



# CASE ANALYSIS OF SPECIAL STATUS OF DELHI (GOVERNMENT OF NCT OF DELHI VS UNION OF INDIA)

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## BACKGROUND OF THE CASE

The Administrative head of the National Capital Territory government is the Chief Minister. The Court said that Chief Minister is the Executive head of Delhi Government not the Lieutenant Governor (LG). The role of Lieutenant Governor is that to help and advice the Council of Ministers related to all matters like Violence, shortage, emergency and so on. And only the Delhi Assembly has the power to make laws.

The Bench of five Judges on July 4, 2018 said that only the Chief Minister is the Executive head of the National Capital Territory (NCT). The Five Judges are:

1. Chief Justice of India Deepak Mishra
2. Justice Kumar Sikri
3. Justice Ajay Manikrao Khanwilkar
4. Justice DY Chandrachud
5. Justice Ashok Bhushan

The scuffle between the Chief Minister of Delhi and Lieutenant Governor of Delhi lead to a legal dispute on the status of the National Capital Territory. The issues revolve around the administrative powers of Lieutenant Governor of Delhi in the light of the special status of Delhi as a Union Territory. The Delhi High Court previously heard the issues in this case in 2015 because there was a conflict between Chief Minister Arvind Kejriwal and Retired Lieutenant Governor Najeeb Jung over various matters. Some of the matters are: Appointment of Chief Secretary without referring the Lieutenant Governor, and the Chief Minister instituting corruption enquiries without the Lieutenant Governor's concurrence. The misunderstanding was arises due to the special status of Delhi. As Delhi is a Union Territory with the characteristics of State because of elected legislature.

In 1992, Article 239 AA added by the 69<sup>th</sup> Amendment to the Constitution of India. According to Article 239 AA, elected assembly is required for Delhi. The special provisions added through the 69<sup>th</sup> Amendment to the Constitution which created confusion related to the authority of the Delhi Government and the Centre. The Delhi High Court delivered its judgement on 4<sup>th</sup> August, 2016. The Delhi High Court held that Delhi continues to be a Union Territory despite Article 239 AA. It was further held that the special provision were also added for not overrule the effect of Article 239.

Article 239 gives power to the Lieutenant Governor to act freely of his Council of Ministers. So, all the enquiries without the discussion of Lieutenant Governor were declared as illegal. Enquiries such as provide permit to CNG vehicles, a financial inquiry in Delhi and District Cricket Association. So, the concurrence of the Lieutenant Governor became mandatory for all mandatory decisions of Ministers of Delhi.

The decision of the Delhi High Court was challenged by the Government of Delhi before the Supreme Court. On February 2017, the two Judge bench hearing the matter, and referred it to a Five Judge Constitution Bench. The Constitution Bench held that the Lieutenant Governor is not the Executive



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Head of the National Capital Territory. Lieutenant Governor is bound by the aid and advice of the Council of Ministers.



## **PARTIES INVOLVED**

### **1. Petitioner**

Government of National Capital Territory of Delhi

### **2. Respondent**

Union of India

## **LAWYERS**

### **i. Petitioner**

1. Mr. P. Chidambaram
2. Mr. Gopal Subramaniam
3. Mr. Satya Mitra
4. Indira Jaising
5. . Rajeev Dhawan
6. Mr. Shekhar Naphade

### **ii. Respondent**

1. Mr. Maninder Singh
2. Mr. Siddharth Luthra

## **FACTS OF THE CASE**

The results of 2014 election were such that the Aam Admi Party (AAP) was in minority and the Congress Party support Aam Admi Party from the outside. Mr. Arvind Kejriwal, the Chief Minister of Delhi held a Press conference on 11th February, 2014. In that Press conference Manish Sisodia, the Deputy Chief Minister of Delhi was also there. In the conference, Arvind Kejriwal said that battle against corruption is going to take place in India and He decided to fight for the people of this Country.

He was filed a complaint in the Anti- Corruption Bureau because the Central Government united with the Reliance Industries Limited and creating an artificial shortage of natural gas in the basin of Krishna Godavari river which causes increase in the price of natural gas.

He also said that I complaint against the Mukesh Ambani, the Chairman of Reliance Industries Limited, M. Veerappa Moily, Union Minister of Petroleum and Natural Gas and Murli Deora, the Former Union Minister of Petroleum and Natural Gas of the Union Progressive Alliance (UPA) Government led by Former Prime Minister Manmohan Singh. The Bureau of Anti- Corruption filed an FIR which owes its existence to a notification issued by the Central Government in 1993. FIR shows that the amount of the cost of the production of gas in the basin of river Godavari and Krishna was less than \$ 2.34 per mm Btu.

