Money Bills were forwarded to the Governor for consideration in the special session of the Fourth Budget Session of the Sixteenth Punjab Vidhan Sabha, proposed to be held from 20

October 2023, the Governor addressed a communication to the Chief Minister on 19 October 2023. He reiterated that in his previous communications dated 24 July 2023 and 12 October 2023, he had indicated that the calling of the session was "patently illegal, against the accepted procedures and practice of the legislature, and against the provisions of the Constitution". The Governor stated:

> "As the Budget Session stood concluded, any such extended session is bound to be illegal, and any business conducted during such sessions is likely to be unlawful, and ab-initio void. Inspite of these communications, disregarding the possibility of taking an unconstitutional step, it appears that a decision has been taken to call the session. For these reasons I withhold my approval to the above mentioned Bills."

8. Notably, the Governor did not 'declare' in any public notification that he is withholding his assent to the Bills. The Governor advised the Chief Minister to call for a fresh Monsoon/Winter Session and to forward an agenda setting out the specific business to be conducted so as to enable him to grant permission for the summoning of the House to transact the business.

9. Aggrieved by the inaction of the Governor, the State of Punjab invoked the jurisdiction of this Court under Article 32 of the Constitution. The State of Punjab seeks:

(a) A declaration that the Sessions held on 19 June 2023, 20 June 2023 and 20 October 2023 of the Punjab Vidhan Sabha are legal and that the business transacted by the House is valid; and

(b) A mandamus to the effect that the seven Bills which have been kept pending by the Governor including the three Money Bills be processed in accordance with law.

10. This Court entertained the Petition on 6 November 2023. During the course of the hearing, the Court has been apprised of the fact that after the institution of the Petition, the Governor has recommended that two out of the three Money Bills, namely, the Punjab Goods and Services Tax (Amendment) Bill 2023; and the Indian Stamp (Punjab Amendment) Bill 2023, may be introduced before the Vidhan Sabha.

II. Submissions

11. During the course of the hearing, we have heard submissions on behalf of the petitioners by Dr Abhishek Manu Singhvi, senior counsel who appeared with Mr Gurminder Singh, Advocate General for the State of Punjab. Mr. Satya Pal Jain, senior counsel appeared on behalf of the Principal Secretary to the Governor.

12. The principal submissions which have been urged on behalf of the petitioners are that:

(a) Though the Budget Session of the Legislative Assembly was summoned on 3 March 2023, it was adjourned *sine die* on 22 March 2023 by the Speaker without prorogation;

(b) The adjournment of the House *sine die* could not have been treated by the Governor as a prorogation of the House;

(c) The Speaker was acting within the exercise of constitutional jurisdiction, as evinced by the provisions of the Rules of Procedure governing the Vidhan Sabha, in reconvening the sitting of the Assembly on 19 and 20 June 2023 under the second proviso to Rule 16;

(d) Regulating the rules of procedure and the conduct of business in the House lies within the sole discretion of the Speaker;

(e) The Governor as a symbolic head of State did not act within the scope of his constitutional powers in coming to the conclusion that reconvening of the session of the Vidhan Sabha in June 2023 was unconstitutional, thereby rendering the legislative business which was transacted on 20 June 2023 void; and

(f) The consequence of the decision of the Speaker is to virtually nullify the legislations which have been passed by an overwhelming majority of the Members of the Legislative Assembly.

