

Government Of Nct Of Delhi vs Office Of Lieutenant Governor Of Delhi on 5 August, 2024

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha, Dhananjaya Y Chandrachud

2024 INSC 578

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 348 OF 2023

GOVERNMENT OF NCT OF DELHI

VERSUS

OFFICE OF LIEUTENANT GOVERNOR OF DELHI

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Section 3(3)(b)(i) of the Delhi Municipal Corporation Act, 1957¹ provides that the Lieutenant Governor² of National Capital Territory of Delhi³ shall nominate 10 persons with special knowledge in municipal administration to the DMC. The question for our consideration is whether the Lt. Governor can exercise that power of nomination as a statutory duty attached to his office or he is bound by the aid and advice of the Council of Ministers of NCTD as provided in Article 239AA(4) of the Constitution.

Hereinafter referred to as the ‘DMC Act’ and ‘DMC’ for Delhi Municipal Corporation. ² After the establishment of Legislative Assembly for the Union Territory of Delhi, the Administrator is redesignated as Lieutenant Governor.

³ Hereinafter referred to as NCTD.

2. Facts: Before we take up a detailed analysis of the law and precedents on the subject, a short reference to the facts leading to the filing of the present writ petition is necessary to understand the contextual relevance of the issue under consideration. Delhi Municipal Corporation is composed of: (a) councillors chosen by direct elections from the wards⁴ and (b) persons represented through

nominations.⁵

3. In the recent elections to the DMC held on 4th December, 2022, Aam Aadmi Party obtained simple majority by winning 134 out of 250 wards and Bharatiya Janata Party came second winning 104 wards. By the end of the month, i.e., 02.01.2023, Municipal Secretary, DMC sent a note, countersigned by the Commissioner, DMC that Lt. Governor will nominate ten persons to the Corporation as provided under Section 3(3)(b)(i) of the DMC Act. In fact, on the very next day, by his order dated 03.01.2023, the Lt. Governor nominated ten members and it was notified in the Delhi Gazette. There was a minor correction and the same was carried out and the corrigendum was also published in the Gazette on the next day, i.e., on 04.01.2023.

4. Challenging the legality and propriety of nominations by the Lt. Governor, the instant writ petition was filed by the Government of NCTD under Article 32 for a Writ of Certiorari to quash the notifications dated 03.01.2023 and 04.01.2023 and also for a direction to the Lt. Governor to nominate persons under Section 3(3)(b)(i) only in accordance with the aid and advice of the Council of Ministers. 4 Under Section 3(3)(a) 5 Under Section 3(3)(b)

5. Submissions: Dr. Abhishek Manu Singhvi, learned Senior Advocate assisted by Shri Shadan Farasat, AOR, appearing on behalf of the Government of NCTD submitted that the 'Lt. Governor can act in his discretion only when it is expressly provided by a law or where no other interpretation of a legal provision is possible'. After taking us through the mandate of Article 239AA, in particular, sub-Article (4), read in conjunction with Section 41 of the Government of National Capital Territory Act of 1991,⁶ he submitted that these provisions mirror Article 163 of the Constitution, requiring the Governor to act only on the aid and advice of the popularly elected Government. For this purpose, the principles laid down in *Samsher Singh v. State of Punjab*⁷ and *Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*⁸ were relied on to put forth the point that the satisfaction of the Lt. Governor in the cabinet system of Government is the satisfaction of his Council of Ministers.

5.1 Referring to Section 3(3)(b)(i) of the DMC Act, it is also argued that the provision cannot be construed as expressly vesting any discretion in the Lt. Governor to nominate persons to the Corporation. He further submitted that the issue, if any, is conclusively decided by the Constitution Bench decisions of this Court in *State (NCT of Delhi) v. Union of India*,⁹ and the recent pronouncement in the case of *Government of NCT of Delhi v. Union of India*.¹⁰ 6 Hereinafter referred to as GNCTD Act.

7 (1974) 2 SCC 831 8 (2016) 8 SCC 1 9 (2018) 8 SCC 501 10 (2023) 9 SCC 1

6. Shri Sanjay Jain, Learned Additional Solicitor General, representing the Lt. Governor has not joined issue on the interpretation of Article 239AA, or on the ratio in *Samsher Singh* (supra) and the two Constitution Bench Judgments of this Court on Article 239AA. It is his submission that the relevant provision of the DMC Act must be read in consonance with Part IXA of the Constitution relating to grant of Constitutional Status to 'Municipalities'.

6.1 Mr. Jain has taken us through certain provisions of the GNCTD Act, as well as the DMC Act to demonstrate the distribution of powers and duties among various authorities. Interpreted in this context, he submitted it will be evident that the Lt. Governor is specifically empowered under Section 3(3)(b)(i) to nominate persons of his own accord and that obligation does not fall within the duty to act on the aid and advice of the Council of Ministers.

7. In rejoinder, Dr. Singhvi submitted that there is a long-standing practice of over 30 years of the Administrator/Lt. Governor nominating councillors only on the aid and advice of the Council of Ministers and that there is no justification for deviating from the established past practice.

