

The Constitutional Crisis in Madhya Pradesh

■ **Dr. M.N. Buch**

The Governor of Madhya Pradesh, Ram Naresh Yadav is on a collision course with the Government of Madhya Pradesh. In the current session of the Legislature the Opposition Congress Party brought a motion of no confidence against the government. The Deputy Leader of the Opposition defected and the Speaker thereafter adjourned the House sine die. The Opposition is up in arms and it met the Government and demanded that he should use his constitutional powers under Article 175 and send a message asking for reconvening of the session. Meanwhile government has recommended that the House be prorogued under Article 174 of the Constitution. The Governor has not acted on this advice. He is also sitting on the Bill whereby the House adopted the third supplementary grant in the form of the Appropriation Bill therefor. This has led to a virtual constitutional crisis in the State.

Under Article 163 of the Constitution the Governor is bound to act on the advice of the Council of Ministers, except in those cases where the Constitution or a law directs that he will act at discretion. Such discretion is very limited. For example, under Article 164 the Governor will not seek the advice of the Council of Ministers in the matter of appointment of the Chief Minister because the Council stands dissolved. However, his discretion is hedged in by Article 164 (2) which makes the Council of Ministers collectively responsible to the Legislative Assembly. Therefore, the Governor would naturally invite that person who is the leader of the party which singly or in coalition has a majority in the House and, therefore, enjoys its trust. The Governor may act at discretion under Article 200 if he decides to return a Bill, other than a Money Bill, to the House with a message rather than accord immediate assent. Under Article 201 when reserving a Bill for consideration by the President the Governor may act independently. Under Article 371 which provides for Regional Development Boards for Vidarbha, Marathwada and the rest of Maharashtra in Maharashtra State and Saurashtra, Kutch and the rest of Gujarat in Gujarat State, the President may determine the special responsibilities of the Governor and he can exercise powers here without the aid and advice of the Council of Ministers. However, the exceptions are so few that in effect it is mandatory for the Governor to act on the advice of the Council of Ministers in every matter in which he exercises the executive power of the State.

Under Article 200 when deciding to return a Bill to the House the Governor will act at discretion, but if the House, after considering the comments of the Governor, decides to once again pass the Bill, with or without the change suggested, then the Governor cannot withhold assent. The reason for this is clear. In the matter of a Money Bill, which includes an Appropriation Bill as given in Article 199 of the Constitution, under Article 200 the Governor cannot return such a Bill after it has been passed by the House. Under Article 204 no amendment can be made in the Appropriation Bill because that would be tantamount to a vote of no confidence against government. Under Article 207 no Money Bill can be introduced in the Legislature without the Governor's recommendation. In other words, the Bill has the Governor's prior assent, it cannot be amended and, therefore, if the House passes it then under Article 200 the Governor cannot withhold his assent to such a Bill.

In Madhya Pradesh the Governor has withheld assent to the Appropriation Bill which covers the third supplementary grants. He is not entitled to do this. He has not issued sanction to prorogue the House. He is not entitled to do this. In both matters the Governor is in violation of the Constitution. A high functionary, who happens to be the Head of State of one of the constituent units of our Federation or Union as constituted under Article 1 of the Constitution, who has sworn an oath under Article 159 to “preserve, protect and defend the Constitution and the law”, the Governor of Madhya Pradesh cannot function in violation of the Constitution. He must either mend his ways, or he should resign, or the President should withdraw his pleasure under Article 156(1) of the Constitution. However, the Governor is obviously acting as an agent of the Central Government and the party which is the leader of the UPA coalition in Delhi and the main Opposition in Madhya Pradesh. This makes him utterly partisan, which is further suggested by the fact that when he visited Delhi for consultation after the State Vidhan Sabha was adjourned, he not only met the Prime Minister and other ministers and officers, but also called on the President of the Congress, which fact was widely reported. Governors are not expected to pay calls on leaders of any political party because as the Head of State he has to remain above politics.

The question here is that despite the constitutional position being absolutely clear, supposing the Governor persists with his behaviour which is contrary to what the Constitution states. What is the remedy? Whereas Government and the Governor are in conflict, the deliberate withholding of assent on the Appropriation Bill concerning the third supplementary grants will create a financial crisis. If the Governor, through persuasion, cannot be made to function constitutionally, then the State Government would be entitled to approach the Madhya Pradesh High Court or the Supreme Court under Article 226 and 139 respectively of the Constitution. Because the Governor is appointed by the President and the question about whether he is acting contrary to the Constitution raises a fundamental issue, perhaps the Supreme Court would be the right forum for adjudicating the question. The State would be justified if it petitions the Supreme Court to issue a Writ of Mandamus to the Governor directing that he must function according to the aid and advice of the Council of Ministers rendered under Article 163, give assent to the Appropriation Bill for the third supplementary grants, prorogue the State Vidhan Sabha and generally keep within the limits of his power as prescribed by the Constitution. Because the matter is of great urgency the government should also request the Supreme Court for immediate and priority hearing on the petition and issue of a suitable writ without any delay so that a constitutional crisis can be avoided in the State.