13. On the other hand, it has been urged on behalf of the Secretary to the Governor that:

(i) After the business of the Budget Session had been transacted, the House was required to be prorogued and it was not open to the Speaker to adjourn the proceeding *sine die* to be reconvened initially on 19 and 20 June 2023 and thereafter on 19 and 20 October 2023;

(ii) Rule 14A of the Rules of Procedure requires that three sessions should be held in the Vidhan Sabha, namely, the Budget Session, the Monsoon Session and the Winter Session and hence, it was not open to the Speaker to continue the Budget Session in the month of June 2023;

(iii) The Governor has, as a matter of fact, assented to as many as 185 Bills which were presented to him for assent, which would clearly indicate that there has been

no delay on the part of the Governor and it is only in view of the objection to the manner in which the House was adjourned *sine die* that assent to the four Bills was withheld;

(iv) Subsequently, the Governor has even granted his recommendation for the introduction of two of the three Money Bills in the Vidhan Sabha;

(v) In the reliefs which have been claimed in the petition under Article 32 of the Constitution, the petitioners themselves seek a declaration that the sessions which were held on 19 and 20 June 2023 and the business which was transacted was legal, which is an indication of the fact that the State of Punjab itself is unsure about the validity of the session; and

(vi) The Governor would have no objection whatsoever to deal with the Bills in respect of which assent has been sought if this Court were to clarify that the Budget Session was lawfully adjourned *sine die* so as to be reconvened in the month of June 2023.

14. Two issues arise for consideration: first, whether the Governor can withhold **action** on Bills which have been passed by the State Legislature; and second, whether it is permissible in law for the Speaker to reconvene a sitting of a Vidhan Sabha session which has been adjourned but has not been prorogued.

III. Analysis

A. The Governor is a symbolic head and cannot withhold action on Bills passed by the State Legislature

15. In a Parliamentary form of democracy real power vests in the elected

representatives of the people. The governments, both in the States and at the Centre consist of members of the State Legislature, and, as the case may be, Parliament. Members of the government in a Cabinet form of government are accountable to and subject to scrutiny by the legislature. The Governor as an appointee of the President is the titular head of State. The fundamental principle of constitutional law which has been consistently followed since the Constitution was adopted is that the Governor acts on the 'aid and advise' of the Council of Ministers, save and except in those areas where the Constitution has entrusted the exercise of discretionary power to the Governor. This principle cements the bedrock of the constitutional foundation that the power to take decisions affecting the governance of the State, or as the case may be of the nation essentially lies with the elected arm of the government. The Governor is intended to be a constitutional statesman, guiding the government on matters of constitutional concern.

16. These principles have been well established since the decision in **Samsher Singh** v. **State of Punjab**[3], where this Court held:

> "28. Under the Cabinet system of Government as embodied in our Constitution **the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers** save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.
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> …
>
> 32. It is a fundamental principle of English Constitutional law that Ministers must accept responsibility for every executive act. In England the Sovereign never acts on his own responsibility. The power of the Sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action. Those advisers must have the confidence of the House of Commons. This rule of English Constitutional Law is incorporated in our Constitution. **The Indian Constitution envisages a Parliamentary and responsible form of Government at the Centre and in the**

[3] (1974) 2 SCC 831

> **States and not a Presidential form of Government. The powers of the Governor as the constitutional head are not different**."

17. In **SR Bommai** v. **Union of India**[4] a nine judge bench of this Court has held that federalism is a part of the basic structure of the Constitution. The manner in which the role of the Governor as a symbolic Head of State is performed is vital to safeguard this basic feature. The exercise of unbridled discretion in areas not entrusted to the discretion of the Governor risks walking rough shod over the working of a democratically elected government at the State. In a steady line of cases this Court has strengthened the importance of institutions and their vitality to democratic functioning. Federalism and democracy, both parts of the basic structure, are inseparable. When one feature is diluted it puts the other in peril. The tuning fork of democracy and federalism is vital to the realization of the fundamental freedoms and aspirations of our citizens. Whenever one prong of the tuning fork is harmed, it damages the apparatus of constitutional governance.