Legislative history of election and nomination of Aldermen:11

8. Municipal administration in Delhi is governed by and under the DMC Act enacted by the Parliament in 1957. Interestingly, there was no provision for 11 DMC Act initially used the expression ‘Aldermen’ to represent persons other than councillors who were represented in the Corporation. However, after the 1993 Amendment to the DMC Act, the term ‘Aldermen’ was dropped and substituted by the descriptive language-‘persons who have special knowledge and experience in municipal administration’.

appointment or nomination of Aldermen in the Delhi Municipal Corporation Bill 12 as it was originally introduced in the Parliament by Shri Govind Ballabh Pant on 2nd September, 1957. However, when the Act was notified on 28 th December, 1957, Section 313 relating to Constitution of the Corporation comprised of councillors as well as Aldermen was introduced. The procedure for election of Aldermen was provided in Section 1314 of the Act, as per which they were to be elected by the councillors from 12 “3. Establishment of the Corporation (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal government of Delhi, to be known as the Municipal Corporation of Delhi.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.

(3) The Corporation shall consist of eighty councillors chosen by direct election on the basis of adult suffrage from various wards into which Delhi shall be divided in accordance with the provisions of section 5:

Provided that twelve out of the eighty seats of councillors shall be reserved for the members of the Scheduled Castes.” Gazette of India Extraordinary, Jan-Dec 1957, Part 2 Section 2 pg. 552.

13 “3. Establishment of the Corporation (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal government of Delhi, to be known as the Municipal Corporation of Delhi.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.

(3) The Corporation shall be composed of councillors and aldermen. (4) (5) (6) (7) The total number of aldermen shall always be six.” Gazette of India Extraordinary, Jan-Dec 1957, Part 2 Section 1 pg. 696. 14 “13. (1) The six aldermen referred to in sub-section (7) of section-3 shall be elected at a meeting of the councillors immediately after the publication of the results of the general election of councillors under section 14. or (2) No person shall be entitled to stand as a candidate at any election of an alderman if at any election of a councillor immediately preceding the election of any alderman he stood as a candidate and failed to be elected as a councillor.

(3) In the case of an equality of votes at any election of an alderman the person presiding at the meeting whether or not entitled to vote in the first instance shall have and exercise a casting vote.

(4) As many persons as there are vacancies to be filled being persons who have the largest number of votes shall be declared by the person presiding at the meeting to be elected. persons who are qualified to be councillors, but were neither councillors nor had contested in the election to the post of councillors.

Constitution (Sixty-Ninth) Amendment and establishment of Legislative Assembly for NCTD and introduction of Articles 239AA and 239AB:

9. A little after three decades of passing of the DMC Act, the Union Government felt the need to reorganize the administrative and municipal authorities in the Union Territory of Delhi and constituted a committee (popularly referred to as the Balakrishnan Committee) to study and make recommendations on the same. The Committee recommended the decentralization of Delhi administration and the constitution of a legislative assembly for NCTD by way of a Constitutional Amendment. In so far as municipal administration is concerned, the Committee inter-

alia touched upon the then position relating to election of Aldermen and made certain recommendations.¹⁵ (5) As soon as may be after the occurrence of any casual vacancy in the office of an alderman election shall be held to fill such casual vacancy.” ¹⁵ “11.6.5. The Act makes provision for the election of six Aldermen by the elected members of the Corporation. The only qualification for an Alderman prescribed by the Act is that every such person should be qualified to be elected as a Councillor and should, not already be a Councillor. This means that the Aldermen are no different from Councillors, except for their mode of election. There is obviously no apparent purpose in providing for the institution of Aldermen if they are also to belong to the same category of persons as the Councillors. It only stands to reason that Aldermen should be elderly men with a measure of maturity, experience and standing in the public so as to enable them to provide a valuable input to the deliberations of the Corporations by reason of their expertise or experience in public affairs. The present provisions in the Act do not ensure this. We consider that an Alderman, if he is to play any useful role, should be a person elected from members of the public, residing within the limits of the

Corporation concerned, with adequate knowledge, reputation and experience of public affairs and with a background of public service. They can be chosen from persons who have retired after rendering service as teachers, doctors, engineers or government servants. Delhi is full of such men of experience and it will be in the public interest that the talents of such experienced men should be utilized usefully in the civic administration. We recommend that the Act should prescribe these qualifications. The Aldermen should be elected by the Councillors from among persons so qualified by the method of proportional representation by means of a single transferable vote. We recommend accordingly. We also recommend that the actual number of Alderman may be fixed for each corporation at a figure not less than two but more than four.” Committee on Reorganisation of Delhi Set-up Report, December 1989 Part II.”

10. Following acceptance of Balakrishnan Committee Report on decentralization, through the Constitution (Sixty-Ninth Amendment) Act, 1991, Articles 239AA and 239AB were introduced in Part VII of the Constitution. This led to the constitution of a Legislative Assembly for the NCTD under Article 239AA with certain special features including redesignation of the Administrator as Lt. Governor.

