* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 04th August, 2016

\+ W.P.(C) No.5888/2015 & CM Nos.10642/2015, 11083/2015, 13153/2015, 23565/2015, 5182/2016, 5183/2016, 12676/2016 & 16088/2016

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI ….Petitioner

Versus

UNION OF INDIA …Respondent

\+ W.P.(C) No.7887/2015 & CM Nos.15903/2015 & 13616/2016

RAJENDER PRASHAD ..... Petitioner

Versus

GOVT. OF NCT OF DELHI ..... Respondent

\+ W.P.(C) No.7934/2015 & CM Nos.12753/2016, 16063/2015 & 16063/2016

NARESH KUMAR ..... Petitioner

Versus

GOVT. OF NCT OF DELHI & ORS ..... Respondents

\+ W.P.(C) No. 8190/2015 & CM No.12752/2016

SANDEEP TIWARI ..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

\+ W.P.(C) No. 8382/2015 & CM Nos.17862/2015, 23564/2015, 25388/2015, 25389/2016 & 12674/2016

M.A. USMANI ..... Petitioner

Versus

UNION OF INDIA & ORS ..... Respondents

\+ W.P.(C) No.8867/2015 & CM Nos.19859/2015, 20896/2015, 12673/2016 & 20304/2016

UNION OF INDIA & ANR. ..... Petitioners

Versus

GOVT OF NCT OF DELHI & ANR. ..... Respondents

\+ W.P.(C) No.9164/2015 & CM No.12754/2016

SANDEEP TIWARI ..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI & ORS ..... Respondents

\+ W.P.(C) No.348/2016 & CM Nos. 1425/2016 & 13619/2016

RAMAKANT KUMAR ..... Petitioner

Versus

GOVERNMENT OF NCT OF DELHI ..... Respondent

\+ W.P.(Crl.) No.2099/2015 & Crl.M.A. Nos.13920/2015 & 4864/2016

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI ….Petitioner

Versus

NITIN MANAVAT & ORS ….Respondents

Advocates who appeared in the matters:

For Petitioners: Mr. Rajeev Dhawan, Mr. Dayan Krishnan, Ms. Indira Jaising, Mr. H.S. Phoolka, Sr. Advocates with Mr.Rahul Mehra, Sr.Standing Counsel, Mr.Sanjoy Ghose, ASC, Ms.Pratishtha Vij, Ms.Meher Dev & Mr. Rohan, Advs. for petitioner/GNCTD in W.P.(C) No.5888/2015.

Mr. Sanjay Jain, ASG with Mr.Kirtiman Singh, Ms.Prerna Shah Deo, Mr.W.A. Noor, Mr. Vidur Mohan, Mr.Evanesh Bhardwaj, Mr. Aakash, Advs. for petitioner/UOI in W.P.(C) No.8867/2015.

Mr. Siddharth Luthra, Sr. Advocate with Mr.Neeraj K.Mishra, Mr.Gautam Khazanchi, Ms.Tara Narula, Advs. for the petitioner in W.P.(C) No.8382/2015.

Mr.Sudhir Nandrajog and Mr.P.P.Rao, Sr.Advs. with Mr.Rahul Mehra, Sr.Standing Counsel, Mr.Gautam Narayan, Mr.Sanjoy Ghose and Mr.Peeyoosh Kalra, Ms.Nandita Rao, ASCs for petitioner/GNCTD in WP(Crl.) No.2099/2015.

Mr. Kirti Uppal, Sr. Advocate with Mr.Vaibhav Vats, Ms.Arpita Rai, Ms. Sahiba Pantel, Advocates for the petitioners in W.P.(C) Nos.9164/2015 & 8190/2015.

Shri Abhik Kumar and Shri Vivek Singh, the learned counsels for the petitioner in W.P.(C) No.7887/2015.

Mr. O.P. Saxena, Advocates for the petitioner in W.P.(C) No.7934/2015.

Mr. Neeraj Gupta, Adv. along with petitioner in person in W.P.(C) No.348/2016.

For Respondents: Mr. Sanjay Jain, ASG with Mr.Kiritiman Singh, CGSC, Mr.Ripu Daman Bhardwaj, CGSC, Mr.Akshay Makhija, CGSC, Mr.Dev P. Bhardwaj, Mr. Sanjeev Uniyal, Ms.Prerna Shah Deo, Mr.Waize Ali Noor, Mr.Gyanesh

Bhardwaj, Mr.Vidur Mohan, Ms.Sanjugeeta Moktan & Mr.Sumant Bhushan, Advs. for Union of India.

Mr. Rajeev Dhawan, Mr. Dayan Krishnan, Ms. Indira Jaising, Mr. H.S. Phoolka, Mr. Rajiv Dutta, Mr.Raju Ramachandran, Mr. Biswajit Bhattacharya, Mr.P.P.Rao, Mr.S.Gurukrishna Kumar, Sr. Advocates with Mr.Rahul Mehra, Sr.Standing Counsel, Mr.Sanjoy Ghose, ASC, Mr. Gautam Narayan, ASC, Mr.Peeyoosh Kalra, ASC Ms.Pratishtha Vij, Ms.Meher Dev & Mr. Rohan, Mr.R.A.Iyer, Ms.Shikha Sandhu, Advs. for the respondent/GNCTD.

Mr.Kiritiman Singh, Advocate for R-10 in W.P.(Crl.) No.2099/2015.

For Intervener: Dr. A.M. Singhvi, Sr. Advocate with Mr.R.S. Prabhu, Adv. for applicant in CM Nos.5182/2016 & 5183/2016 in W.P.(C) No.5888/2015.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: Ms.G.ROHINI, CHIEF JUSTICE

1. Though based on different set of facts, the controversy in all the petitions centers on common issues relating to the exercise of legislative power and executive control in the administration of National Capital Territory of Delhi (NCTD).

2. The parties to the writ petitions and the orders impugned have been set out in the following Table so as to get a glimpse of the controversy involved in each writ petition.

Sl.No.	Writ Petition	Parties	Impugned order/action
1.	W.P.(C) No.5888/2015	GNCTD vs. UOI	Notifications dated 21.05.2015 and 23.07.2014 issued by the Govt. of India, Ministry of Home Affairs empowering the Lt. Governor to exercise the powers in respect of matters connected with 'Services' and directing the ACB Police Station not to take cognizance of offences against officials of Central Government.
2.	W.P.(C) No.7887/2015	Rajender Prashad vs. GNCTD & Ors.	Notification dated 11.08.2015 issued by the Directorate of Vigilance, GNCTD under the Commissions of Inquiry Act, 1952 without placing before the Lieutenant Governor for his views/concurrence.
3.	W.P.(C) No.7934/2015	Naresh Kumar vs. GNCTD & Ors.	Notification dated 04.08.2015 issued by the Revenue Department, GNCTD revising minimum rates of agricultural land (circle rates) under the provisions of Indian Stamp Act, 1899 and Delhi Stamp (Prevention of Undervaluation of Instrument) Rules without placing before the Lieutenant Governor for his views/concurrence.
4.	W.P.(C) No.8190/2015	Sandeep Tiwari vs. GNCTD & Ors.	Order passed by the Department of Power, GNCTD under Delhi Electricity Reforms Act, 2000 read with Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 appointing the Nominee Directors on Board of Electricity Distribution Companies without placing before the Lieutenant Governor for his views/concurrence.
5.	W.P.(C) No.8382/2015	M.A. Usmani vs. UOI & Anr.	Notification dated 11.08.2015 issued by the Directorate of Vigilance, GNCTD under the Commissions of Inquiry Act, 1952 without placing before the Lieutenant Governor for his views/concurrence.
6.	W.P.(C) No.8867/2015	UOI vs. GNCTD & Anr.	Notification dated 11.08.2015 issued by the Directorate of Vigilance, GNCTD under the Commissions of Inquiry Act, 1952 without placing before the Lieutenant Governor for his views/concurrence.
7.	W.P.(C) No.9164/2015	Sandeep Tiwari vs. GNCTD & Ors.	Policy Directions dated 12.06.2015 issued by the Department of Power, GNCTD under Section 108 of Electricity Act, 2003 without placing before the Lieutenant Governor for his views/concurrence.
8.	W.P.(C) No.348/2016	Ramakant Kumar vs. GNCTD	Notification dated 22.12.2015 issued by the Directorate of Vigilance, GNCTD under Commission of Inquiry Act, 1952 constituting the Commission of Inquiry without placing before the Lieutenant Governor for his views/concurrence.
9.	W.P.(Crl.) No.2099/2015	GNCTD vs. Nitin Manawat	Order passed by the Lt.Governor, NCT of Delhi under Section 24 of Cr.P.C. appointing a Special Public Prosecutor to conduct the trial in FIR No.21/2012 in the Special Court under PC Act.

