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Government of N.C.T. of Delhi V. Union of India & Another C.A 2357/2017

CASE COMMENT

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INTRODUCTION

Government of N.C.T. of Delhi V. Union of India & Another C.A 2357/2017 has been a significant case recently, and the Hon'ble Supreme Court delivered this landmark judgment on 04th July 2018. As soon as A.A.P. gained power in 2019, the BJP-led central government took the anti-corruption unit away from the state government. The Centre also withdrew a 1998 concession granted by B.J.P. patriarch LK Advani, which required the L.G. to consult the elected government on every decision relating to police, public order and bureaucratic appointments. These decisions were the starting point of the tussle for power. MrKejriwal, the Chief Minister of Delhi accused the Lieutenant Governor Anil Baijal for acting as the storage of Centre's government for blocking all crucial decisions taken by his government for political reasons. A batch of petitions in the Delhi High Court addressed unresolved issues between the Lieutenant Governor (hereinafter referred as L.G.) of the National Capital Territory (N.C.T.) and its Council of Ministers headed by the Chief Minister. The batch of cases was about the status of Delhi after the 69th amendment, as well as vital questions about democratic governance and the role of institutions in fulfilling constitutional values have been beautifully enumerated by the Apex Court in its judgment dated 04th July 2018.

BACKGROUND

The whole case revolves majorly on two articles which are special provisions concerning Delhi. The Constitution (Sixty-ninth Amendment) Act 1991 inserted Article 239-AA and 239-AB containing special provisions, concerning the Union Territory of Delhi, with a view to the re-organization of the administrative set-up therein. To ensure stability and permanence, arrangements have been incorporated in the Constitution, to give the National Capital a *Special Status* among the Union Territories¹.

It is pertinent to briefly explain the crucial clauses of Article 239-AA, which were addressed in the case at hand. Clause (1) of Article 239-AA declares that the Union Territory of Delhi shall be called the *National Capital Territory* of Delhi, to be referred to as N.C.T.

The administrator to be appointed for Delhi under Article 239 shall be designated as *Lieutenant Governor*². Clause (4) of Article 239-AA provides that there shall be a Council of Ministers with the Chief Minister at the head, to aid and advise the Lieutenant Governor in the exercise of his functions related to matters concerning which the Legislative Assembly has the power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

The proviso to Clause (4) says that in case of any difference between the Lieutenant Governor and his Ministers on any matter, The Lieutenant Governor shall refer it to the President for decision and act according to the decision given by the President. During the pendency of the matter with the President, The Lieutenant Governor may take such action or give such direction as he deems necessary of the matter is urgent and he thinks that he must take immediate action³.

¹ See Objects and Reasons attached to 69th Amendment Act, 1991

² Clause (1) of Art. 239-AA, the Constitution of India

³ Clause (4) of Art. 239-AA, the Constitution of India

In the present case, the tussle between the Delhi Chief Minister Arvind Kejriwal and L.G. Anil Baijal was on the vexatious issue as to who enjoys supremacy over Delhi. The primary issue was whether **Delhi was** a Union Territory with the Lieutenant Governor its sole administrator or is it a Special State with the L-G bound by the aid and advice of the elected government's Cabinet of Ministers?⁴ Before the appeal in the Apex Court, the Delhi High Court on 4th August 2016 declared the L.G. to have "complete control of all matters regarding National Capital Territory of Delhi, and nothing will happen without the concurrence of the L.G.". The five-judge Constitution bench of Chief Justice Deepak Mishra, Justice AK Sikri, Justice AM Khanwilkar, Justice DY Chandrachud and Justice Ashok Bhushan heard the Delhi government's appeal against the High Court judgment.

ANALYSIS

Approach taken by the Supreme Court

The judgment weaves into the Constitution a new thread of interpretation of Article 239AA of the Constitution. It invokes the combination of concepts, particularly constitutional in nature which objectively navigate through the core structure with the sense of having a real test of constitutional structure.