11. The provision relevant for the purpose of this case is sub-Article (4) of Article 239AA, as per which the Council of Ministers are to aid and advice the Lt. Governor in relation to matters where the Legislative Assembly has the power to make laws. The same sub-Article also provides an exception to this rule, that is where the Lt. Governor is, by or under any law, required to act in his discretion. Article 239AA, being crucial for our determination, is reproduced hereinbelow for ready reference:

“Article 239AA. Special provisions with respect to Delhi:-

(1) As from the date of commencement of the Constitution (Sixty-

ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.”

(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b)...

(c)... (3) (a) 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

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly. (4) There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lt. Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

Provided that in the case of difference of opinion 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 thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

(5)... (6)..."

12. Following the introduction of Articles 239AA and 239AB, Parliament enacted the GNCTD Act, 1991 to give full effect to the constitutional amendment. Part IV of the GNCTD Act relates to 'Lieutenant Governor and Ministers' and Sections 41 to 45 falling under this Part are relevant for our purpose and we will refer them at the relevant place.

Judicial Interpretation of Article 239AA and GNCTD Act:

13. The distribution of legislative powers between the Parliament and the Legislative Assembly of NCTD, as well as the distribution of the executive powers between the Union Government and the Government of NCTD was discussed and basic principles were laid down in the two Constitution Bench judgments of 2018 in *State (NCT of Delhi) v. Union of India*¹⁶ and of 2023 in *Government of NCT of Delhi v. Union of India*.¹⁷

14. The 2023 decision of the Constitution Bench in *Government of NCT of Delhi v. Union of India* reaffirmed the unique position of NCTD enunciated in the 2018 decision- that its Legislative Assembly has competence to make laws for all matters enumerated in List II and List III (except with respect to entries 1, 2 & 18 of List II). While Union has executive power with respect to matters concerning entries 1, 2 & 18 of List II, the Government of NCTD has executive power with respect to all matters in List II as well as List III (except of course for matters with respect to entries 1, 2 & 18 of List II).

15. Article 239AA(3)(b) confers legislative power on the Parliament to make laws on any and all matters in Lists II and III. Article 239AA(3)(c) further provides that in case the Parliament exercises such legislative power, any law passed by the Legislative Assembly of NCTD shall be void to the extent of repugnancy with the Parliamentary law. Paragraphs 22 to 27 of the 2023 judgment authored by the Hon'ble Chief Justice (Dr. D Y Chandrachud) are relevant for our consideration and the same 16 Supra no. 9 17 Supra no. 10 are reproduced herein for ready reference. These will conclusively establish the principle that if the Parliament makes a law in relation to any subject in List II and List III, the executive power of GNCTD shall then be limited by the law enacted by the Parliament.

“Legislative and executive power of NCTD

22. Article 239AA(3)(a) stipulates that the Legislative Assembly of Delhi shall have the power to make laws for the whole or any part of NCTD with respect to matters in the State List and the Concurrent List “insofar as any such matter is applicable to Union Territories” except for certain subjects expressly excluded. The provisions expressly excludes entries 1, 2, and 18 of the State List, and entries 64,65 and 66 of List II insofar as they relate to the entries 1, 2, and 18. Article 239AA(3)(b) confers on Parliament the power “to make laws with respect to any matter” for a Union Territory or any part of it. Thus, while the Legislative Assembly of NCTD has legislative competence over entries in List II and List III except for the excluded entries of List II, Parliament has legislative competence over all matters in List II and List III in relation to NCTD, including the entries which have been kept out of the legislative domain of NCTD by virtue of Article 239AA(3)(a). This is where there is a departure from the legislative powers of Parliament with respect to States. While Parliament does not have legislative competence over entries in List II for States, it has the power to make laws on entries in List II for NCTD. This was the view taken in the 2018 Constitution Bench judgment.

23. As the concurring opinion of Justice Chandrachud held:

“316... Unlike State Legislative Assemblies which wield legislative power exclusively over the State List, under the provisions of Article 246(3), the legislative assembly for NCT does not possess exclusive legislative competence over State List subjects. By a constitutional fiction, as if it were, Parliament has legislative power over Concurrent as well as State List subjects in the Seventh Schedule. Sub Clause (c) of Clause 3 of Article 239AA contains a provision for repugnancy, similar to Article 254. A law enacted by the legislative assembly would be void to the extent of a repugnancy with a

law enacted by Parliament unless it has received the assent of the President. Moreover, the assent of the President would not preclude Parliament from enacting legislation in future to override or modify the law enacted by the legislative assembly... ”

24. The 2018 Constitution Bench judgment held that the executive power of NCTD is co-extensive with its legislative power, that is, it shall extend to all matters with respect to which it has the power to legislate. Article 239AA(4) provides that the Council of Ministers shall aid and advise the Lieutenant Governor in the exercise of the functions of the latter in relation to matters with respect to which the Legislative Assembly has the power to make laws. Thus, the executive power of NCTD shall extend over entries in List II, except the excluded entries. After analysing the provision of Article 239AA(4), it was held in the opinion of the majority in the 2018 Constitution Bench judgment that the Union has executive power only over the three entries in List II over which NCTD does not have legislative competence, that is, entries 1,2, and 18 in List II. It was held:

“222. A conjoint reading of Article 239-AA(3)(a) and Article 239-AA(4) reveals that the executive power of the Government of NCT of Delhi is coextensive with the legislative power of the Delhi Legislative Assembly which is envisaged in Article 239-AA(3) and which extends over all but three subjects in the State List and all subjects in the Concurrent List and, thus, Article 239-AA(4) confers executive power on the Council of Ministers over all those subjects for which the Delhi Legislative Assembly has legislative power.