3. Except W.P.(C) No.5888/2015 and W.P.(Crl.) No.2099/2015, in all other writ petitions the impugned orders have been challenged primarily on the ground that the said orders having been passed without placing the

decision of the Council of Ministers before the Lt. Governor for his concurrence/views are illegal and unconstitutional. Out of the said petitions, W.P.(C) No.8867/2015 has been filed by the Union of India whereas the rest of the petitions are more or less in the nature of public interest litigation.

4. W.P.(C) No.5888/2015 and W.P.(Crl.) No.2099/2015 have been filed by the Govt. of NCT of Delhi (GNCTD). The grievance in W.P.(C) No.5888/2015 is that by virtue of the impugned notifications, the legislative and executive powers conferred on the Govt. of NCT of Delhi under Article 239AA of the Constitution in respect of matters relating to "services" have been withdrawn and are sought to be exercised by the Central Government, apart from curtailing the powers of the Anti Corruption Branch of Government of NCT of Delhi to take cognizance of offences against the officers, employees and functionaries of the Central Government. The primary contention is that the said notifications are contrary to the Constitutional scheme.

5. In W.P.(Crl.) No.2099/2015, the appointment of a Special Public Prosecutor by the Lt.Governor has been challenged contending *inter alia* that the Lt.Governor of NCT of Delhi is not competent either to appoint a Special Public Prosecutor independently or to interfere with the appointment made by the Govt. of NCT of Delhi, having regard to the scheme of Article 239AA of the Constitution of India (for short 'Constitution') read with the provisions of the Government of NCT of Delhi Act, 1991 and the Rules made thereunder.

6. Before proceeding further, it is necessary to place on record that the hearing in this batch of writ petitions had commenced on 24.09.2015 on which date Shri Dayan Krishnan, the learned Senior Advocate appearing for

the petitioner/GNCTD in W.P.(C) No.5888/2015 (agreed to be taken as a lead case) was heard in part. He had concluded his arguments on 02.11.2015 and thereafter from 27.01.2016 onwards, we had heard Shri Sanjay Jain, the learned ASG appearing for the respondents/Union of India in W.P.(C) No.5888/2015 on various dates till 25.02.2016.

7. At the request of the learned counsel for both the parties, the further hearing was adjourned from time to time to enable them to file the written synopsis in W.P.(C) No.5888/2015.

8. On 04.04.2016, fresh applications came to be filed on behalf of the Government of NCT of Delhi in all the writ petitions except W.P.(C) No.5888/2015, with a prayer to refer the petitions to a Larger Bench contending that there is a conflict between the judgments rendered by the coordinate Benches of this Court in ***Om Prakash Pahwa v. State of Delhi;*** **(1998) 46 DRJ 719,** ***United RWAS Joint Action v. Union of India;*** W.P.(C) No.895/2011 and batch dated 30.10.2015 and ***Delhi High Court Bar Association v. Union of India;*** **(2013) 203 DLT 129** on the issue whether the Lt.Governor is bound by the aid and advice of the Council of Ministers under clause (4) of Article 239AA.

9. The submissions on behalf of both the parties on the said applications were heard on 05.04.2016. Though the learned Senior Counsel, Ms.Indira Jaising appearing for GNCTD/applicant insisted on passing an order on the abovesaid applications stating that it is necessary to decide the same as a preliminary issue, we declined to do so having regard to the settled principle of law that a case cannot be referred to a larger Bench on mere asking of a party but it is essential for this Court to take into consideration various factors including the applicability of the *ratio decidendi* of the judgment of

co-ordinate Benches to the facts of the case on hand and a decision in that regard can be taken only after the hearing is concluded in all the writ petitions. Hence, the said applications were tagged on to the writ petitions for passing an appropriate order while deciding the main petitions.

10. From 06.04.2016 to 03.05.2016, the hearing was taken up almost on day-to-day basis during which we heard Shri Siddharth Luthra and Shri Kirti Uppal, the learned Senior Advocates appearing for the petitioners in W.P.(C) Nos.8382/2015 and 8190/2015 & 9164/2015 respectively apart from Shri Abhik Kumar, Shri Vivek Singh and Shri Neeraj Gupta, Advocates who appeared for the petitioners in the other writ petitions.

11. We also heard Shri Sanjay Jain, the learned ASG appearing for the Union of India/petitioner in W.P.(C) Nos.8867/2015 and in all the other writ petitions in which the Union of India is arrayed as a respondent.

12. In W.P.(Crl.) No.2099/2015 filed by the Government of NCT of Delhi, Shri P.P. Rao, Senior Advocate had appeared for the Government of NCT of Delhi/petitioner. In other writ petitions where Government of NCT of Delhi has been arrayed as a respondent, Mr.Rajeev Dhawan, Ms. Indira Jaising, Shri Rajiv Dutta, Shri Biswajit Bhattacharyya, Shri Raju Ramachandran, Shri H.S. Phoolka and Shri Sudhir Nandrajog, Senior Advocates had appeared for the Government of NCT of Delhi. We heard all the Senior Advocates extensively.

13. On 03.05.2016, we also heard Dr.A.M. Singhvi, the learned Senior Advocate who appeared on behalf of the applicant in C.M. Nos. 5182/2016 and 5183/2016 in W.P.(C) No.5888/2015 in which the applicant sought for impleadment as a party respondent and further to call for the record in W.P.(C) No.2775/2015 and decide the same along with the present batch of

petitions. The applicant - Reliance Industries Ltd. - is the petitioner in W.P.(C) No.2775/2015 filed for quashing FIR No.17/2014 by the Anti-Corruption Branch of NCTD contending *inter alia* that ACB does not have jurisdiction to register an FIR and undertake investigation in respect of the offence under Prevention of Corruption Act, 1988 alleged to have been committed by the officials, employees and functionaries of the Central Government in conspiracy with private person. The said writ petition is pending on the roster Single Bench. As the validity of the notifications issued from time to time under Section 2(s) of Code of Criminal Procedure, 1973 (Cr.P.C.) empowering ACB, NCTD is under challenge in W.P.(C) No.5888/2015 being heard by us, the applicant prayed for impleadment and further to call for the record in W.P.(C) No.2775/2015 pending before a Single Bench of this Court. Having gone through the file in W.P.(C) No.2775/2015, we found that the said petition involves various other issues apart from the jurisdiction of ACB, NCTD to take cognizance of FIR No.17 of 2015. Hence, we declined to call for the record in W.P.(C) No.2775/2015. However, we allowed the applicant to intervene and address arguments on the legal issue which is common to the applicant's writ petition and the petitions pending before us. Thus, we heard Dr.A.M. Singhvi on legal issues and the written arguments filed by him have been taken on record.

14. While the arguments in the writ petitions were about to be concluded, two applications, i.e., C.M.No.16088/2016 in W.P.(C)No.5888/2015 and C.M. No.16063/2016 in W.P.(C) No.7934/2016 came to be filed on behalf of the Government of NCT of Delhi on 02.05.2016 seeking stay of

proceedings in the writ petitions stating that a suit has been filed before the Supreme Court of India under Article 131 of the Constitution.

15. To enable the non-applicants to file their response, the said applications were adjourned to 09.05.2016 and thereafter to 16.05.2016 at the request of the applicant to file the rejoinder.

16. Ms. Indira Jaising, the learned Senior Advocate appearing for the applicant/GNCTD and Shri Sanjay Jain, the learned ASG appearing for the Union of India made their submissions on 23.05.2016 and 24.05.2016 on C.M. No.16088/2016 in W.P.(C) No.5888/2015 and C.M. No.16063/2016 in W.P.(C) No.7934/2016. On 24.05.2016, another application being C.M. No.20304/2016 in W.P.(C) No.8867/2015 came to be filed by GNCTD with the same prayer to stay the proceedings on the ground of the Original Suit filed under Article 131 of the Constitution. However, it was represented by the learned counsels for both the parties that they are adopting the arguments in CM Nos.16088 and 16063/2016 and there is no need of further hearing in the fresh application. Accordingly on 24.05.2016, we reserved the orders in the said three applications as well the main writ petitions.

