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CASE COMMENT: GOVERNMENT OF NCT OF DELHI V UNION OF INDIA¹

~Ira Dave

Background

Name of the case: Government of NCT of Delhi v Union Of India

Date of Judgment: May 11, 2023

Court: Supreme Court Of India

Bench: Chief Justice of India D.Y. Chandrachud, Justice M.R. Shah, Justice Krishna Murari, Justice Hima Kohli, Justice PS Narasimha

Citation: (2023) 9 SCC 1

Introduction

The contentious issue of control over “Services” in the National Capital Territory has finally been dealt with, by the Apex Court’s five judge bench as on the eleventh of May, 2023. Through this case, we explore the unique balance of power between the Union Government and the Government of NCT Delhi guaranteed by the Constitution of India. Article 239AA, at this time, finds itself at the centre of this discussion.

¹ (2023) 9 SCC 1

Inserted by the Sixty Ninth Amendment Act, Article 239AA² lists the special provisions with respect to Delhi, the National Capital of India. This commentary shall help us understand the rationale behind the judgment and its various implications on the system of governance, relationship between the Union & State & the exceptional role of the LG.

The 2023 ruling upheld the elected government's dominance in areas coming under its legislative purview, with the exception of public order, law enforcement, and land, building on the 2018 Constitution Bench ruling that highlighted the concepts of cooperative federalism and democratic accountability.

Facts of the case

The quandary arose when the Union Ministry of Home Affairs issued a notification on May 21, 2015, giving the Lieutenant Governor (LG) of NCTD authority over "services," in addition to public order, law enforcement, and land. It exempted the Government of NCTD's (GNCTD) legislative and executive arms from having authority over "services". The Delhi High Court had previously ruled that "services" are not within the purview of the NCTD Legislative Assembly. Arguments over whether NCTD's legislative and executive powers extended to "services" under Entry 41 of List II of the Seventh Schedule to the Constitution were heard by the Supreme Court after the case was referred there.

Issues

- I. Who has control over "services" in the NCTD – the Government of NCTD (GNCTD) or the Lieutenant Governor (LG) acting on behalf of the Union Government?
- II. What is the scope of legislative and executive powers of NCTD under Article 239-AA of the Constitution?
- III. Whether the phrase "insofar as any such matter is applicable to Union Territories" under Article 239-AA(3) excludes the legislative powers of NCTD over certain entries in the State and Concurrent Lists.

² Inserted in the Constitution by the sixty ninth Amendment

IV. Whether Part XIV of the Constitution, dealing with services, applies to Union Territories, including NCTD.

Contentions of both parties

Counsel for the GNCTD argued that Entry 41 of List II, concerning State Public Services, gives the Delhi Legislative Assembly the authority to legislate on services. He emphasized that the use of the word “State” in the entry doesn’t exclude Delhi from exercising this power, especially since it has already legislated on such matters in the past. Even if no law has been enacted yet, the legislative power still exists. He maintained that under Article 239AA, Delhi has both legislative and executive power over all List II subjects, except for entries 1 (Public Order), 2 (Police), and 18 (Land), which are explicitly excluded.

He also argued that the phrase “insofar as such matter is applicable to Union Territories” is meant to include, not exclude, entries from List II and III for Delhi’s benefit. This allows Delhi to access entries that refer to “States” without requiring a constitutional amendment. Dr. Singhvi further stressed that Delhi is constitutionally unique—a *sui generis*³ entity—and cannot be treated like other Union Territories.

Referring to *Union of India v. Prem Kumar Jain*⁴, he claimed that Part XIV of the Constitution, which deals with public services, applies to Union Territories too. He dismissed the relevance of the Balakrishnan Committee Report, saying it predates Article 239AA and was conceptually flawed. He also noted that the 2018 Constitution Bench had explicitly refused to rely on that report when interpreting Article 239AA.

On administrative matters, Dr. Singhvi pointed out that while the Joint Cadre Authority assigns officers from Central and All-India Services to Delhi, the GNCTD is responsible for their actual posting within departments. For DANICS and DANIPS officers, appointments are made by the Administrator, but once posted, the Delhi government retains functional control.