223. Article 239-AA(3)(a) reserves Parliament's legislative power on all matters in the State List and Concurrent List, but clause (4) nowhere reserves the executive powers of the Union with respect to such matters. On the contrary, 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 coextensive executive powers...

224. Article 239-AA(4) confers executive powers on the Government of NCT of Delhi whereas the executive power of the Union stems from Article 73 and is coextensive with Parliament's legislative power. Further, the ideas of pragmatic federalism and collaborative federalism will fall to the ground if we are to say that the Union has overriding executive powers even in respect of matters for which the Delhi Legislative Assembly has legislative powers. Thus, it can be very well said that the executive power of the Union in respect of NCT of Delhi is confined to the three matters in the State List for which the legislative power of the Delhi Legislative Assembly has been excluded under Article 239-AA(3)(a). Such an interpretation would thwart any attempt on the part of the Union Government to seize all control and allow the concepts of pragmatic federalism and federal balance to prevail by giving NCT of Delhi some degree of required independence in its functioning subject to the

limitations imposed by the Constitution... 284.16. As a natural corollary, the Union of India has exclusive executive power with respect to NCT of Delhi relating to the three matters in the State List in respect of which the power of the Delhi Legislative Assembly has been excluded. In respect of other matters, the executive power is to be exercised by the Government of NCT of Delhi. This, however, is subject to the proviso to Article 239-AA(4) of the Constitution. Such an interpretation would be in consonance with the concepts of pragmatic federalism and federal balance by giving the Government of NCT of Delhi some required degree of independence subject to the limitations imposed by the Constitution.”

25. The judgment of the majority, however, clarified that if Parliament makes a law in relation to any subject in List II and List III, the executive power of GNCTD shall then be limited by the law enacted by Parliament. It was held:

“284.15. A conjoint reading of clauses (3)(a) and (4) of Article 239-AA divulges that the executive power of the Government of NCTD is coextensive with the legislative power of the Delhi Legislative Assembly and, accordingly, the executive power of the Council of Ministers of Delhi spans over all subjects in the Concurrent List and all, but three excluded subjects, in the State List. However, if Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive action of the State must conform to the law made by Parliament. (sic)”

26. The above view was also taken by Justice Chandrachud in his concurring opinion:

“316. the provisions of Clause 2 and Clause 3 of Article 239AA indicate that while conferring a constitutional status upon the legislative assembly of NCT, the Constitution has circumscribed the ambit of its legislative Powers firstly, by carving out certain subjects from its competence (vesting them in Parliament) and secondly, by enabling Parliament to enact law on matters falling both in the State and Concurrent lists. Moreover, in the subjects which have been assigned to it, the legislative authority of the Assembly is not exclusive and is subject to laws which are enacted by Parliament.”

27. The 2018 Constitution Bench judgment authoritatively held that the legislative and executive power of NCTD extends to all subjects in Lists II and III, except those explicitly excluded. However, in view of Article 239AA(3)(b), Parliament has the power to make laws with respect to all subjects in List II and III for NCTD.”

16. It is in the above referred constitutional position of NCTD that we will examine the law enacted by the Parliament on Municipality, i.e. the Delhi Municipal Corporation Act, 1957.

Delhi Municipal Corporation Act 1957, as amended by Act 67/93:

17. The Delhi Municipal Corporation Act is a law which relates to Entry 5 of State List.¹⁸ This is an Act to consolidate and amend the law relating to the Municipal Government of Delhi. We are concerned with Section 3(3)(b)(i) of the Act, introduced by an amendment in 1993, after introduction of Article 239AA in 1991, which requires the Lt. Governor to nominate persons to be represented in the Corporation. Section 3 being central to our consideration, we will extract a substantial part of it for ready reference:-

“3. Establishment of the Corporation (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be a Corporation charged with the municipal Government of Delhi, to be known as the Municipal Corporation of Delhi.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued. (3) (a) The Corporation shall be composed of the councillors;

(b) the following persons shall be represented in the Corporation, namely:—

(i) ten persons, who are not less than 25 years of age and who have special knowledge or experience in municipal administration, to be nominated by the Administrator:

Provided that the persons nominated under this sub-clause shall not have the right to vote in the meetings of the Corporation;

(ii) members of the House of the People representing constituencies which comprise wholly or partly the area of the Corporation and the members of the Council of States registered as electors within the area of the Corporation;

(iii) as nearly as possible one-fifth of the members of the Legislative Assembly of the National Capital Territory of Delhi representing constituencies which comprise wholly or partly the area of the Corporation to be nominated by the Speaker of that Legislative Assembly, by rotation, every year:

Provided that while nominating such members, by rotation, the Speaker shall ensure that as far as possible all the members are given an opportunity of being represented in the Corporation at least once during the duration of the Corporation; (iv) the Chairpersons of

¹⁸ This is an admitted position as can be seen from para 2.2 of the written submission of Dr. Singhvi that, “In the present case, the DMC Act relates to Entry 5 of State List”. the Committees, if any, constituted under sections 39, 40 and 45, if they are not councillors.