C.M. No.16088/2016 in W.P.(C) No.5888/2015
C.M. No.16063/2016 in W.P.(C) No.7934/2016
C.M. No.20304/2016 in W.P.(C) No.8867/2015

(**Applications filed on behalf of Govt. of NCT of Delhi seeking stay of the proceedings in the writ petitions till the adjudication of Original Suit No.2 of 2016 filed by it in the Supreme Court of India under Article 131 of the Constitution of India)**

17. As noticed earlier, these three applications have been filed by the Government of NCT of Delhi with a prayer to stay all further proceedings in the batch of writ petitions heard by us till the adjudication of the Original

Suit filed by it before the Supreme Court under Article 131 of the Constitution pleading that:-

> "These petitions raise the question of distribution of legislative powers under Article 239AA between the GNCTD on the one hand and the Union of India on the other hand and under the Constitution of India. It is the contention of the GNCTD that the said powers under the impugned notification fall within the legislative competence of the GNCTD whereas it is the contention of the Union of India that they fall within its competence. Although some petitions have been filed by private parties against the GNCTD, the GNCTD and UOI have both claimed legislative and executive powers exclusive to each other. The said petitions therefore raise a dispute of a federal nature between the GNCTD and the Union of India."

18. It is also pleaded that the substantial questions of law raised in the Suit before the Supreme Court are all disputes of a federal nature capable of resolution exclusively by the Supreme Court under Article 131 of the Constitution and since the writ petitions pending before this Court also involve the very same questions, it is necessary to stay all further proceedings in the writ petitions till the Suit filed under Article 131 of the Constitution is adjudicated.

19. Counter affidavits have been filed on behalf of the Union of India, Ministry of Home Affairs contending that filing of the applications after entire hearing in the main writ petitions along with the other batch of petitions is concluded is nothing but abuse of process of the court particularly in the light of the order of the Supreme Court dated 12.04.2016 in SLP (CRL.) No.282/2016 titled ***NCT of Delhi & Ors. v. Rabia alias Mamta & Ors.*** directing that the petitions pending in this Court be decided by the end of July, 2016.

20. On merits, it is contended that it is wrong to claim that there is a dispute between the Government of India on one side and the Government of NCT of Delhi on the other side. It is also contended that the Government of NCT of Delhi is not a State but a Union Territory as per the First Schedule of the Constitution and thus the contention that a dispute of a federal nature is involved in the petitions pending before this Court is untenable.

21. Ms. Indira Jaising, the learned Senior Advocate appeared on behalf of the Govt. of NCT of Delhi/applicant in all the applications. Reiterating the plea that the disputes and differences between GNCTD and the Union of India which have been the subject matter of the petitions pending before this Court raised a dispute of a federal nature, it is vehemently contended by the learned Senior Advocate that such a dispute can only be decided by the Supreme Court of India under Article 131 of the Constitution. It is also contended that since the Union of India has been attempting to infringe upon the Constitutional right vested with GNCTD to exercise its executive and legislative powers over the NCT of Delhi in terms of Article 239AA, the only remedy available is to invoke the exclusive jurisdiction of the Supreme Court under Article 131. It is also sought to be contended that though some of the petitions in the present batch have been filed by private individuals, the said petitions still raise questions concerning the Constitutional scheme which are fundamentally of a federal nature and therefore, the questions raised in the said petitions also need adjudication by the Supreme Court and not by this Court. In support of the said submission, the learned Senior Advocate placed reliance upon ***State of Rajasthan v. Union of India;*** **(1977) 3 SCC 592,** ***State of Karnataka v. Union of India and Anr.***; **(1977) 4 SCC**

608 and a decision of the High Court of Gujarat in ***Babubhai Jashbhai Patel v. Union of India;*** **AIR 1983 Gujarat 1**.

22. In support of the further contention that the questions of law that are the subject matter of the present batch of petitions between federal units are exclusively triable by the Supreme Court of India by virtue of Article 131 of the Constitution and therefore, they cannot be dealt with by this Court under Article 226, the learned Senior Advocate relied upon the Full Bench decision of the High Court of Punjab and Haryana in ***State of Punjab v. Union of India;*** **AIR 1971 P&H 155** and ***State of Karnataka v. Union of India (supra)***.

23. Rebutting the contention of the non-applicants that the applications which have been filed at the fag end of proceedings are misconceived, it is contended by the learned Senior Advocate that the fact that objection to the jurisdiction of this Court has been raised at a belated stage is of no consequence as there is inherent want of jurisdiction in this Court to deal with the disputes of federal nature and consequently, any judgment rendered by this Court would be *void ab initio*. In support of her submission that consent of parties does not confer jurisdiction, reliance has been placed by the learned Senior Advocate upon ***A.R. Antulay v. R.S. Nayak;*** **(1988) 2 SCC 602,** ***Chiranji Lal Shrilal Goenka v. Jasjit Singh;*** **(1993) 2 SCC 507,** ***Gujarat Maritime Board v. G.C. Pandya;*** **(2015) 12 SCC 403** and ***Ariane Orgachen Pvt. Ltd. v. Wyeth Employees Union;*** **(2015) 7 SCC 561**.

24. Ms. Indira Jaising has also drawn our attention to Section 3(60) of the General Clauses Act, 1897 to substantiate her contention that GNCTD is a State for the purpose of Article 131 of the Constitution. To substantiate her contention that NCT of Delhi has been treated as a State for the purpose of

Article 131 of the Constitution, she has also brought to our notice that Original Suit No.3/2014 filed by the State of Rajasthan against the Govt. of NCT of Delhi has been entertained by the Supreme Court.

25. Per contra, it is contended by Shri Sanjay Jain, the learned ASG that Article 131 of the Constitution which confers original jurisdiction on the Supreme Court to the exclusion of any other court in respect of any dispute between the Government of India and one or more States or between two or more States is not attracted at all to the present case since Government of NCT of Delhi is not a State but a Union Territory. For the same reason, it is contended that the dicta in ***State of Rajasthan v. Union of India*** (supra), ***State of Karnataka v. Union of India and Anr.*** (supra) and ***Babubhai Jashbhai Patel v. Union of India*** (supra) is not applicable to the case on hand. Pointing out to the expression "Subject to the provisions of this Constitution" as appeared in Article 131 and placing reliance upon the Full Bench decision of the High Court of Andhra Pradesh in ***Union of India v. State of A.P.;*** **1996 Law Suit (AP) 152**, it is contended by the learned ASG that the contention on behalf of the applicant that the jurisdiction of this Court under Article 226 is ousted by Article 131 is untenable. The learned ASG has also cited ***L. Chandra Kumar v. Union of India and Others;*** **(1997) 3 SCC 261** in support of his submission that jurisdiction conferred on the High Court under Article 226/227 of the Constitution being a part of the basic structure of Constitution, the power of judicial review, ordinarily, can never be ousted or excluded. Reliance has also been placed upon ***State of Madhya Pradesh v. Union of India;*** **(2011) 12 SCC 268** to substantiate the submission that for determination of questions relating to validity of Central or other laws, normally appropriate forum is writ jurisdiction under

Articles 32 and 226, but not an original suit under Article 131 of the Constitution.

26. In her reply arguments, Ms.Indira Jaising, the learned Senior Advocate while seeking to distinguish all the decisions cited by the learned ASG on facts, strenuously contended that there is nothing in Article 226 or any other provisions of the Constitution which enables the filing of a writ petition for adjudication of a dispute which would fall within the ambit of Article of 131 of the Constitution. In the written submissions filed on behalf of Govt. of NCT of Delhi, reliance has also been placed upon ***I.R. Coelho (dead) by LRS. v. State of T.N.;*** **(2007) 2 SCC 1,** ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.;*** **AIR 2007 SC 1609,** ***Municipal Corporation of Delhi v. Gurnam Kaur;*** **(1989) 1 SCC 101,** ***Union of India & Ors. v State of Mysore;*** **(1976) 4 SCC 531,** ***In re: Cuvery Water Disputes Tribunal;*** **1993 Supp. (1) SCC 96 (II),** ***South India Corporation (P) Ltd. v. Secretary, Board of Revenue & Anr.;*** **AIR 1964 SC 207,** ***Union of India & Ors. v. Major General Sh.Kant Sharma & Anr.;*** **(2015) 6 SCC 773** and ***State of Jharkhand v. State of Bihar & Anr;.*** **(2015) 2 SCC 431** to substantiate the contention that this Court cannot proceed with the batch of writ petitions pending on the file of this Court.