18. In **State (NCT of Delhi)** v. **Union of India**,[5] one of us (D Y Chandrachud J) observed:

> "287. … These cases involve vital questions about democratic governance and the role of institutions in fulfilling constitutional values. The Constitution guarantees to every individual the freedom to adopt a way of life in which liberty, dignity and autonomy form the core. The Constitution pursues a vision of fulfilling these values through a democratic polity. The disputes which led to these cases tell us how crucial institutions are to the realisation of democracy. It is through them that the aspirations of a democratic way of life, based on the rule of law, are fulfilled. Liberty, dignity and autonomy are constraining influences on the power of the State. **Fundamental human freedoms limit the authority of the State. Yet the role of institutions in achieving democracy**

[4] (1994) 3 SCC 1
[5] (2018) 8 SCC 501

> **is as significant. Nations fail when institutions of governance fail. The working of a democratic institution is impacted by the statesmanship (or the lack of it) shown by those in whom the electorate vests the trust to govern.** In a society such as ours, which is marked by a plurality of cultures, a diversity of tradition, an intricate web of social identity and a clatter of ideologies, institutional governance to be robust must accommodate each one of them. Criticism and dissent form the heart of democratic functioning. The responsiveness of institutions is determined in a large measure by their ability to be receptive to differences and perceptive to the need for constant engagement and dialogue. Constitutional skirmishes are not unhealthy. They test the resilience of democracy. **How good a system works in practice must depend upon the statesmanship of those who are in decision-making positions within them. Hence, these cases are as much about interpreting the Constitution as they are about the role of institutions in the structure of democratic governance and the frailties of those who must answer the concerns of citizens**."

19. The dispute in the present case essentially bears upon the Governor having detained four Bills which were passed by the Vidhan Sabha on 20 June 2023. Article 200[6] of the Constitution postulates that when a Bill has been passed by the Legislative Assembly of a State or, in the case of a bicameral legislature, by both the Houses, it shall be presented to the Governor. The Governor has three options available when a Bill which has been passed by the State Legislature is presented for assent. The Governor "shall declare" (i) either that he assents to the Bill; or (ii) that he withholds assents

[6] When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

therefrom; or (iii) that he reserves the Bill for the consideration of the President. The term "shall declare" implies that the Governor is required to **declare** the exercise of his powers. The fist proviso to Article 200 stipulates that the Governor may "as soon as possible" return the Bill. The proviso to Article 200 envisages that, as soon as possible, after the presentation to the Governor of the Bill for assent he may return a Bill, which is not a Money Bill, together with a message requesting that the House or Houses would reconsider the Bill or any specific provisions of the Bill and in particular consider the desirability of introducing such amendments which he may recommend. When a Bill is returned by the Governor, the legislature of the State is duty bound to reconsider the Bill. After the Bill is again passed by the legislature either with or without amendment and is presented to the Governor for assent, the Governor shall not withhold assent therefrom. Apart from the first proviso in the above terms, the second proviso envisages a situation where "the Governor shall not assent to, but shall reserve for the consideration of the President" those Bills that "so derogate from the powers of the High Court as to endanger the position" which the High Court is designed to fill by the Constitution.

20. The present case turns upon how the first proviso is to be construed. In construing the first proviso, it needs to be noted that the substantive part of Article 200 provides the Governor with three options: an option to assent; an option to withhold assent; and an option to reserve the Bill for the consideration of the President. The first proviso opens with the expression "the Governor may" in contrast to the second proviso which begins with the expression "the Governor shall not assent". The "may" in the first proviso is because the first proviso follows the substantive part which contains three options for the Governor. The first proviso does not qualify the first option (where the Governor assents to the Bill) nor the third option reserving the Bill for consideration of the President. The

first proviso attaches to the second option (withholding of assent) and hence begins with an enabling expression, “may”. By the mandate of the second proviso, there is an embargo on the Governor assenting to a Bill which derogates from the powers of the High Court under the Constitution. The Governor is by the mandate of the Constitution required to reserve such a Bill for consideration of the President.