(4) Councillors shall be chosen by direct election on the basis of adult suffrage from various wards into which Delhi shall be divided in accordance with the provisions of this Act ***.”

18. The Parliamentary enactment on the subject of Municipality for Delhi, being the DMC Act as amended in 1993, the legislative power of the Legislative Assembly of NCTD to make laws is to be considered. The ‘Sui Generis’ status of NCTD has been analysed and declared by both the Constitution Bench judgments. In the 2018 Constitution Bench Judgment on NCT, Delhi, Justice Dipak Misra, speaking for the majority held:

“284.15. However, if Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive action of the State must conform to the law made by Parliament.”

19. A similar observation is made by Justice D.Y. Chandrachud in his concurring Judgment. In Para 316 of the Judgment, it is observed that;

“316. The provisions of Clause 2 and Clause 3 of Article 239AA indicate that while conferring a constitutional status upon the legislative assembly of NCT, the Constitution has circumscribed the ambit of its legislative Powers firstly, by carving out certain subjects from its competence (vesting them in Parliament) and secondly, by enabling Parliament to enact law on matters falling both in the State and Concurrent lists. Moreover, in the subjects which have been assigned to it, the legislative authority of the Assembly is not exclusive and is subject to laws which are enacted by Parliament.”

20. Reiterating the same position, even in the 2023 Constitution Bench Judgment, Chief Justice Dr. D.Y. Chandrachud observed that:

“The judgment of the majority, however, clarified that if Parliament makes a law in relation to any subject in List II and List III, the executive power of GNCTD shall then be limited by the law enacted by Parliament.”

21. In view of the distinct constitutional position as it exists for NCTD, we cannot agree with the submissions of Dr. Singhvi that the position of Lt. Governor is akin to that of a Governor in a State under Article 163 of the Constitution. There is a clear distinction between the discretionary power of the Governor under Article 163 and that of the Lt. Governor under Article 239AA(4). While Article 163 requires Governor of a State to act on the aid and advice of the Council of Ministers, ‘except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion’, the exception in so far as the Lt. Governor, under Article 239AA(4) is concerned, he will act in his discretion, ‘in so far as he is required by or under any law’. Article 239AA of the Constitution takes into account the unique position of NCTD and therefore adopts the mandate of ‘law’ as a distinct feature for exercise of discretion.

22. In view of the constitutional position and the decisions of this Court, a restatement of the relations between the Union and the NCTD is necessary before we proceed to interpret Section

3(3)(b)(i) of DMC Act to consider whether the Lt. Governor is to nominate on the aid and advice of the Council of Ministers or is to act as per his discretion.

A. Legislative Relationship

(i) Legislative Assembly of NCTD shall have power to make laws (legislative power) for NCTD with respect to 'any of the matters' enumerated in State List or Concurrent List. (except entries 1, 2 and 18 of State List). (Article 239AA(3)(a)).

(ii) Notwithstanding the above, Parliament shall have power to make laws (legislative power) for NCTD with respect to 'any matter' in the three lists. This is where there is a departure from the legislative powers of Parliament with respect to States. While Parliament does not have legislative competence over entries in List II for States, it has the power to make laws even with respect to matters enumerated in List II for NCTD [(Article 239AA(3)(b))].

(iii) Law made by the Parliament shall prevail, whether made before or after any law made by the Legislative Assembly of NCTD, and the law made by the Legislative Assembly, to the extent of repugnancy, shall be void. Only exception is when the law made by Legislative Assembly of NCTD receives Presidential assent. (proviso to Article 239AA(3)(c))

(iv) Once Parliament exercises its legislative power and makes a law on a subject in List II or List III, the Legislative Assembly of NCTD is denuded of its legislative competence to make laws with respect to that subject. Once there is no legislative power for Legislative Assembly of NCTD, there would be no executive power as executive power is always co- extensive and coterminous with legislative power.

B. Executive Relationship

(v) Government of NCTD has the executive power in relation to all matters with respect to which Legislative Assembly of NCTD has power to make laws. The executive power extends to all matters enumerated in the Concurrent List as well as State List (Except Entries 1, 2 and 18 of State List).

(vi) Union of India shall have exclusive executive power with respect to matters in Entries 1, 2 and 18 of the State List, which are specifically excluded from the legislative power of NCTD.

(vii) The executive power of Government of NCTD shall be exercised through the Lt. Governor who shall act on the aid and advice of the Council of Ministers [Art 239AA(4)] read with Section 44 of the GNCTD Act. Another constitutionally recognized departure for NCTD is that while Governor of a State under Article 163 acts on the aid and advice of Council of Ministers on all matters except when he is by or under the Constitution required to exercise his functions in his discretion, the Lt. Governor, under Article 239AA(4) is to exercise discretion, 'in so far as he is, by or under any law, required to act in his discretion'. 'Law' requiring him to act in his discretion could be a law of the Legislative Assembly of NCTD or a Parliamentary law.