27. For proper appreciation of the submissions noticed above, we shall first refer to Article 131 of the Constitution.

> "**131**. **Original jurisdiction of the Supreme Court** - Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute
> (a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or
(c) between two or more States,
if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:
Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute." *(emphasis supplied)*

28. While considering the precise scope of Article 131 of the Constitution it was observed by the Seven Judge Bench of the Supreme Court in ***State of Rajasthan v. Union of India;*** **(1977) 3 SCC 592** that the true construction of Article 131 of the Constitution is that a dispute must arise between the Union of India and a State and that it cannot be which arises out of differences between the Government in office at the Centre and the Government in office in the State. It was also explained that the purpose of Article 131 is to provide a forum for resolution of disputes which must involve a question based on the existence or extent of a legal right and not a mere political issue. The relevant paragraphs from the ***State of Rajasthan v. Union of India (supra)*** may usefully be reproduced hereunder:

"110. The dispute between the Union of India and a State cannot but be a dispute which arises out of the differences between the Government in office at the Centre and the Government in office in the State. "In office" means "in power" but the use of the latter expression may prudently be avoided with the realisation of what goes with power. **But there is a further prerequisite which narrows down the ambit of the class of disputes which fall within Article 131. That**

requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Article 131. Mere wrangles between governments have no place in the scheme of that article. They have to be resolved elsewhere and by means less solemn and sacrosanct than a court proceeding. The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It is only when a legal, not a mere political, issue arises touching upon the existence or extent of a legal right that Article 131 is attracted.

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163. Article 131 speaks of a legal right. That legal right must be that of the State. The dispute about a legal right, its existence or extent, must be capable of agitation between the Government of India and the States. The character of the dispute within the scope of Article 131 that emerges is with regard to a legal right which the States may be able to claim against the Government. For example, the States as a party must affirm a legal right of its own which the Government of India has denied or is interested in denying giving rise to a cause of action. For the purpose of deciding whether Article 131 is attracted the subject-matter of the dispute, therefore, assumes great importance."

(*emphasis supplied*)

29. The nature, scope and applicability of Article 131 of the Constitution again fell for consideration by another Seven Judge Bench of the Supreme Court in ***State of Karnataka v. Union of India;*** **(1977) 4 SCC 608**. Reiterating the principles laid down in ***State of Rajasthan v. Union of India*** (supra), it was held:

"146. It has to be remembered that Article 131 is traceable to Section 204 of the Government of India Act. The jurisdiction conferred by it thus originated in what was part of the federal structure set up by the Government of India Act, 1935. It is a remnant of the federalism found in that Act. It should, therefore, be widely and generously interpreted for that reason too so as to advance the intended remedy. It can be invoked, in my opinion, whenever a State and other States or the Union differ on a question of interpretation of the Constitution so that a decision of it will affect the scope or exercise of governmental powers which are attributes of a State. It makes no difference to the maintainability of the action if the powers of the State, which are Executive, Legislative, and Judicial, are exercised through particular individuals as they necessarily must be. It is true that a criminal act committed by a Minister is no part of his official duties. But, if any of the organs of the State claim exclusive power to take cognizance of it, the State, as such, becomes interested in the dispute about the legal competence or extent of powers of one of its organs which may emerge.

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151. I think that the State concerned, which challenges the validity of the action of the Central Government against one or more of its Ministers in respect of acts involving exercise of its governmental powers, would have sufficient interest to maintain a suit under Article 131 because it involves claims to what appertains to the State as a "State". It may be that, if the effect upon the rights or interests of a State, as the legal entity which constitutes the legally set up and recognised governmental organisation of the people residing within certain territorial limits is too remote, indirect, or infinitesimal, upon the facts of a particular case, we may hold that it is not entitled to maintain a suit under Article 131. But, I do not think that we can say that here."

30. In the concurring judgment of Untwalia J., while referring to the facts of the case, the purport of Article 131 has further been explained as under:

> "215. In the present case the inquiry set up by the Central Government is not against the State or the State Government. It is against the Chief Minister and some other Ministers who are officers of the State. It may be open to them to take the plea in an appropriate proceeding, such as a writ petition under Article 226 of the Constitution, that the action of the Central Government is illegal and ultra vires. Under Article 131A (introduced by the Forty-second Amendment), the question of vires of Section 3 of the Act may then have to be referred for the decision for the Supreme Court by the High Court. But that in no way entitled the State to invoke the original jurisdiction of the Supreme Court under Article 131. The submission made by Mr. Lal Narayan Sinha on behalf of the plaintiff State that the legal right of the State has been invaded by the impugned notification, is not correct. Counsel submitted that it is only the State's right to order an inquiry under Section 3 of the Act against its Ministers acting through its Government, that the Central Government has no right, that it has put an impediment in the right of the State Government to modify or issue a subsequent notification for the purpose of enlarging or clarifying the scope of the inquiry and that it has thus affected the legal right of the State. We find no substance in this argument. There may be a competition between the power of one authority and the other, here in this case between the Central Government and the State Government. But unless the power exercised by one authority brings about a dispute impinging upon the legal right of the other authority, the latter cannot come under Article 131 and say that merely because it was within its power to do so its legal right is affected by the illegal exercise of the power by the other authority. The said exercise of the power must directly or by necessary implication affect the legal right of the other authority. We may support the proposition by an illustration. Suppose, the Central Government, in pursuance of a law made by the Parliament in respect of an entry in List II, say, Entry 8, relating to

> intoxicating liquors, make an order against a person residing in or an officer of any State. The order will be obviously bad, as having been issued under an invalid law made by the Parliament. Who can challenge this order? Obviously the person affected or aggrieved by the order. If the order does not affect the legal right of the State or the State Government (for the purpose of testing the argument, the two may be equated), can the State file a suit under Article 131 merely because the order has been made against its resident in accordance with a law which encroached upon the exclusive legislative field of the State? The answer, in our opinion, must be in the negative. In the instant case if the stand on merits taken on behalf of the State Ministers is correct, then the impugned notification is an invasion on their legal right. They can press into service the power of the State Government to order an inquiry and challenge the impugned notification, but the said notification can in no way be said to have affected or restrained the State Government from giving effect to its notification."

31. As is evident from the ratio laid down in the above decisions, every dispute which may arise between the State on the one hand and the Union of India on the other, in discharge of their respective executive powers cannot be construed as a dispute arising between the State and the Union of India attracting Article 131 of the Constitution. It is also clear that Article 131 of the Constitution is attracted only when a dispute arises between or amongst the States and the Union in the context of the constitutional relationship that exists between them and the legal rights flowing therefrom.

32. Coming to the case on hand, the Suit under Article 131 of the Constitution has been filed by the applicant/GNCTD at the fag end of proceedings in the batch of the petitions in which virtually the hearing was concluded on 03.05.2016. However, it is now brought to our notice that the Suit has been numbered as Original Suit No.2/2016 and summons have also

been issued on 12.05.2016 under the Supreme Court Rules. The prayer in the Suit may also be reproduced hereunder:

> "(i) Declare by a decree of this Hon'ble Court that Art.239 is not applicable in relation to the Plaintiff NCT of Delhi.
> (ii) Declare by a decree of this Hon'ble Court that the Defendant Union of India has no executive powers in relation to any of the items in List-II (other than the reserved subjects), and List-III of the Seventh Schedule of the Constitution, except to the extent provided for by Article 73 of the Constitution, and these executive powers are vested exclusively in the Plaintiff NCT of Delhi.
> (iii) Declare by a decree of this Hon'ble Court that the "aid and advise" of the Council of Ministers referred to in Article 239AA(4), is binding in relation to all matters covered by entries in List II (other than reserved subjects) and List III.
> (iv) Declare by a decree of this Hon'ble Court that Exhibit A to this plaint issued by the Defendant Union of India is unconstitutional being in excess of authority.
> (v) Declare by a decree of this Hon'ble Court that Exhibit B to this plaint issued by the Defendant Union of India is unconstitutional being in excess of authority.
> (vi) Declare by a decree of this Hon'ble Court that Exhibit C to this plaint issued by the Defendant Union of India, through the Lieutenant Governor is unconstitutional being in excess of authority and violative of Section 25A, Cr.P.C.
> (vii) Declare by a decree of this Hon'ble Court that Exhibit D to this plaint issued by the Defendant Union of India, through the Lieutenant Governor is unconstitutional being in excess of its authority and violative of Section 24(8), Cr.P.C.
> (viii) Declare by a decree of this Court that the proviso to Article 239AA(4) is limited in its applicability to cases where a difference of opinion arises on the question whether or not a particular matter is one whether the Lieutenant Governor has, by or under any law, been authorised to act in his discretion.
> (ix) Issue a permanent injunction by a decree of this Hon'ble Court restraining the Defendant Union of India from enforcing

> either directly or through its delegate the Exhibit A and Exhibit B, to this plaint.
> (x) Issue a permanent injunction by decree of this Hon'ble Court directing the defendant Union of India to restrain the Delhi Police from filing appeals, and appointing advocates or counsel to conduct criminal cases.
> (xi) Any other declaration and permanent injunction as the nature and circumstances of the case may require."