21. The second proviso impacts upon the **option** which is provided by the substantive part of Article 200 to the Governor to reserve a Bill for the consideration of the President by making it mandatory in the situation envisaged there. The option of reserving a Bill for the consideration of the President is turned into a mandate where the Governor has no option but to reserve it for the consideration of the President. The second proviso is, therefore, in the nature of an exception to the option which is granted to the Governor by the substantive part of Article 200 to reserve any Bill for the consideration of the President.

22. A proviso, as is well settled, may fulfil the purpose of being an exception. Sometimes, however, a proviso may be in the form of an explanation or in addition to the substantive provision of a statute. The first proviso allows the Governor, where the Bill is not a Money Bill to send it back to the legislature together with a message. In terms of the message, the legislature may be requested by the Governor to reconsider the entirety of the Bill. This may happen for instance where the Governor believes that the entirety of the Bill suffers from an infirmity. Alternatively, the Governor may request the legislature to reconsider any specific provision of the Bill. While returning the Bill, the Governor may express the desirability of introducing an amendment in the Bill. The desirability of an amendment may arise with a view to cure an infirmity or deficiency in the Bill. The concluding part of the first proviso however stipulates that if the Bill is passed again by

the legislature either with or without amendments, the Governor shall not withhold assent therefrom upon presentation. The concluding phrase “shall not withhold assent therefrom” is a clear indicator that the exercise of the power under the first proviso is relatable to the withholding of the assent by the Governor to the Bill in the first instance. That is why in the concluding part, the first proviso indicates that upon the passing of the Bill by the legislature either with or without amendments, the Governor shall not withhold assent. The role which is ascribed by the first proviso to the Governor is recommendatory in nature and it does not bind the state legislature.

23. This is compatible with the fundamental tenet of a Parliamentary form of government where the power to enact legislation is entrusted to the elected representatives of the people. The Governor, as a guiding statesman, may recommend reconsideration of the entirety of the Bill or any part thereof and even indicate the desirability of introducing amendments. However, the ultimate decision on whether or not to accept the advice of the Governor as contained in the message belongs to the legislature alone. That the message of the Governor does not bind the legislature is evident from the use of the expression “if the Bill is passed again …**with or without amendments**”.

24. The substantive part of Article 200 empowers the Governor to withhold assent to the Bill. In such an event, the Governor must mandatorily follow the course of action which is indicated in the first proviso of communicating to the State Legislature “as soon as possible” a message warranting the reconsideration of the Bill. The expression “as soon as possible” is significant. It conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Constitutional language is not surplusage. In **State of**

Telangana v. **Secretary to Her Excellency the Hon'ble Governor for the State of Telangana & Anr.**[7] this court observed that "The expression "as soon as possible" has significant constitutional content and must be borne in mind by constitutional authorities." The Constitution evidently contains this provision bearing in mind the importance which has been attached to the power of legislation which squarely lies in the domain of the state legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever.

25. The Governor, as an unelected Head of the State, is entrusted with certain constitutional powers. However, this power cannot be used to thwart the normal course of lawmaking by the State Legislatures. Consequently, if the Governor decides to withhold assent under the substantive part of Article 200, the logical course of action is to pursue the course indicated in the first proviso of remitting the Bill to the state legislature for reconsideration. In other words, the power to withhold assent under the substantive part of Article 200 must be read together with the consequential course of action to be adopted by the Governor under the first proviso. If the first proviso is not read in juxtaposition to the power to withhold assent conferred by the substantive part of Article 200, the Governor as the unelected Head of State would be in a position to virtually veto the functioning of the legislative domain by a duly elected legislature by simply declaring that assent is withheld without any further recourse. Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance. Therefore, when the Governor decides to withhold assent under the substantive part of Article 200, the course of action which is to be

[7] WP(C) No. 333 of 2023

followed is that which is indicated in the first proviso. The Governor is under Article 168[8] a part of the legislature and is bound by the constitutional regime.

