
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

GOVERNMENT OF NCT OF DELHI VS UNION OF INDIA- Khushi Aditya¹**CASE DETAILS:**

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| Case Name | Government of NCT of Delhi vs Union of India |
| Equivalent Citation | 2023 SCC OnLine SC 606 |
| Case Number | W.P.(C) no. 678/2023 |
| Bench | CHIEF JUSTICE D.Y. CHANDRACHUD, JUSTICE KRISHNA MURARI, JUSTICE M.R. SHAH, JUSTICE HIMA KOHLI, JUSTICE P.S. NARASIMHA |
| Petitioner | Government of NCT Delhi |
| Respondent | Union of India |
| Counsel for Petitioner | Sr. Adv. A.M. Singhvi, Adv. Shadan Farasat |
| Counsel for Respondent | Solicitor General Tushar Mehta |

INTRODUCTION

The landmark case of Government of NCT of Delhi vs Union of India² stresses upon one of the major aspects of Constitution that is the bifurcation of powers between the Union and the State. The case is about the conflict that arises with regards to the control and powers of the State and the Union. The two parties to the case that is the Government of NCT of Delhi and the Union of India were at tussle with each other with reference to the power to control civil

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²2023 SCC OnLine SC 606.

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servants and handling the administration of the NCT of Delhi. In accordance with The Constitution (Sixty – ninth Amendment) Act, 1991 the state of Delhi was given the status of National Capital Territory, which became the major point that gave rise to issue as to the powers of administration of NCT of Delhi between the government of Delhi and the Union.

The Union Territories also known as the centrally administered territories are federal territories and are administered by the Union Government of India. The concept of Union Territories was introduced in the States Reorganisation Act, 1956 and was added by the Constitution (Seventh Amendment) Act, 1956. India currently has given status of Union Territories to namely eight territories of which Delhi is the one. However, the scenario is different in case of Delhi as it is also the administrative capital of India as well as given the status of Union Territory³. In 1956, it was set that Delhi was to be governed by an administrator appointed by the President. Therefore, the Legislative Assembly and Legislative Council of Delhi were abolished. In 1966, an act⁴ was passed in accordance to which The Ministry of Home Affairs issued an Order stating that the Lieutenant Governments shall be subject to the President's control. The turning point in the administration of Delhi is seen when The Constitution (Sixty-ninth Amendment) Act, 1991 came into being which inserted Articles 239AA and 239AB. It gave the administrator of the NCT of Delhi, Lieutenant Governor, the power that the Council of Ministers and a Chief Minister for Delhi would function on the aid and advise of the Lieutenant Governor on those matters that the Legislative Assembly was empowered to make laws on. Moreover, the Lieutenant Governor should act only in those matters that do not fall under the legislative authority of the NCT of Delhi. The issue in the present case came into light when in 2021 Union Government enacted the Government of National Capital Territory (Amendment) Act which sparked the conflict between the State and the Union as a question against the idea of federalism⁵. The act prevented the Legislative Assembly from dealing with matters relating to the ongoing administration of the NCT. In addition, it was ascertained that all executive actions taken by the government must first receive the opinion of Lieutenant Governor.

BACKGROUND

³ States Reorganisation Act, 1956.

⁴ Delhi Administration Act, 1966.

⁵ NCT Amendment Act, 2021 <<https://prsindia.org/billtrack/the-government-of-national-capital-territory-of-delhi-amendment-bill-2021>> accessed on 10 December 2023.