33. The learned Senior Counsel for the applicant/GNCTD would contend that various disputes of federal nature that exist between NCTD and Union of India can be adjudicated only by the Supreme Court in exercise of the Original jurisdiction under Article 131 of the Constitution. It is contended that the questions of law that are the subject matter of the present batch of petitions are also fundamentally of federal nature apart from involving various issues of Constitutional importance and therefore, it is just, necessary and proper to stay the proceedings until the Supreme Court decides the Original Suit filed under Article 131 of the Constitution.

34. We have already heard all the writ petitions in detail and have taken note of the controversy involved in each writ petition. On a careful analysis of the relief sought and the grounds of challenge in each writ petition, we are of the view that the issues raised in none of the petitions involve a question of federal nature or a dispute concerning the existence or extent of a legal right of the applicant/GNCTD. As we will presently demonstrate, the only question that requires consideration in all the writ petitions, except W.P.(C) No.5888/2015, is whether the orders impugned therein are vitiated by any error in exercise of the jurisdiction conferred under Article 239AA(4) of the Constitution read with the provisions of the GNCTD Act, 1991, the

Transaction of Business Rules, 1993 and the provisions of the respective enactments under which the impugned orders were passed.

35. Even the dispute involved in W.P.(C) No.5888/2015, according to us, cannot be construed as a dispute of a federal nature. As per clause (3) of Article 239AA, the Legislative Assembly of NCT of Delhi shall have power to make laws for the whole or any part of NCT of Delhi except with respect to Entries 1, 2 and 18 of the State List. As per clause (4) of Article 239AA, the Council of Ministers with the Chief Minister at the head are conferred with certain executive powers. The fact that the executive power so conferred is co-extensive to the legislative powers under clause (3) is not in dispute. As we could see, the only issue in controversy in W.P.(C) No.5888/2015 is whether the Central Government is right in contending that the matters connected to "Services" are relatable to Entry 41 of List-II and thus the same fall outside the purview of the legislative and executive powers of Govt. of NCT of Delhi. In our considered opinion, the said question needs to be answered on interpretation of the legislative entries in the light of clauses (3) and (4) of Article 239AA of the Constitution and nothing more. The other question relating to competence of the Central Government in directing the Anti-Corruption Branch Police Station not to take cognizance of offences against the officials and employees of the Central Government also does not involve any dispute of federal nature as sought to be contended by the petitioner/applicant. As we could see, the subject matter of the dispute in W.P.(C) No.5888/2015 is not covered by the class of disputes which fall within Article 131 so as to oust the jurisdiction of this Court under Article 226 of the Constitution. Similarly, the subject matter of dispute in W.P.(Crl.) No.2099/2015 also does not involve a dispute

of federal nature. In the said writ petition, we are merely called upon to determine whether the Lt. Governor can appoint a Special Public Prosecutor under Section 24(8) of Cr.P.C. for conducting prosecution on behalf of Government of NCT of Delhi. In our considered opinion, none of the above noticed issues are exclusively triable under Article 131 of the Constitution.

36. Hence, we are unable to agree with the contention of the applicant/GNCTD that the proceedings in the present batch of petitions shall remain stayed till the Original Suit filed by the applicant under Article 131 of the Constitution is adjudicated by the Supreme Court.

37. It is also relevant to note that the Govt. of NCT of Delhi itself is the petitioner in both W.P.(C) No.5888/2015 and W.P.(Crl.) No.2099/2015 and both petitions have been argued extensively. The hearing in the writ petitions was in fact concluded even before the filing of the Suit under Article 131 and the present applications for stay of proceedings in writ petitions. It may also be added that in SLP (Crl.) No.282 of 2016 titled ***NCT of Delhi & Others vs. Rabia @ Mamta and Others*** arising out of the order dated 03.12.2015 in W.P.(Crl.) No.2349/2015 in which also this Court had an occasion to consider the objection raised by the Govt. of NCT of Delhi to the appointment of a Special Counsel by the Lt.Governor to represent Delhi Police, the following order was passed by the Supreme Court on 12.04.2016:

> "We had, vide order dated 22nd February, 2016, requested the High Court to finalize the matter with regard to the interpretation of Article 239AA by the end of March, 2016. We have been told that a batch of matters is being heard together and it will take some time. Be that as it may, we would request the High Court of Delhi to finalize the matters by end of July, 2016.

Let the matters be listed on 16th August, 2016.

Needless to say, the parties shall complete the pleadings by the next date of hearing of this case.

The interim order passed on the earlier occasion shall continue till the next date of hearing."

38. In the light of the said order, it is not open to the applicant/GNCTD now to contend that the proceedings in the present batch of petitions shall remain stayed. Therefore, the only conclusion that can be reached is that these three applications are liable to be dismissed being devoid of merit and misconceived.

On Merits:

39. In view of the fact that the legal issue involved in each writ petition and the so called conflict between the Cabinet form of Government in place in Delhi and the Lieutenant Governor appointed by the President essentially relates to the status provided for Delhi under the Constitution, we shall first proceed to take note of the constitutional scheme with regard to administration of Delhi.

Constitutional Scheme

40. Article 1 of the Constitution defines India as a Union of States and further provides that the Territory of India shall comprise (a) the Territories of the States; (b) the Union Territories specified in the First Schedule; and (c) such other Territories as may be acquired.

41. Prior to the Constitution (Seventh Amendment) Act, 1956 the States which formed the Union of India were classified into four categories and enumerated in Parts A, B, C and D of the First Schedule of the Constitution. The first three categories were the “States” that formed the Union of India

and the fourth category was "territory". To implement the scheme of States Reorganisation Act, 1956, on 1.10.1956, the Constitution (Seventh Amendment) Act 1956 was passed and the territorial basis of the Union Part B and Part C States were abolished and a new category of States called the Union Territories were brought into existence. The three categories of "State" i.e., Part A, Part B and Part C would now be one class and the category of "territory in Part D" was replaced by "Union Territory". Thus, the first part of the First Schedule comprises the territories of the States that forms the Union and the second part of the First Schedule comprises the "Union Territories". Delhi is listed as Entry 1 of the second part of the First Schedule.

42. The Constitution for the purpose of administration and governance of the country provides for demarcation of powers between the Centre and the States. Part VIII of the Constitution deals with the powers for administration of Union Territories. According to the provisions contained in Part VIII of the Constitution, the Union Territories will be governed by the President acting through an Administrator, subject to the legislation by Parliament, if any.

43. Thus, Delhi admittedly is a Union Territory and shall be governed by the provisions enumerated under Part VIII of the Constitution. However, since it is the President who exercises the control over the Union Territories for the purposes of their administration, we shall in brief refer to the provisions of Chapter I of Part V of the Constitution that deals with the Executive of Union.

44. In order to ensure a responsible Government, the framers of the Constitution adopted the best features of the Presidential and Parliamentary

forms of the Government. Article 52 of the Constitution states that there shall be a President of India. Though 'executive power' is nowhere defined under the Constitution, Article 53 states that the 'executive power' of the Union vests in the President. A perusal of the provisions of Part V of the Constitution shows that the President enjoys vast powers to be exercised in accordance with the provisions of the Constitution. However, it is settled legal position that the President is a formal or constitutional head of the Executive of the Union and the real power is vested in the Council of Ministers on whose aid and advice the President acts in the exercise of his functions.