C. Statutory Regulation

(viii) Once Parliament makes Law on a subject over which NCTD also has legislative competence and consequently executive power, the powers, duties and obligations of the authorities will then be governed by the mandate of the Law made. This position is already mentioned in statements (iii) and (iv). If the Law vests a power, duty or an obligation on the Lt. Governor, the Lt. Governor will act under the mandate of the Act and not as per the 'executive power' of Government of NCTD. Therefore, statutory provision alone will determine whether the power is intended to be exercised by the Lt. Governor on his own accord or on the aid and advise of the Council of Ministers.

23. Before examining the statute, i.e., DMC Act in detail, we will deal with yet another submission of the petitioner. It is argued by Dr. Singhvi that vesting of power in the name of Administrator/Lt. Governor in Section 3(3)(b)(i) is nothing but a 'semantic lottery', as the word 'administrator' has been used in many pre-1991 legislations which relate to subjects that now fall within the purview of the Legislative Assembly of NCTD.

24. We will examine if this apparent vesting of the power in the name of Administrator, to nominate councillors under Section 3(3)(b)(i) is by default, as the old statutory regime would have continued without incorporating the Legislative status for NCTD after the introduction of Article 239AA in 1991.

25. For giving effect to the Constitutional 69th Amendment introducing Articles 239AA and 239AB and the specific recommendations of Balakrishnan Committee for reorganizing municipalities, the Delhi Municipal Corporation (Amendment) Bill, 1992 was introduced in the Lok Sabha on 24th November, 1992.

26. While the Bill was pending consideration, another constitutional development took place. In its Winter Session, Parliament passed the Constitution (Seventy-fourth Amendment) Bill relating to 'Panchayats' and 'Municipalities'. Part IX-A relating to Municipalities comprising of Articles 243P to Articles 243ZG came into effect from 01.06.1993. The Constitutional recognition of Municipalities, coupled with provisions granting autonomy for municipal administration, its elections, composition, duration, reservation, etc. had to be incorporated in the DMC Act. In order to 'harmonize' the position, Government withdrew the pending Bill and introduced the new Bill No. 66 of 1993. The Bill was passed and was notified on 17.09.1993 as the Delhi Municipal Corporation (Amended) Act No. 67 of 1993.

27. The DMC Act, as amended in 1993 is of seminal importance. The amendment gives effect to two Constitutional developments. While the first relates to the recognition and grant of quasi-statehood to Delhi with the introduction of Articles 239AA and 239AB, the other relates to grant of a Constitutional status to the Municipalities. The statement of objects and reasons of Amendment Act 67 of 1993 record the circumstance in which amendments to the principal Act were brought about:

“STATEMENT OF OBJECTS AND REASONS The need for reorganization of administrative and municipal set up in Delhi was being felt and the matter has been

under the consideration of the Government for some time. For making an in- depth study, the Government appointed a Committee to go into the various issues connected with the administrative and municipal set up of Delhi and to recommend measures, inter alia, for streamlining of the municipal set up. The Committee on re-organisation of the Delhi set up (popularly known as Balakrishnan Committee) went into the matter in great detail and recommended a decentralized municipal administration.

2. To give effect to the recommendation of the Committee, and decision of the Government thereto, the Delhi Municipal Corporation (Amendment) Bill, 1992 was introduced in Lok Sabha on 24th November, 1992. Meanwhile, during the Winter Session of the Parliament, the Constitution (Seventy-second Amendment) Bill, 1992 relating to Panchayats and the Constitution (Seventy-third Amendment) Bill, 1992, relating to the municipalities were passed.

These Bills have now become Acts. As the provisions of the aforesaid two Constitutional Amendments have a bearing on the composition, duration reservation of seats and responsibilities of Panchayats and Municipalities, it has become necessary to make further changes in the Delhi Municipal Corporation (Amendment) Bill, 1992 so as to harmonise the provisions of the Delhi Municipal Corporation Act, 1957 with the provisions of the aforesaid two Constitutional Amendments.

3. Government has, therefore, proposed to withdraw the Delhi Municipal Corporation (Amendment) Bill, 1992 to introduce a new Amendment Bill in harmony with aforesaid Constitution Amendment Acts, with such modifications as are necessary in view of the special requirements of the Union Territory of Delhi.

4. The important changes sought to be brought about by the Bill are-

(i), (ii).....

(iii) Provision has been made for ten persons of not less than 25 years of age and possessing special knowledge or experience in municipal administration, to be nominated by the Administrator to the Corporation;

(iv) to (xv).....

