

WHY CAN'T PERARIVALAN BE RELEASED: SUPREME COURT

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“If at all the Governor disagrees with the State Cabinet decision to release him, the proper course for him would be to refer it back to the Cabinet and not forward it to the President, who is bound by the aid and advice of the Centre... That cannot simply be done. *We prima facie* find the Governor’s action wrong and you are arguing against the Constitution,” Justice L. Nageswara Rao addressed Additional Solicitor General K.M. Nataraj, appearing for the Centre.

Justice B.R. Gavai, on the Bench said the Constitution would have to be “rewritten” if the Centre’s argument was accepted that in “certain situations” the Governor could refer matters under Article 161 (Governor’s power of mercy) to the President.

“Under what provision in the Constitution is the Governor referring the case to the President? Is this not an issue in which the Governor acts on the aid and advice of the State Cabinet? What is the source of power which allows him to refer the matter to the President? Under Article 161, the Governor has to exercise his powers independently,” Justice Gavai observed.

Senior advocate Rakesh Dwivedi, for the State of Tamil Nadu, said the law was settled on the Governor’s power to decide mercy pleas under Article 161.

“The law is settled, they [Centre] are only trying to unsettle it,” Mr. Dwivedi said. The Governor had to abide by the aid and advice of the State Cabinet. The “personal satisfaction” of the Governor was not at play while deciding mercy pleas. Governors were bound by the State governments’ decision. The Council of Ministers of the Government of Tamil Nadu recommended Perarivalan’s release on September 9, 2018.

“Article 161 is an executive power. Reserving a mercy plea for the President’s assent is not contemplated at all,” the senior advocate argued for the State.

Perarivalan has argued that he had been “under the hangman’s noose” for years. He had suffered the pain and trauma of the death row syndrome. “The pain was equally felt by the ageing and fragile parents due to the uncertainty between life and death, and hope and despair,” he had submitted.

The court scheduled the next hearing on Wednesday.

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