Reliance Industries Limited said that they will supply about 132 trillion units of gas per annum in June 2004. Reliance Industries agreed that they supply gas to the National Thermal Power Cooperation (NTPC) for the years of 17. The Centre allowed the Reliance Industries to claim the amount of production which is four times higher than the previous amount now the price becomes \$ 8.4 per mm Btu. In the Delhi High Court, the Centre retailed back the allegation and saying that the investigate Union Minister; Bureau of Anti- Corruption has no authority.



Arvind Kejriwal resigned from the post of Chief Minister of Delhi after the Lieutenant Governor of Delhi Najeeb Jung on 14th February, 2014. For the approval of Centre's, Delhi's Jan Lokpal Bill sends to the Law Ministry by Lieutenant Governor Najeeb Jung.

Reliance Industries Limited moved to the High Court of Delhi to cast-off the FIR and also to challenge the notification passed which give Union Ministers and Employees jurisdiction to investigate. In 2015 The Aam Admi Party (AAP) returns to the power by securing 67 seats out of 70 clear majorities. Arvind Kejriwal was appointed as the Chief Minister of Delhi. Later, there were a number of battles between Chief Minister Arvind Kejriwal and Lieutenant Governor Najeeb Jung. The House of Lieutenant Governor was called the BJP 2nd headquarter.

Arvind Kejriwal ordered all Ministers and bureaucrats not to follow any order from the Lieutenant Governor whether the order is in oral or in written form without his consent. When Najeeb Jung knows about this order of Arvind Kejriwal he termed it as Illegal. When the NDA Government came into power, the Centre limits the power of the Bureau of Anti-corruption of Delhi Government for review the employees of Central government. The Supreme Court said that the petitioner already approached the High Court and also High Court heard the issues of the case. So, High Court of Delhi should deal with this case and gives the judgment.

MK Meena was appointed as the Joint Commissioner of Delhi Police by Lieutenant Governor Najeeb Jung. With this, Arvind Kejriwal replaced the Home Secretary. The order of replacement was prohibited by the Lieutenant Governor. Government of Delhi appointed Swati Maliwal as the Chairperson of Delhi Commission for Women (DCW). The Lieutenant Governor was very anger about this and asked why his permission not taken? The High Court of Delhi gave its judgment. The judgment was in the favor of Lieutenant Governor. According to the Judgment, Lieutenant Governor is the administrative head of the Delhi National Capital Territory. Also the authorization of Lieutenant Governor is required for the decision taken by the Council of Ministers.

The Government of Delhi appealed to the Supreme Court. With this Lieutenant Governor Najeeb Jung resigned from his post. Then Anil Baijal becomes the new Lieutenant Governor of Delhi. But the battle still continued. The matter escalated so much that a Division Bench of Supreme Court had to recommend the matter to a Constitutional Bench including five Judges. The Supreme Court decided to hear the issues on November, 2017 and gives its Judgment. The battle still continues after the Judgment. There was an alleged assault Chief Secretary Anshu Prakash by the leaders of Aam Admi Party (AAP) on the residential house of Chief Minister.

This causes protest, all the IAS officers decided to skip their meeting with ministers but they also decided that they do not stop working. Lieutenant Governor Anil Baijal asked to the Arvind Kejriwal that he demanded approval from the Lieutenant Governor for providing nation door to door. The government also demanded complete statehood of Delhi and installation of CCTV's camera. Arvind Kejriwal with his associates went on a hunger strike in the front of Lieutenant Governor Office.

Arvind Kejriwal wrote a letter to the Prime Minister to interfere and end the battle between the Lieutenant Governor and Arvind Kejriwal. After the 7 month later, Supreme Court changes the decision of Delhi High Court and held that Lieutenant Governor was bound by the advice of the Ministers.

## ISSUES

The matter was that should Delhi be treated as a Union Territory with Administrative Head Lieutenant Governor or as a State where the Lieutenant Governor is bound by the advice of the Chief Minister?