45. Part VIII of the Constitution comprising Articles 239 to 242 deals with the Union Territories. As is apparent, the constitutional status of the Union Territories is not the same as a State. A Union Territory shall be administered by the President through an Administrator appointed by him with such designation as he may specify or through the Governor of a neighbouring State, save as otherwise provided by Parliament by law.

46. Analysing the provisions of Article 239 of the Constitution, it has been held by the Supreme Court that the position in law is clear that though the Union Territories are centrally administered under the provisions of Article 239 they do not become merged with the Central Government and they form part of no State but are the territories of the Union. The President who is the executive head of a Union Territory does not function as the head of the Central Government, but under Article 239 of the Constitution the administration of the Union Territories is left with the President of India and he functions as the head of the Union Territory under powers specially vested in him under Article 239. Under Article 239, the President occupies,

in regard to the Union Territory, a position analogous to that of a Governor in a State. Thus, the Union Territory does not entirely lose its existence as an entity though large control is exercised by the Union of India. {Vide: **Satya Dev Bushahri v. Padam Dev; AIR 1954 SC 587**, **NDMC v. State of Punjab; (1997) 7 SCC 339**, **Govt. of NCT, Delhi v. All India Central Civil Accounts, JAO's Assn.; (2002) 1 SCC 344** and **Chandigarh Admn. v. Surinder Kumar; (2004) 1 SCC 530**}.

47. While describing the status of the Administrator of the Union Territory as a delegatee of the President, it was observed by the Supreme Court in **Sushil Flour Dal & Oil Mills v. Chief Commissioner**; **(2000) 10 SCC 593** as under:-

> " 4. ..... Under Part VIII of the Constitution the power to administer the Union Territories vested in the President and the President could exercise that power directly or through an Administrator appointed by him. An Administrator so appointed was the medium through which the President exercised the function of administering the Union Territories."

48. So far as Delhi is concerned, the legislative history shows that even as a Part-C State under the First Schedule to the Constitution as it stood prior to the Constitution (Seventh Amendment) Act, 1956, the territory of Delhi was a separate and distinct entity. This has been explained in **Express Newspapers (P) Ltd. v. Union of India; (1986) 1 SCC 133** as under:-

> "92. ..... it is necessary to view the question from a historical perspective since the Union Territory of Delhi, as it now exists, has undergone many constitutional changes. Prior to September 17, 1912, the Territory of Delhi was known as the "Imperial Delhi Estate" and was included within the then Province of Punjab. After the decision to form the capital at Delhi was reached, proceedings for acquisition of land

therefor were taken by the Collector of Delhi District pursuant to the Notification No. 775 dated December 21, 1911 issued by the Lt. Governor of Punjab. When the capital was shifted from Calcutta to Delhi, the Governor-General-in-Council by his proclamation dated September 17, 1912 took under his immediate authority and management the territory of Delhi with the sanction and approbation of the Secretary of State for India. The Delhi Laws Act, 1912 came into force w.e.f. September 18, 1912 and provided for the administration of the territory of Delhi by a Chief Commissioner as a separate Province to be known as the Province of Delhi. The Preamble to the Act reads as follows:

"Whereas by Proclamation published in Notification No. 911, dated the seventeenth day of September, 1912, the Governor-General-in-Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule A, which was formerly included within the Province of the Punjab, and to provide for the administration thereof by a Chief Commissioner as a separate Province to be known as the Province of Delhi;

And whereas it is expedient to provide for the application of the law in force in the said territory, and for the extension of other enactments thereto; It is hereby enacted as follows:"

Under Section 58 of the Government of India Act, 1919, Delhi remained and was administered as a Chief Commissioner's Province. The office of Land & Development Officer came into being as a separate organisation under the administrative control of the Chief Commissioner of Delhi. Under Section 94 of the Government of India Act, 1935, it was provided that Delhi would continue to be a Chief Commissioner's Province. A Chief Commissioner's Province was to be administered by the Governor-General acting to such extent as he thought fit through a Chief Commissioner to be appointed by him in his discretion. Section 94 of the Government of India Act, 1935 provided as follows:

"94. Chief Commissioners' Provinces.—(1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.

(2) Aden shall cease to be part of India.

(3) A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion."

Under Section 100(4) of the Government of India Act, 1935, the Federal Legislature was empowered to legislate in relation to Chief Commissioners' Provinces and without limitation as to subjects.

93. With the attainment of Dominion status on August 15, 1947 under the Indian Independence Act, 1947, the powers of the Legislature of the Dominion were exercisable by the Constituent Assembly under sub-section (1) of Section 8. The Constituent Assembly was not to be subject to any limitations whatsoever in exercising its constituent powers. Thus, the Indian Independence Act, 1947 established the sovereign character of the Constituent Assembly which became free from all limitations. Sub-section (2) of Section 8 of the Act provided that except insofar as other provision was made by or in accordance with a law made by a Constituent Assembly under sub-section (1), the governance of the Dominion was to be carried out in accordance with the Government of India Act, 1935 and the provisions of that Act, and all the orders in Council, rules and other instruments made thereunder. On January 5, 1950, the Constituent Assembly enacted the Government of India (Amendment) Act, 1949 by which Section 290-A was inserted in the Government of India Act, 1935 providing that the Governor-General may by order direct that an acceding State or a group of such States shall be

> administered as a Chief Commissioner's Province or as part of Governor's or Chief Commissioner's Province. These acceding States were thus converted into centrally administered areas and included in Part "C" of the First Schedule of the Government of India Act, 1935. The remaining States in Part "C" were Ajmer, Coorg and Delhi. **Under the Constitution, Delhi became a Part "C" State. As already stated the States specified in Part "C" of the First Schedule were to be administered by the President under Article 239(1) acting, to such extent as he thought fit, through a Chief Commissioner or a Lt. Governor to be appointed by him.**" *(emphasis supplied)*

49. As could be seen, with the transformation of territory of Delhi from a Chief Commissioner's Province under Section 94(3) of the Government of India Act 1935 into that of a Part C State under the Constitution and after the Constitution Seventh Amendment into the Union Territory of Delhi, the office of the Chief Commissioner disappeared and that of an Administrator appointed by the President of India under Article 239(1), with such designation which he may specify came into existence.

50. By the Constitution (Fourteenth Amendment) Act, 1962, Article 239A was inserted creating local legislatures or Council of Ministers or both for certain Union Territories. Subsequently, by the Constitution (Sixty Ninth Amendment) Act, 1991 with effect from 01.02.1992 Article 239AA was inserted making special provisions with respect to Delhi. Articles 239, 239A and 239AA as they stand as of today may be reproduced hereunder:-

> **"239. Administration of Union territories. -** (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

239 A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.- (1) Parliament may by law create for the Union territory of Puducherry—
(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

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) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters

relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament.

(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 18.

(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 Lieutenant 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) The Chief Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Puducherry, the administrator and its Legislature, respectively; and any reference in that article to "clause (1) of article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be."

(emphasis supplied)

51. As is evident from the title itself, Article 239AA is a special provision with respect to Delhi which was inserted by the Constitution (69th Amendment) Act, 1991 with effect from 01.02.1992, in terms of which the Union Territory of Delhi shall be called National Capital Territory of Delhi and the administrator thereof shall be designated as the Lt. Governor. Further, as per clause (2) of Article 239AA, 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. Clause (2) further provides that the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

52. Clause (3) of Article 239AA is an important provision which confers the Legislative Assembly of National Capital Territory with the 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 except matters with respect to Entries 1, 2 and 18 of the

State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18. It has also been made clear that the powers so conferred on the Legislative Assembly of National Capital Territory to make laws is not in derogation of the powers of Parliament under the Constitution to make laws with respect to any matter for a Union Territory or any part thereof. In case of any repugnancy between the law made by the Legislative Assembly and the law made by the Parliament, the law made by the Parliament shall prevail and the law made by the Legislative Assembly to the extent of repugnancy shall be void except where the law made by the Legislative Assembly has been reserved for consideration of the President and has received his assent.

53. Clause (4) of Article 239AA further provides that there shall be a Council of Ministers 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 required by law to act in his discretion. The proviso to Clause (4) made it clear that in case of difference of opinion between the Lt. Governor and his Ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision, Lt. Governor is competent to take action or to give direction as he deems necessary, in case the matter is so urgent that it is necessary for him to take immediate action.