The Court emphasized that the insertion done by the Constitution (Sixty-Ninth Amendment Act), 1991 is not to be renounced with any kind of firm understanding since the purpose of exercising constituent power is to confer democratic, societal and political powers to the residents of Delhi which have been granted special status.

⁴ Krishna Das Rajagopal, *Key Arguments in Delhi Vs LG Case*, The Hindu (04/07/2018) available at <https://www.thehindu.com/news/national/key-arguments-in-delhi-govt-vs-l-g-case/article24327768.ece> , last seen on 25/08/2018

The Hon'ble Court prodigiously addressed the issue by putting forth that whether this special status conferred to Delhi instils "prana" to its cells or has changed nothing. The Appellant claimed that status of the voters of N.C.T. Delhi after the Sixty-Ninth Amendment has moved from notional to real, but the claim has been held contrary by the Delhi High Court and the appeal was filed before the Apex Court. The Hon'ble Supreme Court opined that the main aim is that rule of law must prevail, and the process of interpretation provides the required step to the same. When the rule of law is conferred its due status in the sphere of democracy, it gains credibility. The Court termed this method of understanding and explicating as "Confluence of the idea and spirit of the Constitution" for it celebrates the grand idea behind the constitutional structure founded on the cherished values of democracy.

Submissions on behalf of the Appellant

Mr P. Chidambaram, Mr Gopal Subramaniam, DrRajiv Dhawan, Ms Indira Jaising and MrShekhar Naphade, learned senior counsel appeared on behalf of the Appellant, i.e. Government of N.C.T. of Delhi. The major arguments in the form of submissions put forth were:

1. The National Capital Territory of Delhi (hereinafter referred to as NCTD) occupies a particular or rather a unique position after the insertion of Article 239AA and Article 239AB through 1991 amendment act. Also, after this amendment, the government of Delhi enjoys a far better status of administrative set-ups than other Union Territories in the country. This amendment has shaped the NCTD into a constitutional hybrid and has led Delhi to acquire certain special characters which makes it as a full-fledged state.
2. The Appellant submitted that the insertion of Article 239AA was intended to eliminate the hierarchical structure, which technically placed the Lieutenant Governor superior to the Council of Ministers. It was urged that the L.G. must be treated as titular head. MrP Chidambaram quoted that 'L.G. is not a viceroy but simply an agent of the President whose powers depend on the pleasure of President'.

3. The Appellant referred to the nine-Judge Bench decision of *New Delhi Municipal Corporation v. State of Punjab*⁵ as regards to Delhi's unique constitutional status and claimed that Delhi itself is a class by itself different from other Union Territories. The 1991 amendment was passed to confer to the citizens of Delhi a more significant say in the governance and to establish democracy in its real sense.
4. The Appellant pointed out that the making of Article 239AA has deliberately excluded the use of words 'assist and advice' preferably have used the expression 'aid and advice' and therefore preclude the L.G.'s concurrence on every matter. There must be consistency and uniformity in interpreting the term 'aid and advice' as used in Article 74, Article 163 and Article 239AA in context of President, Governor and Lieutenant Governor.
5. The Appellant took the stand that the Court must adopt a more organic approach of interpretation as taken in a catena of cases *including Justice K.S. Puttuswamy and Anr (Retd) V. Union of India and others*⁶, *R.C. Cooper V. Union of India*⁷ and *Maneka Gandhi V. U.O.I.*⁸ Mr Gopal Subramaniam submitted that the proviso to Article 239AA envisaged 'great confidence' to evolve between the Chief Minister and the L.G. and the 'extra-ordinary discretion' of the L.G. is confined to exceptional circumstances, not in everyday governance.