There was a conflict between the Delhi government and Centre due to the following reasons:

1. The Home Affairs Ministry put all the services outside the Delhi government and gave the power to the Centre related to services.
2. Another notification carried out that limited the Anti-Corruption Branch of Delhi Police to examine the servants of Centre.
3. There was a non-approval of investigation of corruption in the Council of Delhi and Districts.
4. Non approval of the decision taken by the government for recompense to people for disruption in power supply.
5. On the deal of agricultural land and special public prosecutors there was non- approval of the revision of stamps duty payable by the Lieutenant Governor.

#### ARGUMENTS FROM APPELLANT

The appellant challenged the decision of the High Court of Delhi before the Supreme Court. Senior Advocate argued that the Lieutenant Governor is not a viceroy. His power is depend on the needs of the President and He is an agent of President only. He further argued that there was some lack in the Constitution so that by a majority of people's representative the 69th Amendment was added to the Constitution. The Lieutenant Governor is making contempt of democracy.

According to the Act of National Capital Territory Delhi and the Business Rule of Transaction, the Lieutenant Governor is also required to help and advice of the Ministers. If there is any difference only the President will decide and his decision would be final.

Advocate argued to prevent Constitutional revolution it is very important that Article 239-AA should be understood and legislative power is co- extensive with the executive power of the government of Delhi. According to the Article 239 AA (3), the legislative assembly of Delhi is given legislative power on all subjects except three subjects in State list and all subjects in the Concurrent list. According to the Article 239 AA (4) legislative assembly has executive power on those subjects whom the Council of Ministers has power to make laws.

There has to be a separation of power between Delhi and Centre government. So, that Delhi government works smoothly without the interference from the Centre government. With this, there is a development in the field of social welfare like women welfare's, education, sanitation, employment, health care and so on. Advocate Indira Jaising also argued that if this type of exercise of power is allowed, the Centre in future shift the Capital as Delhi is not specified as Capital in our Constitution.

Senior Advocate Gopal Subramaniam argued that it is the right of people of Delhi to elect their own legislative government to make laws under the State list and also execute those laws. He also added that according to the Article 239 AA, These articles draw a line between executive and legislature and this line is essential for the democracy. So, the legislature has the full power to execute laws and this function of legislature was not interfered by any other authority. Delay and paralyzed governance caused when there is Governor's interfere. According to him, he was titular head not a real head.

Advocate Rajeev Dhawan argued that Delhi has a responsible government not a representative government like the government of Pondicherry. The Lieutenant Governor has not any power to running the affairs of Delhi. Only the Council of Ministers handles the affairs of Delhi. The Lieutenant Governor can only interference when Delhi is under some kind of threat or crosses powers. If there is any conflict between Lieutenant Governor and Council of Minister then it is resolved by the negotiation and if the conflict still continued then it should be referred to the President only. He was



further argued that according to the Article 239AA and Article 239AB, government of National Capital Territory Act 1991, the government of Delhi occupied a very unique position in the Constitution of India. This enables Delhi to enjoy special status which was different to the full-fledged State under the Constitution of India. He also said that after the enactment of National Territory of Delhi Act, 1991. Delhi has become more strong administrative power than the other Union Territory.

The appellant referred to the case of Municipal Corporation Vs. State of Punjab to struggle that the Delhi Union Territory forms a class itself. Union Territory of Delhi is different from all the other Union Territories. The appellant further argued that the object of 69th Amendment and the 1991 Act was to give citizens recognition and a voice in the governance of Delhi.

The appellant also referred to some of the more cases such as the R.C. Copper vs. Union of India and Maneka Gandhi vs. Union of India. These are the cases that constitutional law had undergone a lot of changes in the Indian context. The Governor has to work according to the aid and advice of the Council of Ministers. The appellant also said that there is a necessity need of the interpretation of the phrase 'aid and advice'. This phrase used in different article of the Constitution. Like in Article 74, Article 163 and Article 239AA in the point of the function of President, the Governor and the Lieutenant Governor respectively.

#### ARGUMENTS FROM RESPONDENT

The respondent argued that with the addition of Article 239 AA the President still remains the Executive head. The President acts through the Lieutenant Governor and the power of the Parliament is in the position to diminish by the insertion of Article 239 AA. The role of Government of Delhi is only the role of Municipal governance argued by the Maninder Singh. Acts such as the Fire Service Act of Delhi and Delhi, Andaman and Nicobar Islands Civil Service are the acts the Central Legislation. The Lieutenant Governor has the power to dominate the Council of Ministers not only the public order, police and land.

