CM’s Nomination to State Legislative Council

Why in news?

Maharashtra Governor Bhagat Singh Koshyari is yet to act on Maharashtra Cabinet’s recommendations made on April 9, 2020.

What did the Cabinet recommend?

- It recommended the Governor to nominate Chief Minister Uddhav Thackeray to a seat in the state Legislative Council.
- This nomination is to be made for one of the seats reserved for the Governor’s nominee.
- Even as the Chief Minister’s current term in office approaches its end, the Governor is yet to act. A Constitutional crisis looms.

What is the need for nomination?

- Thackeray took oath as Chief Minister (CM) on November 28, 2019.
- **Article 164(4)** - A Minister who for any period of 6 consecutive months is not a member of the State Legislature shall cease to be a Minister.
- It follows that Thackeray must become part of the Maharashtra legislature before May 27.
- With the pandemic raging, a by-election cannot be held.
- Therefore, the only way to fulfil the requirement is for Thackeray to be nominated to the Upper House by the Governor.
- If that does not happen, he will have to make way for someone else.

What is the nomination route?

- A situation in which an individual who is not a member of the legislature becomes CM is in itself fairly common.
- The nomination route for non-member Ministers is less common - but not unconstitutional.
- **Article 171(5)** - Governor can nominate persons with special knowledge in literature, science, art, co-operative movement and social service.
- Thackeray can be said to have a stronger claim in this regard, he is an ace wildlife photographer.
- As per the Allahabad High Court in Har Sharan Varma vs Chandra Bhan Gupta and Ors (1961), politics can be seen as ‘social service’.

What is the role of the Governor?

- **Vacancy** - Two Legislative Council seats in the Governor's quota are currently vacant.
- However, the terms of these vacancies end on June 6, 2020.
- A fresh appointment can be made only for the remainder of the term.
- Representation of the People Act, 1951, prohibits the filling of a vacancy if the remainder of the term of a member in relation to a vacancy is less than a year.
- This bar is in respect of by-election to fill a vacancy, not nomination.
- So, the Governor cannot use this as a reason to refuse nomination.
- **No obligation** - Of course, Governor is not obligated under the Constitution to act swiftly on the advice of the Council of Ministers.
- But, Maharashtra has the highest coronavirus caseload and death toll by far in the country.
- Political uncertainty is the last thing that Maharashtra needs now.

What are the limits to the Governor's discretion?

- **Article 163(1)** - The Governor must follow the recommendations of the Council of Ministers in all situations except in so far as he is by this Constitution must exercise his functions in his discretion.
- The Governor is bound by the advice of the Council of Ministers only in executive matters as defined in Article 162.
- The **nomination** of members is **not an executive power**.
- Therefore, the Governor can act in his discretion here.
- Also, the Constitution specifically mentions the situations in which the Governor can act in his discretion.
- The Governor has a general discretion in appointing the Chief Minister.
- But there are well established conventions governing the exercise of such discretion.

Source: The Indian Express

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