Notes on Clauses Many of the clauses of the Bill provide for amendments to the Delhi Municipal Corporation Act, 1957 in order to bring its provisions, as far as possible, in consonance with the provisions contained in the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992 as well as consequent on the transfer of certain functions now being performed by the Municipal Corporation of Delhi to other agencies. Clause 3 provides for the increase in the number of Councillors from one hundred to one hundred and thirty-four. It also provides for representation of ten persons, having special knowledge or experience in municipal

administration (without voting right) to be nominated by the Administrator and representation of MPs from Delhi and Members of Legislative Assembly of Delhi....” The 1993 Amendment to the DMC Act:

28. The DMC Act, as amended in 1993 (by Act 67/93) recognizes five authorities exercising distinct powers and duties under the Act. They are the, i) Central Government, ii) Government of NCTD, iii) Administrator, iv) Corporation, and v) the Commissioner. These authorities are also defined under the Act. Section 2(21A) defines ‘Government’ as ‘the Government of National Capital Territory of Delhi’, ‘Administrator’ is defined under Section 2(1) as ‘the Lt. Governor of the National Capital Territory of Delhi’, the ‘Corporation’ is defined under Section 2(7) as ‘the Municipal Corporation of Delhi’ and finally the ‘Commissioner’ is defined under Section 2(6) as ‘the Commissioner of the Corporation appointed under Section 54 of the Act’.

29. The (Amendment) Act carries out as many as 136 amendments to the principal Act to give effect to a scheme by which powers, duties, and responsibilities are allocated to the authorities, depending on the functions that they perform under the Act. This also includes comprehensive amendments to Section 3(3)(b)(i) of the Act.

For instance, while the power of nomination of Aldermen is given to the Lt. Governor under Section 3(3)(b)(i), the power of nomination of MLA’s is given to the Speaker of the House under this very Section. It is therefore incorrect to suggest that the power vested in the Lt. Governor continued by default or ‘Semantic Lottery’. In fact, the power to nominate is brought into the Statute for the first time with the introduction of the 1993 amendment to the DMC Act. This submission is therefore rejected as it is oblivious of the 1993 amendment to the Act.

The ‘Text’ and the ‘Context’ of Section 3(3)(b)(i) of DMC Act:

30. We will now examine Section 3(3)(b)(i) and also the ‘context’ in which it is located with other provisions of the Act to gather the true purpose and intention of the Parliament. The text of the provision is clear. Section 3(3)(b)(i) provides that ‘ten persons to be nominated by the Administrator’.

31. It is now necessary to refer to the statutory scheme involving power, functions and duties of the Lt. Governor and that of the Government of NCTD in order to appreciate the true intendment behind Section 3(3)(b)(i), i.e., whether the power is to be exercised by the Lt. Governor on the aid and advice of the Council of Ministers or it is a statutory duty to be exercised at its own discretion as the Lt. Governor.

32. Provisions of the DMC Act imposing certain duties on the Lt. Governor are as follows:

(i) Section 3(3)(b)(i) provides that ten persons who have special knowledge and experience in municipal administration are to be nominated by the Administrator.

(ii) Section 7 relates to the duty, superintendence, direction and control of elections by the Election Commissioner and the Administrator is given the duty to appoint the Election Commissioner. The other power relates to a duty to maintain the integrity of the elections.

(iii) Section 33 relates to the duty to decide if any councillor has become subject to disqualification. The duty is entrusted to the Administrator and the Section provides that “the question shall be referred to the decision of the Administrator and his decision shall be final”. Sub-Section 4 of the same Section provides that before giving any decision on the question, the Administrator shall obtain the opinion of the Election Commissioner and the Lt. Governor shall act in accordance with the opinion of the Election Commission.

(iv) Section 73 relates to the duty of the Administrator to convene the first meeting of the Corporation after the General Elections.

(v) Section 77 prescribes the duty of the Administrator to nominate a presiding officer for the election of the Mayor. This duty is prescribed in terms that the “Administrator shall nominate a Councillor”.

(vi) Section 82 relates to the power of the Lt. Governor to decide the time, place and procedure of the first meeting of the Corporation after the General Elections.

(vii) Section 95 provides for the Administrator being the Appellate Authority against imposition of punishment on municipal officer and other employees who are appointed by the Commissioner.

(viii) Section 107A provides that the Administrator shall constitute the Finance Commission.

(ix) Section 347D also provides an appeal to the Administrator for adjudicating disputes against the order of the Appellate Tribunal made under Section 343 or 347B.

33. In contrast, we will now examine the powers and duties entrusted to the Government of NCTD by the DMC Act.

(i) Under Section 479, the Government of NCTD has the power to make Rules. The Government also has the power to approve Bye-Laws made by the Corporation.

(ii) Section 7B relates to the preparation of Electoral Rolls in which the Electoral Registration Officer shall be appointed in consultation with the Government.

(iii) Section 43 empowers the Government to give general or special orders with respect to any function that the Corporation may perform in exercise of its duty.

(iv) Under Section 52, the Government has the power to pass general or special orders as specified in Fifteenth Schedule of the Act, with respect to exercise of powers and functions of the Ward Committees.

(v) Under Section 89, the appointment of the Municipal Chief Auditor shall be made with the previous approval of the Government. Similarly, all the officers mentioned in Section 89(1), except the Municipal Chief Accountant and Municipal Secretary, shall be subject to confirmation by the Government.

(vi) Under Section 92A, direct recruitment to category B and C posts shall be made by the Government and it may prescribe the agencies for performing its function.

(vii) Under Section 116, the Government has the power to appoint and notify the Municipal Valuation Committee which comprises a Chairperson and such other members as the Government may determine.

(viii) Under Section 150 the power of the Corporation to levy taxes is subject to the sanction of the Government.