26. Insofar as Money Bills are concerned, the power of the Governor to return a Bill in terms of the first proviso is excluded from the purview of the constitutional power of the Governor. Money Bills are governed by Article 207 in terms of which the recommendation of the Governor is required for the introduction of the Bill on a matter specified in clauses (a) to (f) of clause (1) of Article 199.

27. Senior counsel for the respondent has argued that the Governor has assented to about 185 Bills which would indicate that the delay on the part of the Governor on the four Bills in question was only based on his objection to the validity of the sitting of the Vidhan Sabha. The learned senior counsel further submitted that the Governor has since granted his recommendation for the introduction of two of the three Money Bills in the Vidhan Sabha. As we have held above, the Governor is not at liberty to withhold his action on the Bills which have been placed before him. He has no avenue but to act in a manner postulated under Article 200. Regardless, these submissions do not affect the role of the Governor under the Constitution or justify the inaction on the Bills sent to him by a democratically elected State Legislature.

28. In view of the above, the Governor of Punjab was not empowered to withhold action on the Bills passed by the State Legislature and must act “as soon as possible”. In

[8] **Article 168.**
Constitution of Legislatures in States. - (1) For every State there shall be a Legislature which shall consist of the Governor, and (a) - [Andhra Pradesh], [***], Bihar, [***] [Madhya Pradesh], [***[, [Maharashtra], [Karnataka] [***], [Tamil Nadu] [and Uttar Pradesh], two Houses;
(*b*) in other States, one House.
(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly

any event, as delineated below, it was legally permissible for the Speaker to reconvene the Vidhan Sabha because (a) there is a distinction between adjournment and prorogation; and (b) the Speaker has exclusive jurisdiction over regulating the procedure of the House.

B. Reconvening a sitting of the Vidhan Sabha which has not been prorogued is permissible in law and is within the exclusive domain of the Speaker

1. Distinction between adjournment and prorogation

29. Article 174 of the Constitution provides that the Governor shall from time to time summon the House or each House of the legislature of the State to meet at such time and place as he thinks fit. However, clause (1) also specifies that six months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session. Clause (2) of Article 174 empowers the Governor, from time to time to (a) prorogue the House or either House of the legislature; and (b) dissolve the Legislative Assembly. Article 174 thus makes a reference to distinct constitutional concepts, namely, the power to prorogue and the power to dissolve.

30. Significantly, Article 174 also makes a distinction between a sitting of the legislature and a session of the legislature. That is how, while specifying the maximum duration between two sittings, Article 174(1) stipulates that not more than six months should elapse between the last sitting of the legislature in one session and the date appointed for its first sitting in the next session. This implicitly recognizes that there may be more than one sitting of the legislature comprised in one session. Similar provisions have been made in relation to Parliament under Article 85 of the Constitution.

31. Kaul and Shakdher in their well-known treatise on the *Practice and Procedure of Parliament (7th Ed)* note that the termination of a session of the House of Parliament by an order made by the President under Article 85(2) of the Constitution is called prorogation. Moreover, the President in exercising the power to prorogue the House acts on the advice of the Prime Minister. Usually, as the authors note, prorogation follows the adjournment of the sitting of the House *sine die*. However, the authors list several instances where the adjournment of the sitting of the House *sine die* is not followed by a prorogation and the sittings of the House are reconvened by the Speaker. A few illustrative instances discussed by the authors are set out below:

(a) The Eighth Session of the Eighth Lok Sabha commenced on 23 March 1987 and was adjourned *sine die* on 12 May 1987. The Lok Sabha was not, however, prorogued. The Speaker reconvened the sittings of Lok Sabha from 27 July 1987 which continued till 28 August 1987. The two parts, preceding and following the period of adjournment of Lok Sabha *sine die* on 12 May 1987, were treated as constituting one session divided into two parts. On conclusion of the second part of the Eighth Session, the Lok Sabha was adjourned *sine die* on 28 August 1987 and was prorogued on 3 September 1987; and

(b) The Third Session of the Ninth Lok Sabha commenced on 07 August 1990 and was adjourned *sine die* on 07 September 1990. The Lok Sabha was not, however, prorogued. The Speaker reconvened the sittings of the Lok Sabha from 01 October 1990 which continued till 05 October 1990.

