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Ayodhya, Gujarat 2002 polls, 2G – the times Presidential Reference was invoked earlier

Governments, including of the Congress, have used the Presidential Reference route to either resolve vexed legal issues, seek clarity on judgements, or at times to lob uneasy and uncomfortable political issues into the Court's domain

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President Droupadi Murmu's move to consult the Supreme Court on the use of Article 142 to impose timelines for the President and Governors to act on Bills from state Assemblies has sparked a renewed discussion on the 'Presidential Reference' provision. (Source: X/)

President Droupadi Murmu’s decision to seek the Supreme Court’s opinion on whether the Court can employ its powers under Article 142 to impose timelines for the President and Governors to act on Bills sent by state Assemblies means the provision of

'Presidential Reference' again finds itself in the political battleground.

So far, the Congress has not joined the issue, though its allies including Tamil Nadu Chief Minister and DMK chief M K Stalin and the Left parties have hit out at the Modi government over the President's move.

Several governments in the past, including that of the Congress, have used the Presidential Reference route to either resolve vexed legal issues with political undertones, seek clarity on important Supreme Court judgements which impact matters of policy and governance, or at times to lob uneasy and uncomfortable political issues into the Court's domain.

These include issues like the Babri Masjid-Ram Janmabhoomi dispute, the Cauvery water row, the timing of elections after the 2002 Gujarat riots and the alleged 2G licence allocation scam.

Cauvery water row, 1991

The July 1991 Presidential Reference regarding the Cauvery water dispute between Tamil Nadu and Karnataka had political undertones, but was also about adjudicating whether a state government could deny implementing the order of a tribunal set up by the Central government. The Congress was then in power in Karnataka and at the Centre, while the AIADMK's J Jayalalithaa had just a month ago taken over as the Chief Minister of Tamil Nadu.

In June 1991, the Cauvery Water Disputes Tribunal had issued a directive to Karnataka to release 205 tmcft (thousand million cubic feet) of water to Tamil Nadu. But the sharing of Cauvery waters between Karnataka and Tamil Nadu was – and remains – a volatile issue. Soon after the Cauvery tribunal's order, the government led by S Bangarappa in Karnataka issued a Karnataka-Cauvery Basin Irrigation Protection Ordinance, which sought to override it.

The Presidential Reference to the Supreme Court raised these key points: "Whether the Ordinance and the provisions thereof are in accordance with the provisions of the Constitution; (2) Whether the Order of the Tribunal constitutes a report and a decision

within the meaning of Section 5(2) of the Act; and (3) Whether the Water Disputes Tribunal constituted under the Act is competent to grant any interim relief to the parties to the dispute."

Section 5(2) of The Inter-State River Water Disputes Act, 1956, says, "The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts…."

As regards the Presidential Reference, the Supreme Court concluded that the Karnataka Ordinance, which was replaced by an Act later, was beyond the legislative competence of the state and was ultra vires the Constitution. It said the 'Order of the Tribunal' constituted a report and a decision within the meaning of Sector 5(2) of the Inter-State Water Disputes Act. It further said that a Water Disputes Tribunal constituted under the Act was competent to grant any interim relief to the parties to the dispute, when a reference for such relief was made by the Central government.

Ram Janmabhoomi-Babri Masjid dispute, 1992

In the wake of the demolition of the Babri Masjid in December 1992 by alleged Sangh Parivar members, the Congress-led P V Narasimha government decided to take the Presidential Reference route – after announcing that it would see to it that the razed structure was rebuilt and that appropriate steps were taken for the construction of a Ram temple.

In what was seen as a politically astute move, the Rao government decided to "acquire all areas in dispute in the suits pending in the Allahabad High Court (on the matter)" and to request the President to seek the Supreme Court's opinion on whether a Hindu temple existed where the "disputed structure" stood. Accordingly, the 'Acquisition of Certain Area at Ayodhya Ordinance' was issued on January 7, 1993, for 67.703 acres of land in the Ram Janmabhoomi-Babri Masjid complex.

The same day, then President Shankar Dayal Sharma made a reference to the Supreme Court, asking "…whether a Hindu temple or any Hindu religious structure existed prior to the construction of the Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards…) in the area on which the structure stood?".