Submissions on behalf of the Respondent

Learned Additional Solicitor General of India, Mr Maninder Singh appeared on behalf of the respondents, i.e. Union of India and Lieutenant Governor of Delhi. The submissions put forth are:

⁵5(1997) 7 SCC 339

⁶(2017) 10 SCC 1

⁷6AIR 1970 SC 564

⁸AIR 1978 SC 597

1. The primary submission of all the arguments was that though the insertion of Article 239AA constitutes the formation of a Legislative Assembly for NCTD. Yet, the President shall remain its Executive head acting through its Lieutenant Governor. The powers of the Parliament cannot be derogated by the insertion of Article 239AA.
2. The Respondent also referred to *New Delhi Municipal Corporation v. State of Punjab* wherein the Court contemplated three categories of Union Territories yet, came to the conclusion that Delhi has not acquired Statehood and remains a Union Territory. Therefore, it must run in conformity with Article 239 read with 239AA which conjointly suggests that the ultimate administration concerning Delhi shall remain with the President acting through its administrator.
3. Mr Singh further drawn the Court's attention to Article 53⁹ and Article 73¹⁰ read with Article 246(4)¹¹. It was further submitted that the contention of the Appellant that - as soon as the legislative Assembly is constituted, an automatic power of investiture is conferred upon it is flawed and baseless since the Constitution does envisage any automatic power to the Council of Ministers. Contrastingly, Article 239AA(4) employs the phrase 'Lieutenant Governor and his ministers' and not 'Council of Ministers' to be responsible for the administration of the Union Territory.
4. The Respondent contravened the principle laid down in *Rai Sahib Ram Jawaya Kapur and Ors. v. The state of Punjab*¹² that wherever there is the existence of legislative power, there is co-extensive existence of executive power; however, this applies to Union and States only and not to Union Territories.
5. The submission concluded by highlighting the relevant portions of Balakrishnan Committee Report, which laid the reasons for introducing the 1991 amendment. It was concluded by the Respondent that the governance of NCTD would fall within the domain of the Union Government.

⁹Executive power of the Union, Art 53, the Constitution of India

¹⁰Extent of executive power of the Union, Art 73, the Constitution of India

¹¹Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

¹²AIR 1955 SC 549

**ESSENCE AND INTERPRETATION OF ARTICLE 239AA GIVEN BY THE
SUPREME COURT**

Articles 239AA and 239AB pertains explicitly to N.C.T. of Delhi and are reflective of the intention of the Parliament to accord Delhi “*asui generis status*” from the other Union Territories. The same has been authoritatively held by the majority judgment in the *New Delhi Municipal Corporation case* to the effect that the N.C.T. of Delhi is a class by itself.

The legislative Assembly, Council of ministers and the Westminster style of the cabinet system of government brought by the 69th amendment, highlighted the uniqueness attributed to Delhi with the aim that the residents of Delhi have a more significant say in how Delhi is to be governed. The real purpose behind the Constitution (Sixty-Ninth Amendment) Act, 1991 as the Hon'ble Supreme Court perceived is to establish a democratic set-up and a representative form of government. Wherein the majority has a right to embody their opinions in law and policies about the N.C.T. of Delhi subject to the limitations imposed by the Constitution. The intention of the Parliament, while inserting Article 239A in the exercise of its constituent power, was done to treat the Legislative Assembly of the N.C.T. of Delhi as a set of elected representatives of the voters of the region. Further, to treat the government of the N.C.T. of Delhi as a representative form of government. The Balakrishnan Committee Report recommends that though Delhi should continue to be a Union Territory, yet it should be provided with a Legislative Assembly and a Council of Ministers responsible to such Assembly with appropriate powers to deal with matters of concern to the common man. Sub Clause (a) of Clause (3) of Article 239A establishes the power of the Delhi Legislative Assembly to enact laws for the N.C.T. of Delhi concerning matters enumerated in the State or Concurrent List. A conjoint reading of Article 239A (3) (a) and Article 239A(4) reveals that the executive power of the Government of N.C.T. of Delhi is co-extensive with the legislative power of the Delhi Legislative Assembly which is envisaged in Article 239A(3) and which extends overall. However, three subjects in the State List and all subjects in the Concurrent List and, thus, Article 239A (4) confers executive power on the Council of Ministers over all those subjects for which the Delhi Legislative Assembly has legislative power. The bone of contention in the above matter is Article 239A (4) inserted by the 69th amendment to the Constitution. It has important consequences for the special status of Delhi as National Capital Territory. It essentially distinguishes its governance from the other Union Territories. The Constitution has adopted a cabinet form of government for the Union Territory of Delhi by creating institutions for the exercise of legislative power and an executive arm represented by the Council of Ministers. Clause (4) explicitly