32. Similar incidents of reconvening an adjourned sitting of the House, without prorogations can also be found in the (a) Fourteenth Session of the Eighth Lok Sabha which commenced on 18 July 1989; (b) First Session of the Eleventh Lok Sabha which commenced on 22 May 1996; (c) Fourteenth Session of Thirteenth Lok Sabha which commenced on 02 December 2003; (d) Seventh Session of Fourteenth Lok Sabha which commenced on 16 February 2006.

33. Article 208 of the Constitution provides that a House of the legislature of a State may make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. The Rules of Procedure framed by the Punjab Vidhan Sabha contain provisions which have a bearing on the subject under discussion. Rule 2 defines "prorogue" to mean the ending of a session by an order of the Governor under Article 174(2)(a) of the Constitution. Rule 3 postulates that when a session of the Vidhan Sabha is summoned under Article 174 of the Constitution, the Secretary shall issue a notification in respect thereof in the Gazette. According to Rule 7, when a session of the Vidhan Sabha is prorogued, the Secretary shall issue a notification in the Gazette and inform the Members. Rule 7A postulates that on the prorogation of the House, all pending notices, other than notices of intention to move for leave to introduce a Bill, shall lapse. Rule 14 provides that the sitting of the Vidhan Sabha is duly constituted when it is presided over by the Speaker or any other Member competent to preside over a sitting under the Constitution or the Rules. Rule 14A provides that subject to the provisions of Article 174, there shall be three Sessions in a financial year, namely, the Budget Session, Summer/Monsoon Session and Winter Session of the Assembly and that the total

number of sittings in all the Sessions put together shall not be less than forty. Rule 16 provides as follows:

> "Subject to the provisions of the Constitution and these Rules the Vidhan Sabha (Assembly) may be adjourned from time to time by its own order:
>
> Provided that a motion for adjournment of the Vidhan Sabha (Assembly) to a day or sine die shall not be made except in consultation with the Speaker:
>
> Provided further that the Speaker may, if it is represented to him by the Minister that the public interest requires that the Vidhan Sabha (Assembly) should meet at any earlier time during the adjournment and if he is satisfied that the public interest does so require, give notice that he is so satisfied, and call a meeting of the Vidhan Sabha (Assembly) before the day to which it has been adjourned or any time after it has been adjourned sine die."

34. Rule 16 indicates that the Vidhan Sabha may be adjourned by its own order from time to time. This is however subject to the provisions of the Constitution and the Rules. In terms of the first proviso, a motion for adjournment either to a day or *sine die* requires consultation with the Speaker. Significantly, in terms of the second proviso, the Speaker is empowered in public interest to call a meeting of the Vidhan Sabha earlier than the date to which it has been adjourned or at any time after it has been adjourned *sine die*. Therefore, it is clear that the Rules of Procedure expressly recognize a situation where the Speaker reconvenes a sitting of the Vidhan Sabha which has been adjourned *sine die* but not prorogued.

35. The provision empowering the Speaker to reconvene a sitting of the Vidhan Sabha on any date after it has been adjourned *sine die* is not unique to the Rules of Procedure of the Punjab Vidhan Sabha. A review of the Rules of Procedure of State Legislatures for various states indicates that almost all of them contain an identical or similar provision.

By way of illustration, to name a few, the Rules of Procedure for the State Legislatures of Rajasthan,[9] Haryana,[10] Tamil Nadu,[11] Kerala,[12] and West Bengal[13] expressly permit the Speaker to call a sitting of the House any time after it has been adjourned. A similar provision is also contained in the first proviso to Rule 15(1) of the Rules of Procedure and Conduct of Business in Lok Sabha.[14] Therefore, it is common practice for the Rules of Procedure of State Legislatures and Parliament to permit the Speaker to call a sitting of the House after it has been adjourned *sine die*.