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It is evident that The Government of National Capital Territory (Amendment) Act, 2021 and introduction of Article 239AA became a major point of contention between the NCT of Delhi and the Union and their quest for acquiring power for the performance of administrative functions. Therefore, the Delhi government with Mr. Arvind Kejriwal as the Chief Minister challenged the Act in the Supreme Court. It was claimed that the amendment will nullify the powers of the Legislative Assembly and is violative of the basic characteristics of federalism, separation of powers, and democracy⁶. As per, Part VIII of the Indian Constitution, separate provisions are made that govern the functioning of the Union Territories according to which specifically Article 239 stated that “Every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.”⁷ However, with respect to the NCT of Delhi special provisions were taken into consideration as mentioned in Article 239AA of Constitution. It created an elected Legislative Assembly and a Council of Ministers including a Chief Minister for NCT Delhi. The Assembly has the power to make laws for NCT Delhi with respect to any of the matters under the State or Concurrent Lists (except public order, police and land matters). The Lieutenant Governor of Delhi was assigned as the Administrator of the NCT Delhi. Precisely, the Articles 239 and 239AA became a major source of contest as now the scope of powers of the government of NCT and the Administrator were at conflict with each other. Furthermore, the notification dated 21-05-2015 issued by the Union Ministry of Home Affairs provided for the Lieutenant Governor of NCT of Delhi to exercise control “to the extent delegated to him from time to time by the President” over “services”, in addition to “public order”, “police”, and “land.”⁸ Hence in this case the most pertinent issue was the term “Services” which is covered under Entry 41 of the State List of the Seventh Schedule to the Constitution. This notification excluded Entry 41 of the State List, which has as its subject, “State Public Services Commission”, from the scope of powers of the government of NCT of Delhi. It established that the matters related with ‘Services’ fall outside the purview of the Legislative Assembly of NCT of Delhi.

⁶Jatin Anand, ‘What has the Bill on the National Capital Territory proposed, and how will it impact the administration?’ *The Hindu* (Delhi, 21 March 2021).

⁷The Constitution of India.

⁸Apoorva, ‘Supreme Court judgment settling tussle between Delhi Govt and Centre’ (SCC Online 13 May, 2023) <<https://www.sconline.com/blog/post/2023/05/13/explained-supreme-court-judgment-settling-tussle-between-delhi-govt-and-centre-legal-news/>> accessed on 16 December 2023.

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FACTS

The Aam Adami Party was elected during 2014 elections and the fight of Mr. Arvind Kejriwal against Corruption started the State and Union tussle. The primary key concern was the scope and power of the NCT of Delhi upon the bureaucrats. Arvind Kejriwal on 18 May 2015 spoke to all the bureaucrats not to follow the oral or written orders of LG without his permission. Later, when the NDA government came to power, the Union issued a notification on the 21st May 2015, which limited the powers of the Delhi government's anti-corruption agency to investigate the central government employees, which ignited the conflict. The case was filed before the High Court of Delhi. Meanwhile the then Lieutenant Governor appoints MK Meena as Joint Commissioner of Delhi Police and in retaliation, Arvind Kejriwal replaced the Home Secretary. During this entire tussle, the Delhi High Court on 4th August 2016 gave the judgment in favour of the Lieutenant Governor and said that he was not bound by the aid and advice of the Council of Ministers and that he was the administrative head of the National Capital Territory of Delhi. The LG's approval was compulsory now to implement the decision taken by the Council of Ministers. The Delhi government appealed to the Supreme Court. Confusion and chaos have arisen over the unique relationship between the two heads of state and the extent of their power in NCT of Delhi. In 2018, a five-judge Constitution Bench of the Supreme Court ruled that the Lt. Governor is bound by the aid and advice of the NCT to the Delhi Council of Ministers⁹. To maintain control over the national capital, the Union passed the Government of the National Capital Territory (Amendment) Act, 2021 (the Act) in 2021, which prevented the Delhi Assembly from considering the day-to-day administration of the NCT. The Delhi government opposed the law because it transferred control of the Delhi civil servants to the LG, who is the representative of the Union. The Delhi government claims that it cannot implement the policy in the NCT because the officials who are supposed to implement it are not under its control.

ISSUES

1. Who must control Delhi's civil servants—the Union or the Delhi government?
2. Does the Union have a legitimate interest in controlling civil servants in the nation's capital?

⁹(2018) 8 SCC 501.

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3. Do the LG's powers to refer disagreements with the Delhi govt to the President restrict the latter's executive and legislative powers?