3 Of its own kind

4 (1976) 3 SCC 743

Supporting the appellant, Mr. Shadan Farasat highlighted global practices, noting that even in highly centralised countries, local governments in national capitals usually have control over services to ensure democratic functioning.

Solicitor General Tushar Mehta, representing the Union of India, argued that Union Territories like Delhi cannot claim power under Entry 41 of List II since they don't have a State Public Service or Commission. He pointed out that the 2018 judgment did not clearly decide this issue. Emphasising Delhi's unique position as the national capital, he said the Union must retain control over services to fulfil its national and international responsibilities.

He interpreted the phrase "insofar as such matter is applicable to Union Territories" in Article 239AA narrowly, arguing that NCTD can only legislate on entries clearly meant for UTs. He also maintained that the current system—where the Union controls services—has worked well, and Delhi ministers already have enough operational control under the 1993 Transaction of Business Rules.

The Court clarified that the only question before it was whether Delhi has legislative and executive power over "services" under Entry 41, and it did not go into the details of service rules.

Judgment & Reasoning

The Court concluded that Union Territories do not form a single, uniform class in terms of governance, and the NCTD stands apart due to its special status under Article 239AA, which grants it a sui generis position. The Delhi Legislative Assembly has legislative competence over all entries in List II and List III of the Seventh Schedule, except for Entries 1 (public order), 2 (police), and 18 (land), which are explicitly excluded. Parliament, however, retains the power to legislate over all these matters for NCTD as well.

The executive power of the NCTD is "coextensive" with its legislative power, meaning it has authority to implement laws on subjects it can legislate on. The Union government holds executive power only over the three excluded entries. However, where the Constitution or a Parliamentary law specifically grants the Union executive powers, those prevail over NCTD's powers.

Importantly, the phrase “insofar as any such matter is applicable to Union Territories” under Article 239AA(3) cannot be used to narrow NCTD’s legislative authority beyond the explicitly excluded subjects. Similarly, the words “subject to the provisions of this Constitution” do not limit NCTD’s power but guide it in accordance with constitutional principles.

Finally, the Court held that NCTD does possess legislative and executive power over “services” under Entry 41 of List II. This is because the definition of “State” under Section 3(58) of the General Clauses Act includes Union Territories for the purposes of Part XIV of the Constitution, which deals with public services. Also, the Union’s rule-making power under Article 309 does not eliminate the legislative power of NCTD under Entry 41.

Analysis

This Judgment is significant, not just constitutionally but along the political lines as well. Though not the first instance where the Court has clarified a long-standing power tussle between the elected government of Delhi and the Union Government, this judgement still proves to be significant. The Bench, on many occasions has recognised Delhi’s ‘sui generis’ status, acknowledging that Delhi cannot be treated like other Union Territories, given its unique position as the national capital with an elected legislature and Council of Ministers. The judgment respects the democratic mandate of the people of Delhi, asserting that the elected government must have real power to govern—particularly over services, which are essential for administration. The Court’s interpretation of Article 239AA is both liberal and purposive. Instead of reading down Delhi’s powers by using ambiguous constitutional phrases like “insofar as such matter is applicable to Union Territories,” the bench gave the provision a functional and democratic reading. This reflects the Court’s commitment to cooperative federalism and representative governance, even in the context of a Union Territory.

The judgment also addresses the balance between national interest and local autonomy. While the Union retains control over public order, police, and land—core areas tied to national sovereignty and security—it cannot micromanage Delhi’s day-to-day administration. This approach attempts to strike a balance between Delhi’s dual identity as a Union Territory and a self-governing political entity.

The Court's reaffirmation that the rule-making power under Article 309 of the Constitution does not override legislative authority under Entry 41 helps reinforce the idea that administrative control must follow constitutional principles, not just bureaucratic convenience. This empowers the Delhi government to hold officers accountable and implement its policies effectively.

In essence, this decision resolves a specific constitutional question while reaffirming broader principles: democracy must be meaningful, local governments must have genuine authority, and constitutional provisions must be interpreted in a way that advances governance rather than obstructs it.

Conclusion

This judgment marks a decisive step in strengthening democratic governance in Delhi. By affirming the Delhi government's authority over services and interpreting Article 239AA in a purposive manner, the Court has reinforced the principles of federalism, accountability, and the true spirit of representative government.