36. In **Ramdas Athawale (5)** v. **Union of India and Others**[15], a Constitution Bench of this Court distinguished between the prorogation of the House and its adjournment. The Court held that:

> "22. An adjournment is an interruption in the course of one and the same session, whereas a prorogation terminates a session. The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current.
>
> …
>
> 23. In May's Parliamentary Practice, which has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary practice, it is stated:
>
> > "A session is the period of time between the meeting of a Parliament, whether after the prorogation or dissolution, and its prorogation…. During the course of a session, either House may adjourn itself of its own motion to such as it pleases. The period between the prorogation of Parliament and its reassembly in a new session is termed as 'recess'; while the period between the adjournment of either House and the resumption of its sitting is generally called an 'adjournment'."
>
> …

[9] Rule 13, Rules of Procedure and Conduct of Business in the Rajasthan Legislative Assembly.
[10] Rule 16, Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly.
[11] Rule 26, Tamil Nadu Legislative Assembly Rules.
[12] Rule 14, Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.
[13] Rule 15, Rules of Procedure and Conduct of Business in the West Bengal Legislative Aseembly.
[14] 15. Adjournment of House and procedure for reconvening. - (1) The Speaker shall determine the time when a sitting of the House shall be adjourned sine die or to a particular day, or to an hour or part of the same day:
Provided that the Speaker, if thinks fit, may call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.
[15] (2010) 4 SCC 1

> 25. It is thus clear that whenever the House resumes after it is adjourned sine die, its resumption for the purpose of continuing its business does not amount to commencement of the session. The resumed sitting of the House, in this case, on 29-1-2004, does not amount to commencement of the first session in the year 2004.

37. The Constitution and established legislative practice distinguish between adjournment *sine die* and prorogation of the session of the House. In the case before us the Vidhan Sabha was adjourned on 22 March 2023 without prorogation. Therefore, the Speaker was empowered to reconvene the sittings of the House within the same session.

2. Exclusive domain of the Speaker to regulate the procedure of the House

38. Article 178 of the Constitution provides for the office of the Speaker and Deputy Speaker of a Legislative Assembly. Article 212 of the Constitution precludes the courts from inquiring into the proceedings of the legislature of the State. A corresponding provision with regard to the Parliament is contained in Article 122. The decision In **Ramdas Athawale** *(supra)* is significant in that it dwells on the role of the Speaker of the House and interprets Article 122 of the Constitution. The Constitution Bench observed:

> " 31. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to maintain order. The powers to regulate the procedure and conduct of business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued Notice dated 20-1-2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23-12-2003. Whether the resumed sitting on 29-1-2004 was to be treated as the second part of the fourteenth session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution

of India."

39. The Court observed that under Article 122(2), the decision of the Speaker in whom powers are vested to regulate the procedure and conduct of business is final and binding on every Member of the House. Hence, this Court held that the validity of the Speaker adjourning the House *sine die* and the later direction to resume sittings could not be inquired into on the ground of any irregularity of procedure. The Court reaffirmed that the business transacted and the validity of proceedings after the resumption of sittings of the House pursuant to the direction of the Speaker cannot be inquired by the courts. This follows the fundamental principle that it is the right of each House of the legislature to be the sole Judge of the lawfulness of its own proceedings so as to be immune from challenge before a court of law.