Many in the Congress saw Rao's decision as an attempt to appropriate the Ram Mandir plank from the BJP by getting a temple built by the Ramalaya Trust, which had several Shankaracharyas – while "firing from the shoulders of the Supreme Court".

The Court, however, did not let itself be dragged into the row. It said the Act and the Reference favoured one religious community and disfavoured another. The purpose of the Reference, it said, was opposed to secularism and did not serve a Constitutional purpose. Hence, the Court struck down the Acquisition of Certain Area at Ayodhya Act, which had replaced the Ordinance, as being unconstitutional, and "respectfully" returned the Presidential Reference unanswered.

Interestingly, the Court added, "no observation that we have made is a reflection on the referring authority". "We have the highest respect for the office of the President of India and for its present incumbent; his secular credentials are well known."

Gujarat gas transmission Act, 2001

In 2001, a Presidential Reference was made to the Supreme Court on the Gujarat government's enactment of the Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act. It was on the Constitutional validity of the Act, since the supply and distribution of oil and gas was a subject under the Union List. Interestingly, the BJP was in power both in Gujarat and the Centre at that time.

The questions in the Presidential Reference were: "Whether Natural Gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of the List I and the Union has exclusive legislative competence to enact; Whether States have legislative competence to make laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution; and Whether the State of Gujarat had the legislative competence to enact the Act."

The Court held: "… the Union has exclusive legislative competence to enact laws on natural gas (including LNG)" and that "the states have no legislative competence to make laws on the subject".

It added that the Gujarat Act, so far as the provisions contained therein relating to natural gas or LNG, was without any legislative competence and the Act was to that extent ultra vires of the Constitution.

Gujarat elections, 2002

In the aftermath of the 2002 riots in Gujarat, the state BJP government wanted to hold early elections in the state. While the Assembly polls were due in March 2003, the then Governor S S Bhandari dissolved the Assembly on the recommendation of the Narendra Modi Cabinet in July 2002. Accordingly, the last sitting of the dissolved Assembly was held on April 3, 2002.

The Election Commission, however, said it was not in a position to conduct elections before October 3, 2002, which was when the six-month deadline to have an Assembly in place from the last sitting would end.

There was a BJP government led by A B Vajpayee in power at the Centre, and the EC order prompted the President to refer three questions for the opinion of the Supreme Court. The questions posed by then President A P J Abdul Kalam were: “Is Article 174 subject to the decision of the Election Commission of India under Article 324 as to the schedule of elections of the Assembly; Can the Election Commission of India frame a schedule for the elections to an Assembly on the premise that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President; And is the Election Commission of India under a duty to carry out the mandate of Article 374 of the Constitution, by drawing upon all the requisite resources of the Union and the State to ensure free and fair elections?”

Article 174 (1) says that the “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, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.” Article 324 deals with superintendence, direction and control of elections to be vested in the EC.

The Court upheld the EC’s order on deferring Gujarat polls and said there was no Constitutional mandate to hold elections within six months of the last sitting of an Assembly if the House was prematurely dissolved. “The provisions of Article 174 are

mandatory in character so far as the time period between two sessions is concerned in respect of live Assemblies and not dissolved Assemblies. Article 174 and Article 324 operate in different fields," it said.

Within an hour of the Supreme Court verdict, the EC announced that the Assembly election in Gujarat would be held on December 12, 2002.

2G telecom licences, 2012

In April 2012, under the UPA government led by Manmohan Singh, the President sought clarity from the Supreme Court on its order cancelling 122 2G telecom licences given by the government, a political flashpoint between the government and the BJP-led Opposition.

The Presidential Reference had eight questions, the first of which was "Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?" It sought clarity over a February 2, 2012, verdict in which the Court had said that resources should be allotted through auctions.

A Constitution Bench led by Chief Justice S H Kapadia ruled that "auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances" since this mode was merely an economic policy and "not a Constitutional mandate", that could be applied in absolute terms.

The Court said it "cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place". It said it respected the mandate and wisdom of the Executive on such matters.

"The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot

mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate," it said.

The Congress government welcomed the verdict, saying it had brought 'clarity' to the government's role in economic policy-making.

This article went live on May fifteenth, twenty twenty-five, at fifty-nine minutes past nine at night.

TAGS: **2002 Gujarat Elections** **Droupadi Murmu** **Political Pulse** **Ram Janmabhoomi**