54. Clause (7)(a) of Article 239AA provided that the Parliament may by law make such provisions for giving effect to, or supplementing the provisions contained therein. In terms thereof, Government of NCTD Act,

1991 has been enacted by the Parliament which has come into force on 01.02.1992. In exercise of the power conferred by Section 44 of the said Act, the President of India made Rules which provide in detail for the procedure for the exercise of functions under clause (4) of Article 239AA.

Status of Delhi after insertion of Article 239AA

55. The Statement of Objects and Reasons appended to the Constitution (74th Amendment) Bill, 1991 which was enacted as Constitution (69th Amendment) Act, 1991 reflects the purpose for which Article 239AA has been inserted and the same reads as under:-

> "Statement of Objects and Reasons
> The question of re-organisation of the Administrative set-up in the Union territory of Delhi has been under the consideration of the Government for some time. The Government of India appointed on 24-12-1987 a Committee to go into the various issues connected with the administration of Delhi and to recommend measures inter alia for the streamlining of the administrative set-up. The Committee went into the matter in great detail and considered the issues after holding discussions with various individuals, associations, political parties and other experts and taking into account the arrangements in the national Capitals of other countries with a federal set-up and also the debates in the Constituent Assembly as also the reports by earlier Committees and Commissions. After such detailed inquiry and examination, it recommended that Delhi should continue to be a Union territory and provided with a Legislative Assembly and a Council of Ministers responsible to such Assembly with appropriate powers to deal with matters of concern to the common man. The Committee also recommended that with a view to ensure stability and permanence the arrangements should be incorporated in the Constitution to give the National Capital a special status among the Union territories.

2. The Bill seeks to give effect to the above proposals."

56. In ***NDMC v. State of Punjab;*** **(1997) 7 SCC 339**, a Constitution Bench of nine Judges while setting out the constitutional history of Union Territories made it clear that Delhi is a Union Territory. In the minority judgment authored by the then Chief Justice A.M. Ahmadi, on behalf of himself and three other Judges, it was explained:

> "Constitutional history of the areas that are now called "Union Territories"
>
> 8. In the pre-constitutional era, these territories were called Chief Commissioner's Provinces. The Government of India Act of 1919 contained specific provisions for the governance of these areas. Under the scheme of the Government of India Act, 1935 (hereinafter referred to as "the 1935 Act"), the Federation of India comprised: (*a*) the Provinces called Governor's Provinces; (*b*) the Indian States which had acceded to or were expected to accede to the Federation; and (*c*) the Chief Commissioner's Provinces. Part IV of the 1935 Act dealt with the Chief Commissioner's Provinces and Section 94 listed them as: (*i*) British Baluchistan, (ii) Delhi, (iii) Ajmer-Marwara, (iv) Coorg, (v) Andaman and Nicobar Islands, and (vi) the area known as Panth Piploda: and provided that these areas were to be administered by the Governor General, acting through a Chief Commissioner.
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> 9. On 31-7-1947, during the incipient stages of the framing of the Constitution, a Committee under the Chairmanship of Dr B. Pattabhi Sitaramayya was established to study and report on the constitutional changes required in the administrative structure existing in the Chief Commissioner's provinces to give to the people of these provinces a due place in the democratic governance of free India. After the recommendations of this Committee were sanctioned by the Drafting Committee, they were placed before the Constituent Assembly for its consideration.

10. The Constituent Assembly considered all aspects of the issue with a view to providing an appropriate administration for what were called Part C States, which included three former Chief Commissioner's Provinces — Delhi, Ajmer and Coorg — and some erstwhile Indian States which were retained as Centrally-administered areas after their merger with India; the latter group consisted of the following areas: Himachal Pradesh, Bhopal, Bilaspur, Cooch-Behar, Kutch, Tripura, Manipur and Vindhya Pradesh. It was decided that the decision whether these territories should have legislatures and Councils of Ministers ought to be left to Parliament and, for this purpose, an enabling provision should be incorporated within the Constitution. It was also provided that these Part C States would be administered by the President, acting to such extent as he thought fit, through a Chief Commissioner or a Lieutenant Governor to be appointed by him, or through the Governor of a neighbouring State, subject to certain procedural requirements. Accordingly, Articles 239 and 240 were inserted in the final draft of the Constitution.

11. Under the Constitution of India, as initially enacted, the States were divided into Part A States, Part B States, Part C States and the territories in Part D. The First Schedule to the Constitution provided details of the States falling within each of these categories. The Part C States comprised: (i) Ajmer; (ii) Bhopal; (iii) Bilaspur; (iv) Cooch-Behar; (v) Coorg; (vi) Delhi; (vii) Himachal Pradesh; (viii) Manipur; and (ix) Tripura. The only territory under Part D was Andaman and Nicobar. Part VIII of the Constitution, comprising Articles 239-242, dealt with Part C States. Article 239 provided that Part C States were to be administered by the President acting through a Chief Commissioner or a Lieutenant Governor. Article 240 provided that Parliament could, by law, create a local legislature or a Council of Ministers or both for a Part C State and such a law would not be construed as a law amending the Constitution. Article 241 allowed Parliament to constitute High Courts for the States in Part C States. Article 242 was a special provision for Coorg. Article 243, which also constituted Part IX of the Constitution, stated that territories in Part D would be

administered by the President through a Chief Commissioner or other authority to be appointed by him.

12. In exercise of its powers under Article 240 (as it then stood), Parliament enacted the Government of Part C States Act, 1951 whereunder provisions were made in certain Part C States for a Council of Ministers to aid and advise the Chief Commissioner and also for a legislature comprising elected representatives. Section 22 of this legislation made it clear that the legislative powers of such Part C States would be without prejudice to the plenary powers of Parliament to legislate upon any subject.

13. The States Reorganisation Commission which was set up in December 1953, while studying the working of the units of the Union, took up the functioning of the Part C States for examination as an independent topic. In its Report, submitted in 1955, the Commission expressed the view that Part C States were neither financially viable nor functionally efficient, and recommended that each of them should either be amalgamated with the neighbouring States or made a Centrally-administered territory.

14. Substantial changes were made by the Constitution (Seventh Amendment) Act, 1956 (hereinafter called "the Seventh Amendment Act"), which incorporated the recommendations of the States Reorganisation Commission and was to have effect in concert with the States Reorganisation Act, 1956. The four categories of States that existed prior to these Acts were reduced to two categories. The first of these categories comprised one class, called "States", and there were 14 such "States". The second category comprised the areas which had earlier been included in Part C and Part D States; these areas were called "Union Territories" and were six in number. Some additions and deletions were made to the existing lists. While Ajmer, Bhopal, Coorg, Bilaspur and Cooch-Behar became parts of other States, the Laccadive, Minicoy and Amindivi Islands became a Union Territory. The six Union Territories, therefore, were: (1) Delhi; (2) Himachal Pradesh; (3) Manipur; (4) Tripura; (5) Andaman

and Nicobar Islands; (6) the Laccadive, Minicoy and Amindivi Islands.

15. The Seventh Amendment Act also replaced Articles 239 and 240 by new provisions; the new Article 240 allowed the President to make regulations for certain Union Territories and this provision continues to this day. It also repealed Articles 242 and 243 of the Constitution.

16. Subsequently, Dadra and Nagar Haveli became a Union Territory by the Constitution (Tenth Amendment) Act, 1961; Goa, Daman and Diu and Pondicherry became Union Territories by the Constitution (Twelfth Amendment) Act, 1962; Chandigarh became a Union Territory by the Punjab (Reorganisation) Act, 1966.

17. The Constitution (Fourteenth Amendment) Act, 1962 replaced the old Article 240 as Article 239-A, enabling Parliament to create a legislature and/or a Council of Ministers for Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry. Thereafter, by the Government of Union Territories Act, 1963, Parliament did create Legislative Assemblies, comprising three nominated persons, for these territories.