40. As stated above, Rule 16 of the Rules of Procedure empowers the Vidhan Sabha to adjourn from time to time by its own order. The first proviso to Rule 16 acknowledges that adjournment of the Vidhan Sabha may be either to a particular day or *sine die*. An adjournment *sine die* postulates that there is no specific date on which the sitting of the Vidhan Sabha is convened. The first proviso requires express consultation with the Speaker in that regard, for the adjournment of the Vidhan Sabha. However, even when an adjournment takes place the Speaker is entrusted in public interest to call a meeting of the Vidhan Sabha before the date to which it has been adjourned. These provisions are a clear indicator of the control of the Speaker in the conduct, both of the legislative business of the House and matters pertaining to its adjournment.

41. Therefore, it was legally permissible for the Speaker to reconvene the sitting of the Vidhan Sabha after it was adjourned *sine die* without prorogation. Further, the Speaker was empowered as the sole custodian of the proceedings of the House to adjourn and

reconvene the House.

42. The submission that the declaration sought by the State of Punjab in the present petition namely, that the sessions of the Vidhan Sabha and the business transacted was legal indicates that the State of Punjab is unsure about the validity of the sessions is misconceived. The declaration has not been sought in a vacuum but in response to the Governor's inaction on the Bills purportedly on the grounds that the sessions were invalid. In fact, as evidenced by the correspondence, the State of Punjab has consistently held the position that the sessions of the Vidhan Sabha and the business transacted therein are legal and constitutionally valid. The fact that a petitioner has approached this Court seeking declaratory relief cannot be used to the petitioner's detriment.

43. During the course of the hearing, a question was posed to the senior counsel appearing on behalf of the State of Punjab as to whether the course of action which has been followed in the present case could possibly be utilized to justify the indefinite adjournment of the House *sine die* so as to obviate the prorogation of the House. We posed a query to learned counsel on whether the power of adjourning of the House sine die could be used to obviate the proroguing of the House over an entire year. Responding to the query, Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the petitioner submitted that the Chief Minister heading the Council of Ministers of the State of Punjab would be advising the Speaker to convene the Winter Session of the State Legislative Assembly at an early date which would be fixed in due consultation. Dr Singhvi urged that the course of action which was adopted in the present case was due to the difficulty faced by the government in having the House summoned by the Governor. Counsel adverted to the situation which arose when the Governor was delaying in summoning the Vidhan Sabha for the Budget session, which eventually led to

proceedings before this court under Article 32. The imbroglio which arose in the State would have been obviated by statesmanship and collaboration.

IV. Conclusion

44. Bearing in mind the well settled principles which have been adverted to above, we are of the view that there is no valid constitutional basis to cast doubt on the validity of the session of the Vidhan Sabha which was held on 19 June 2023, 20 June 2023 and 20 October 2023. Any attempt to cast doubt on the session of the legislature would be replete with grave perils to democracy. The Speaker who has been recognized to be a guardian of the privileges of the House and the constitutionally recognized authority who represents the House, was acting well within his jurisdiction in adjourning the House *sine die*. The re-convening of the House was within the ambit of Rule 16 of the Rules of Procedure. Casting doubt on the validity of the session of the House is not a constitutional option open to the Governor. The Legislative Assembly comprises of duly elected Members of the Legislature. During the tenure of the Assembly, the House is governed by the decisions which are taken by the Speaker in matters of adjournment and prorogation. We are, therefore, of the view that the Governor of Punjab must now proceed to take a decision on the Bills which have been submitted for assent on the basis that the sitting of the House which was conducted on 19 June 2023, 20 June 2023 and 20 October 2023 was constitutionally valid.

45. We clarify that we have not expressed any opinion in regard to the manner in which the Governor will exercise his jurisdiction on the Bills in question presented to him. However, he must act in a manner consistent with the provisions of Article 200 of the Constitution.

46. The Petition shall accordingly stand disposed of in the above terms.

47. Pending applications, if any, stand disposed of.

…….....…..…….....……..CJI.
[Dr Dhananjaya Y Chandrachud]

……..…….....…….....J.
[J B Pardiwala]

……..…….....…….....J.
[Manoj Misra]

New Delhi;
November 10, 2023
CKB