grants to the Government of Delhi executive powers in relation to matters for which the Legislative Assembly has power to legislate. The legislative power is conferred upon the Assembly to enact whereas the policy of the legislation has to be given effect to by the executive for which the Government of Delhi has to have co-extensive executive powers. Another important aspect is given to the interpretation of the phrase '*aid and advice*' in the Article 239AA (4). It deals with the role of Lieutenant Governor to act as per the '*aid and advice*' of the Council of Ministers concerning matters for which the Legislative Assembly of Delhi has the power to enact laws except what has been stated in the proviso which requires a thoughtful interpretation. Further, the phrase '*any matter*' is interpreted in the light of following judgment In *Shri Balaganesan Metals v. M.N. Shanmugham Chetty and others*¹³, the Court has observed:

¹³87 (1987) 2 SCC 707

The word “any” has the following meaning: Someone out of many; an indefinite number. One indiscriminate of whatever kind or quantity.” Word “any” has a diversity of meaning and may be employed to indicate “all” or “every” as well as “some” or “one” and its meaning in a given statute depends upon the context and the subject matter of the statute.” It is often synonymous with “either”, “every” or “all”. Its generality may be restricted by context; (Black’s Law Dictionary; Fifth Edition).” Thus, the Lieutenant Governor is to act with the constitutional objectivity keeping in view high degree of constitutional trust reposed in him while exercising the special powers ordained upon him unlike the Governor and the President who are bound by the aid and advice of their ministers. The L.G. need not act in mechanical manner and refer every decision of his ministers to the President. He has to be guided by the concept of constitutional morality. There has to be some valid grounds for the L.G. to refer the decision to the Council of Ministers to the President in order to protect the interest of the N.C.T. of Delhi and the principle of constitutionalism. The proviso says “any matter” this may not include “every matter” as this will defeat the sole purpose of adopting the constitutional structure for governance of Delhi and the President would be governing all the matters including the trifling ones. A purposive interpretation to A239AA must be given so that the principles of democracy and federalism which are part of the basic structure of our Constitution are reinforced in N.C.T. Delhi in their truest sense.

CONCLUSION

Dr D. Y Chandrachud, J. has apprised that the disputes which led to these cases tell us how crucial institutions are to the realization of democracy. It is through them that the aspiration of a democratic way of life is fulfilled—criticism and dissent from the heart of the democratic functioning.

The Constitution needs to be interpreted in the context of the history of the movement for political freedom. Each provision is to be read while linking them effectively to other segments of the document and would be meaningful when they are construed together in the broad canvas of the Constitution. A constitution can set the framework of government, but the working primarily depends upon the constitutional values.

It is well settled that the Lieutenant Governor works on the aid and advice of the Council of Ministers headed by the Chief Minister except where he can exercise his discretionary powers. There is as well a proviso which is indicative of the situation wherein difference of opinion arises on any matter between the L.G. and his Council of Ministers the L.G. shall refer the same to the President. In between the decision is pending, the L.G. can take immediate action the matter that needs to be urgently addressed. The Court has interpreted this proviso meticulously while describing the ambit of every word in it.

It can be observed that the objective of the 69th amendment that was stability and permanence was upheld by demarcating the situations and interpreting the Constitution to avoid the future disputes of similar nature. As well as the importance of N.C.T. Delhi embodies in its character as a capital city, the political symbolism underlying national governance. This, in turn, establishes the independence of the state legislature of Delhi while harmoniously construing to the provisions made in the Constitution thereby giving strength to the voice of people and giving paramount importance to the Representative form of government while keeping in view the special status of Delhi too that of other Union territories.

The judgment is exemplary, wherein the judiciary has helped the legislature and commoners in interpreting the laws and making them understand the actual motive of the founding fathers behind the framing of the Constitution of India.