

Centre vs Delhi Govt on control over services: Timeline of a Dispute

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A five-judge constitution bench of the Supreme Court is hearing the dispute between the Delhi government and the Center over control of services.

On May 6 last year, a three-judge bench headed by former CJI NV Ramana had referred the matter to a larger bench on the Centre's plea. A three-judge bench had decided that the question of control over administrative services required "further examination".

What Is The Matter?

A bench headed by Chief Justice of India (CJI) DY Chandrachud, and also comprising Justices MR Shah, Krishna Murari, Hima Kohli and PS Narasimha, between the Center and the Delhi government, on the administrative dispute in the National Capital Territory (NCT) of Delhi Hearing disputes relating to the overall functioning of the services and control over transfers. (Nearly five years ago, another constitution bench had ruled in favor of the Aam Aadmi Party-led state government in a similar tussle.)

References

On April 27, 2022, the Center sought a reference to a larger bench, arguing that it needed the power to

69th Amendment Act, 1992

Account Account 239AA(3)(a)

Account 239AA was inserted in the Constitution by the 69th Amendment Act, 1991, and Delhi was given special status following the holding of the S. Balakrishnan Committee, which ensured the statehood of Delhi in 1987.

In this, two new articles 239AA and 239AB have been added, whose rights have been given special status to the state of Delhi.

Section 239AA provides that the Shop Open State of Delhi shall be called the National Capital Territory of Delhi and its authority shall be known as the Lieutenant Governor.

According to this bandh, there will be one close and one Vidhan Sabha in the National Capital Territory of Delhi. The Legislative Assembly, as authorized by the Constitution, shall have power to make laws for the whole or any part of the NCT with respect to any matter enumerated in the "State List or the Concurrent List, in so far as any such matter relates to the matters of police, public order and land". Applies to minority territories except

It also provides for a Council of Ministers for Delhi which shall not exceed 10% of the total number of members in the Legislative Assembly.

Account 239AB provides that the President may suspend the operation of any provision of account 239AA or of all or any provision of any law made in pursuance of that account. This provision corresponds to Account 356 (President's Rule).

transfer and posting officers in Delhi being the national capital and the "face of the nation".

The court agreed that the limited question relating to the scope of legislative and executive powers of the Center and the National Capital Territory of Delhi with respect to the word "services" would require an official pronouncement by a Constitution Bench in terms of Article 145(3) of the Constitution.

The court had noted that the primary dispute relates to the interpretation of Article 239AA(3)(a) of the Constitution, which deals with special provisions for the NCT of Delhi.

The matter came before a three-judge bench after a two-judge bench had earlier given a split verdict on the services issue.

Some Matters Related To The Case

Verdict 2018

In 2018, a five-judge bench comprising then CJI Dipak Misra and Justices Sikri, Bhushan, A.M. Khanwilkar and (now CJI) Chandrachud interpreted Article 239AA of the Constitution which contains special provisions for the national capital.

The court laid down broad parameters for the governance of Delhi; It said that though Delhi cannot be given the status of a state, the LG's powers can be curtailed as he does not have "independent decision-making power" and has to act on the aid and advice of the elected government.

"Thus, the Constitution Bench has also held that the Lieutenant Governor has to act on the aid and advice of the Council of Ministers in all his functions, except those functions where the Lieutenant Governor is allowed to exercise his discretion.

Lieutenant Governor and the NCT Delhi:

Constitutional provisions:

Under Article 239 of the Constitution of India, the administration of UT's is handled by an administrator appointed by the President of India.

However, the Constitution (Sixty-ninth Amendment) Act, 1991 introduced Article 239AA which created an elected Legislative Assembly and a Council of Ministers including a Chief Minister for NCT Delhi.

This 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 (LG) of Delhi was designated the Administrator of the NCT Delhi.

Powers of Lieutenant Governor:

He/She acts on the aid and advice of the Council of Ministers, except when he/she is compelled to act in his/her discretion.

If the LG and the Ministers disagree on any issue, the LG shall refer it to the President for decision and act accordingly.

When such a decision is pending with the President, it shall be competent for the LG to take prompt action in any scenario where the matter (in his opinion) is urgent.

Under Article 239AB, the President may, on receipt of a report from the LG or otherwise, suspend the operation of any provision of Article 239AA by order when a situation arises in which the administration of the NCT cannot be carried out in accordance with the provisions of Article 239AA.

The court limited the LG's jurisdiction to matters relating to land, police and public order, while for all other matters he would have to act on the aid and advice of the Council of Ministers.

Earlier, the Delhi High Court in its judgment dated August 4, 2017 on the same issue had said that for administrative purposes of the NCT, the LG is not bound by the aid and advice of the Council of Ministers in every matter. , On appeal, the SC, in 2017, referred the matter to decide the interpretation of Article 239AA of the Constitution.

Verdict 2019

The 2019 judgment by a two-judge bench of Justices AK Sikri and Ashok Bhushan settled several issues related to the powers of the Lieutenant Governor (LG). However, on the issue of control over services, the two judges ruled separately.

After the 2019 bifurcation verdict, the matter came up for listing before the CJI so that the matter could be heard afresh. Split verdicts are rare but not unusual. When a split verdict is pronounced, the case is heard by a larger bench assigned by the CJI.

Justice Bhushan had observed that the Delhi government had absolutely no power over administrative services, while Justice Sikri was of the view that "transfers and postings of secretaries, HODs and other officers in the pay scale of Joint Secretary to the Government of India and above shall be made by the Lieutenant Governor". should be done and the file should be submitted directly to him", but "for other levels including DANICS (Delhi, Andaman and Nicobar Islands Civil Service) officers, the files may be sent through the Chief Minister to the Lieutenant Governor".

The 2019 judgment also dealt with five other issues arising out of the power struggle related to the power of Delhi government's anti-corruption branch to investigate cases of corruption against central government officials and appoint commissions of inquiry

The 2019 judgment was mandated to decide the contentious issues based on the law decided by a five-judge constitution bench in 2018.

Expected Question

Que. Which of the following statements is/are correct with respect to the National Capital Territory of Delhi?

1. In 1991, it was declared as 'National Capital Territory' by the 69th Constitutional Amendment Bill.
2. In this act, a provision has been made for the appointment of a lieutenant governor as the administrator.
3. Prior to this Act, there was a provision of Metropolitan Council and Executive Council in Delhi.
4. By this act, provision has been made for the formation of assembly and cabinet for Delhi.

Select the correct answer using the code given below :

- (a) 1 and 3 only (b) 2 ,3 and 4 only
(c) 1. 2. 3 and 4 (d) 1. 2 and 4 only

Answer : C

Mains Expected Question & Format

Que.: Throw light on the appointment and powers of the Lieutenant Governor as the Administrator of Delhi.

Answer Format :

- ❖ State the provisions for the appointment of Lieutenant Governor (LG).
- ❖ Define its powers.
- ❖ Give a balanced conclusion.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.