LAWS INVOLVED

The case has certain laws involved in it that constitute the basis of the argument. It stresses on Article 239 AA of the Indian Constitution which provides the constitutional bulwark for the exercise of legislative powers by the Legislative Assembly of the Union Territory of Delhi and the Parliament in respect of the National Capital Territory of Delhi. It states that "*Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.*" In addition to that, the legislative assembly of National Capital Territory of Delhi also has powers with the exception that Entries 1, 2 and 18 of the List II are not within the legislative competence of the legislative assembly.

The Entry 41 of the State List of the Indian Constitution which has as its subject, "State Public Services; State Public Services Commission" states the scope of the State government on the administration of the Civil Servants. This clash is all about the control of powers between the State government and the Union government. At this particular point, the Article 73 and Article 162 were also at the verge of conflict. In accordance to Article 73: **Extent of executive power of the Union.** — (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

On the other hand, Article 163 states that **Extent of executive power of State.**—Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws: Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive

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power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities.

CONTENTIONS

Union Of India

1. The Constitution bench of 2018 did not decide on the issue of who will have legislative competence over Entry 41 of the State List.
2. The State list has to be interpreted contextually so that certain entries can be excluded from the domain of the Government of NCTD.
3. The phrase "insofar as such matter is applicable to the Union Territories" is a limitation phrase that allows the Government of Union territories to make laws to a limited extent that apply to the Union territories.

Government of NCT of Delhi

1. The legislative assembly of NCTD cannot be excluded just because of the use of the word "State¹⁰".
2. The legislative power not used by the government of NCTD does not mean it ceases to exist.
3. The phrase "insofar as such matter is applicable to Union Territories" is a facilitative phrase that allows the Government of Union territories to make law under the State List.

JUDGEMENT

In a unanimous verdict, the five-judge bench upheld the Delhi government's powers to supervise officials and ongoing administration of the National Capital Territory (NCT). The Supreme Court highlighted the federal structure of NCT of Delhi under Article 239AA of the Treaty and ruled that the union cannot ignore the democratically elected government of NCT of its legislative and executive powers. The court also reflected upon the importance of the chain of accountability of the civil servants to the electorates.

¹⁰Universal, *The Constitution of India Bare Act* (first published 2020, Universal Law Publishing Co.).
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ANALYSIS

The Supreme Court in this case appropriately exercised its jurisdiction by ruling in favour of the government of NCT of Delhi as it is the heart and soul of the country and its administration should be looked for strategic importance. It was crucial to give the verdict without much time lapse since the chaos on the powers would have hindered the development of the NCT of Delhi. The question was grave as to the State or the Union should exercise its powers with relation to the civil servants. The status of NCT of Delhi is “Sui Generis¹¹” which is created under Article 239AA of the Constitution according to which there is a unique identity that NCT of Delhi holds even though it is a Union Territory as well. The power of NCT must be reflected into broader sense. This will aid in promoting the idea of federalism of the Constitution. The asymmetric model created between the State and the Union was reasonably resolved by allotting government of NCT of Delhi its right to exercise the power otherwise it would have discarded the complete say of the government and mismanagement would have taken place. The decision conforms with the existing Article 239AA of Indian Constitution and rightfully laid down the powers and functions of the Lieutenant Governor under Chapter IV of the Transaction of Business Rules (the Rules)¹². The court reasonably interpreted the existing laws and exercised its jurisdiction as to provide adequate remedy as demanded by the government so as to not distort the rule of law. The verdict was backed by the logical reasoning that the NCT government’s powers over ‘services’ remains subject to the limitations under Article 239AA which specifically excludes public order, police, and land. However, it retains power over matters concerning the implementation of policies and day-to-day administration through the Indian Administrative Services or the Joint Cadre Services. The verdict judiciously balanced the conflict as it stated that the Union may exercise executive power through Lieutenant Governor only if the Constitution or Parliamentary law grants such power.

¹¹ of its own kind.

¹² The Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993 <https://www.mha.gov.in/sites/default/files/2022-08/TransactionofBusinessRulesGovt_1%5B1%5D.pdf> accessed on 24 December 2023.

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