(ix) Under Section 169 the Government shall have the power to constitute the Municipal Taxation Tribunal and such other members as the Government may determine.

(x) Under Section 207 the Government has the power to appoint an Auditor for the purpose of making a special audit of the Municipal Fund and reporting thereon to the Government.

(xi) Under Section 347A the Government also has the power to constitute one or more Appellate Tribunal for deciding appeals under section 343 and 347B.

(xii) Under Section 347A(4) the Government has the power to appoint one or more persons having special knowledge or experience in the matters involved in such appeals to act as assessors to advice the Appellate Tribunal. In this very context it is important to note that in so far as appointment of person manning the Appellate Tribunal is concerned, the power is given to the Central Government.

(xiii) Under Section 469, the Government has the power to appoint Municipal Magistrates for conducting the trial of offences under the Act. Under sub- Section (3) the Government has the power to prescribe the salary, pension, and leave etc.

34. Apart from the powers and duties of Lt. Governor and the Government of NCTD as noted in Paras 32 and 33, the DMC Act also refers to powers, functions and duties of other authorities such as the Central Government, the Corporation,¹⁹ and the Commissioner.²⁰ The specific powers that are entrusted to them are mentioned in the footnote for the purpose of brevity as we are concerned

only with the competing power structure between the Lt. Governor and the Government of NCTD.
19 See Sections 39, 89, 98, 209 20 See Sections 89, 90, 92, 98

35. The provisions of the Act relating to the Lt. Governor are relating to matters such as nomination of experts, Election Commissioner, constituting Finance Commission, convening the first meeting of the Corporation, acting as an appellate authority, etc. These functions seem to suggest that they are intended to enable the authority (Lt. Governor) in which the power is vested to act as an independent body.

36. On the other hand, powers and duties entrusted to the Government under the DMC Act are very distinct from that of the Lt. Governor. Para 30 evidences this fact. Powers and duties of Government of NCTD relate to matters such as making of subordinate legislation, having superintendence, making direct recruitment, imposing taxes, establishment of Tribunals, appointment of Authorities such as the Municipal Chief Auditor, Valuation Committee, etc.

37. Having examined Section 3(3)(b)(i) of the DMC Act empowering the Lt. Governor to nominate persons having special knowledge to the DMC, we will underscore the point that it is law made by Parliament. As the law requires the Lt. Governor to exercise the power of nomination, it satisfies the exception contemplated under Article 239AA(4) to act in his discretion as he is by or under any law so required to act. We also reject the submission that the word 'Administrator' is a relic of the past- a pre-1991 legislation when there was no Legislative Assembly for Delhi, for the reason that Section 3(3)(b)(i) was introduced only in 1993 to give effect to the two constitutional amendments. Apart from the 'text' of Section 3(3)(b)(i) specifically requiring the Lt. Governor to nominate, we have also examined the 'context' in which the said provision is located, and it evidences the existence of a statutory scheme in which powers and duties are entrusted to different authorities under the Act to subserve the constitutional purposes. The statutory regime makes it clear that the entrustment of the powers is intended to be exercised by Lt. Governor as a statutory duty.

38. We would therefore proceed to add the following two principles to the statement of the relations between Union and NCTD in para 22:

(ix) The statutory power under Section 3(3)(b)(i) to nominate persons of special knowledge was vested in the Lt. Governor for the first time by the 1993 amendment to the Delhi Municipal Corporation Act, 1957 to incorporate the Constitutional changes through Articles 239AA, 239AB and introduction of Part IX-A relating to municipalities. The power to nominate is therefore not a vestige of the past or a power of the Administrator that is continued by default. It is made to incorporate change in the Constitutional structure of NCTD.

(x) The 'text' of Section 3(3)(b)(i) of the DMC Act, 1957 as amended by Act 67/1993 expressly enables the 'Lt. Governor' to nominate persons having special knowledge to the Corporation. The power expressed by the statute in the name of Lt. Governor, also seen in the 'context' of other provisions of the statute, demonstrates the statutory scheme in which powers and duties are distributed among authorities under the Act.

The context in which the power is located confirms that the Lt. Governor is intended to act as per the mandate of the statute and not to be guided by the aid and advice of the Council of Ministers.

39. Having examined the provisions of the Act, we are of the opinion that Section 3(3)(b)(i) of the Delhi Municipal Corporation Act is a Parliamentary enactment vesting the power of nomination of persons with special knowledge in municipal administration with the Lt. Governor. The power is to be exercised as a statutory duty of the Lt. Governor and not as the executive power of the Government of NCTD.

40. For the reasons stated above, the notifications dated 03.01.2023 and 04.01.2023 issued by the Lt. Governor under Section 3(3)(b)(i) are not in violation of Article 239AA read with Section 41 of the GNCTD Act.

41. Accordingly, this Writ Petition (C) No. 348 of 2023 under Article 32 of the Constitution of India is dismissed.

42. No order as to costs.

.....CJI.

[Dr DHANANJAYA Y CHANDRACHUD]J. [PAMIDIGHANTAM SRI NARASIMHA]J. [J.B. PARDIWALA] New Delhi;

August 05, 2024