As Delhi is one of the Union Territory of India which means President is the head who acting through the Lieutenant Governor. The appellant argued that the Delhi Government is an elected government by the legislative assembly. Similarly, the Union of India is the elected government because India is the democratic country. The Union of India is superior they are elected by the Nation. So, Delhi has got a special status not a State. Delhi is still a Union Territory and the President regardless of the fact it has a legislative assembly. It is not says that both Union of India and the Legislative Assembly of Delhi have the same power and Delhi is not in the list of States. The Governmental power is with Centre and the President but the legislative has the power to take care of daily utilities. The respondent said that in the case of Municipal Corporation of Delhi, Constitutional scheme for Union Territory has been dealt. The Court established three types of Union Territory and Delhi. Also National Capital Territory of India that is Delhi is still a Union Territory. According to the Article 239, Delhi has administrative power. The respondent contented the attention of the Court towards the Article 53 and 73 and said that Article 246 (4) read along the Article 53 and 73. The respondent also argued that in Article 239 and 239 AA it has been mention that Council of Ministers has the right to exercise the executive power. The respondent also highpoints the expression mentioned in Article 239 (4) that "Lieutenant Governor and his ministers" not refers to "Lieutenant Governor and Council of Ministers".



The expression shows that only Lieutenant Governor is responsible for the government. The respondent argued that there was a difference between Article 239 AB and Article 356. In Article 356, it was mentioned that, if the constitutional monarchy fails, the President can obtain power from all States Government and power of Governor. But in the case of Union Territory, this article not applicable because President have the executive power of Union Territory.

The respondent argued that Article AA (4) is same to the Section 44 in the Act of Union Territory, 1963. In the Section 3 (60) of the General Clauses Act, 1963, the State government along with the Union Territories would mean the Central government. Respondent thus said that it is very necessary to interpret Article 239 AA like the Section of the Act of Union Territory, 1963.

The respondent further give a combine reading of both the Article 239 AA and 41 (2) of the Act 1991. In this act it is mentioned that if there is a matter with Lieutenant Governor and LG has the liberty to his discretion then the discretion of LG is final.

The respondent refers to the case *Tejkisan Jain and Ors VN Sanjiva Reddy and Ors*. In this case a phrase was mentioned that is “any matter” here any matter interpreted with “every matter” and anything refers to everything.

National Capital Territory Delhi belongs to the all people of India not only to the people who lives in Delhi.

#### JUDGMENT

The judgment of this case becomes historical. According to the Supreme Court, Lieutenant Governor of Delhi is bound by the aid and advice of the council of ministers. Lieutenant Governor not gives aid and advice in the matters of land, police and public order. CJI Deepak Mishra during reading his judgment said that there is no injured or stretch to the imagination of National Capital Territory of Delhi. Delhi can be accorded the status of state under the scheme of Constitution and this is very clear as soon. Dictatorship and Rebellion have no place in the Constitution. CJI Deepak Mishra said that the relationship between the Council of ministers and Lieutenant Governor are the image of the philosophy of the thoughtful knowledge, positive constructionism and wisdom.

Justice Chandrachud said that the LG has to know that the Council of Minister which provides aid and advice is elected by the people to serve people. Ministers represent responsibility and aspiration of democracy. And if there is a dispute between Lieutenant Governor and Minister it must be decided through negotiations and meetings. Justice Chandrachud also said that Lieutenant Governor is the administrative head of Delhi so he cannot act as a delaying. In democratic form of government, real power and substantive accountability are vested only in the representative elected by the people. Article 239 (4) must be in interpret in such a way that “any matter” is not “every trivial matter”.

Justice Bhushan said that if there is a need to interpret constitutional provisions then there be only on that time. He said that under Article 239 AA, Lieutenant Governor Power should be exercise related to constitutional relevance.

The Bench held that the LG should not act in ‘mechanical manner’ without due application. Justice Ashok Bhushan said that the decision and opinion of Delhi Legislative Assembly must be respected in all ways. As Delhi legislative assembly represent the elected representative.

#### CONCLUSION

The judgment of Supreme Court leads to the more litigation. Put such kind of faith in the constitutional functionaries was misplaced involved in the administration of Delhi. It’s now depending



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on the party's wisdom how they interpret Article 239 AA (4) in the Delhi administration. The judgments of this case only depend on constitutionality. It does not talk about How it will be applied practically which would lead to more litigation. After the judgment, there is still a lot of tension between Government of Delhi and the Lieutenant Governor.