18. Himachal Pradesh ceased to be a Union Territory by virtue of the State of Himachal Pradesh Act, 1970. Manipur and Tripura became States by virtue of the North-Eastern Areas (Reorganisation) Act, 1971. Arunachal Pradesh, Mizoram and Goa, Daman and Diu ceased to be Union Territories by virtue of the State of Arunachal Act, 1986, the State of Mizoram Act, 1986 and the Goa, Daman and Diu (Reorganisation) Act, 1987 respectively. The Laccadive, Minicoy and Amindivi Islands (Alteration of Names) Act, 1973 changed the name of these Islands to "Lakshadweep" but it continued to remain a Union Territory.

19. The present list of Union Territories is as follows: (i) Delhi; (ii) Andaman and Nicobar; (iii) Lakshadweep; (iv)

Dadra and Nagar Haveli; (v) Daman and Diu; (vi) Pondicherry; and (vii) Chandigarh. However, it is to be noted that all the Union Territories do not have the same status. By the Constitution (Sixty-Ninth Amendment) Act, 1991, Articles 239-AA and 239-AB, which are special provisions in relation to Delhi, were added. They provide that Delhi, which is to be called the National Capital Territory of Delhi, is to have a Legislative Assembly which will be competent to enact laws for matters falling in Lists II and III barring a few specific entries. As the position stands at the present moment, the Union Territories can be divided into three categories:

(i) Union Territories without legislatures — comprising Andaman and Nicobar, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh.

(ii) Union Territories for which legislatures have been established by Acts of Parliament under Article 239-A — Pondicherry is the sole occupant of this category.

(iii) Union Territories which have legislatures created by the Constitution (Articles 239-AA and 239-AB) — The National Capital Territory of Delhi is the sole occupant of this category."

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87. It has been urged that when Parliament legislates for Union Territories in exercise of powers under Article 246(4), it is a situation similar to those enumerated above and is to be treated as an exceptional situation, not forming part of the ordinary constitutional scheme and hence falling outside the ambit of "Union taxation". Having analysed the scheme of Part VIII of the Constitution including the changes wrought into it, we are of the view that despite the fact that, of late, Union Territories have been granted greater powers, they continue to be very much under the control and supervision of the Union Government for their governance. Some clue as to the reasons for the recent

amendments in Part VIII may be found in the observations of this Court in *Ramesh Birch case* [1989 Supp (1) SCC 430] , which we have extracted earlier. It is possible that since Parliament may not have enough time at its disposal to enact entire volumes of legislations for certain Union Territories, it may decide, at least in respect of those Union Territories whose importance is enhanced on account of the size of their territories and their geographical location, that they should be given more autonomy in legislative matters. However, these changes will not have the effect of making such Union Territories as independent as the States. This point is best illustrated by referring to the case of the National Capital Territory of Delhi which is today a Union Territory and enjoys the maximum autonomy on account of the fact that it has a legislature created by the Constitution. However, clauses (3)(*b*) and (3)(*c*) of Article 239-AA make it abundantly clear that the plenary power to legislate upon matters affecting Delhi still vests with Parliament as it retains the power to legislate upon *any* matter relating to Delhi and, in the event of any repugnancy, it is the parliamentary law which will prevail. It is, therefore, clear that Union Territories are in fact under the supervision of the Union Government and it cannot be contended that their position is akin to that of the States. **Having analysed the relevant constitutional provisions as also the applicable precedents, we are of the view that under the scheme of the Indian Constitution, the position of the Union Territories cannot be equated with that of the States. Though they do have a separate identity within the constitutional framework, this will not enable them to avail of the privileges available to the States**."

(emphasis supplied)

57. The majority judgment authored by Justice B.P. Jeevan Reddy on behalf of himself and four other Judges, has also reiterated that Delhi remains a Union Territory. The relevant paragraphs from the majority judgment in ***NDMC v. State of Punjab*** (supra) may be extracted hereunder:

"152. xxxx xxxx xxxx xxxx xxxx xxxx

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In the year 1991, the Constitution did provide for a legislature for the Union Territory of Delhi [National Capital Territory of Delhi] by the Sixty-Ninth (Amendment) Act (Article 239-AA) but even here the legislature so created was not a full-fledged legislature nor did it have the effect of — assuming that it could — lift the National Capital Territory of Delhi from Union Territory category to the category of States within the meaning of Chapter I of Part XI of the Constitution. **All this necessarily means that so far as the Union Territories are concerned, there is no such thing as List I, List II or List III. The only legislative body is Parliament — or a legislative body created by it. Parliament can make any law in respect of the said territories — subject, of course, to constitutional limitations other than those specified in Chapter I of Part XI of the Constitution**. Above all, the Union Territories are not "States" as contemplated by Chapter I of Part XI; they are the territories of the Union falling outside the territories of the States.

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155. In this connection, it is necessary to remember that all the Union Territories are not situated alike. There are certain Union Territories (i.e., Andaman and Nicobar Islands and Chandigarh) for which there can be no legislature at all — as on today. There is a second category of Union Territories covered by Article 239-A (which applied to Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry — now, of course, only Pondicherry survives in this category, the rest having acquired Statehood) which have legislatures by courtesy of Parliament.

> Parliament can, by law, provide for constitution of legislatures for these States and confer upon these legislatures such powers, as it may think appropriate. Parliament had created legislatures for these Union Territories under the "the Government of Union Territories Act, 1963", empowering them to make laws with respect to matters in List II and List III, but subject to its overriding power. The third category is Delhi. It had no legislature with effect from 1-11-1956 until one has been created under and by virtue of the Constitution Sixty-Ninth (Amendment) Act, 1991 which introduced Article 239-AA. We have already dealt with the special features of Article 239-AA and need not repeat it. Indeed, **a reference to Article 239-B read with clause (8) of Article 239-AA shows how the Union Territory of Delhi is in a class by itself but is certainly not a State within the meaning of Article 246 or Part VI of the Constitution. In sum, it is also a territory governed by clause (4) of Article 246**. As pointed out by the learned Attorney General, various Union Territories are in different stages of evolution. Some have already acquired Statehood and some may be on the way to it. The fact, however, remains that those surviving as Union Territories are governed by Article 246(4) notwithstanding the differences in their respective set-ups — and Delhi, now called the "National Capital Territory of Delhi", is yet a Union Territory."
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> *(emphasis supplied)*

58. As is evident from the legal position noticed above, though a specific constitutional provision has been inserted by the Constitution (69th Amendment) Act, 1991 to deal with the administration of the National Capital Territory of Delhi, it continues to be a Union Territory and does not acquire the status of a State.

59. To supplement the provisions of Article 239AA and in terms of Clause (7)(a) thereof, the Parliament enacted Government of National Capital Territory of Delhi Act, 1991 (GNCTD Act) which has come into force with effect from 01.02.1992. Part IV of the said Act contains certain provisions relating to Lt.Governor and Ministers which included matters in which Lt.Governor may act in his discretion (Section 41), conduct of business for which the President of India shall make rules for the allocation of business to the Ministers, orders and other instruments made and executed in the name of Lt.Governor (Section 44) and duties of Chief Minister regarding furnishing of information to the Lieutenant Governor (Section 45).

60. Sections 41, 44 and 45 of GNCTD Act which are relevant for the purpose of the present case, may be reproduced hereunder for ready reference:

> "**Section 41. Matters in which Lieutenant Governor to act in his discretion.**- (1) The Lieutenant Governor shall act in his discretion in a matter-
>
> (i) which falls outside the purview of the powers conferred on the Legislative Assembly but in respect of which powers or functions are entrusted or delegated to him by the President; or
>
> (ii) in which he is required by or under any law to act in his discretion or to exercise any judicial or *quasi-judicial* functions.
>
> (2) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is by or under any law required to act in his discretion, the decision of the Lieutenant Governor thereon shall be final.
>
> (3) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is required by

any law to exercise any judicial or *quasi-judicial* functions, the decision of the Lieutenant Governor thereon shall be final.

Section 44. Conduct of business. - (1) the President shall make rules -

(a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers; and

(b) for the more convenient transaction of business with the Ministers, including the procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.

(2) Save as otherwise provided in this Act, all executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.

(3) Orders and other instruments made and executed in the name of the Lieutenant Governor shall be authenticated in such manner as may be specified in rules to be made by the Lieutenant Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Lieutenant Governor.

Section 45. Duties of Chief Minister as respect the furnishing of information to the Lieutenant Governor, etc. - It shall be the duty of the Chief Minister -

(a) to communicate to the Lieutenant Governor all decisions of the Council of Ministers relating to the administration of the affairs of the Capital and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Capital and proposals for legislation as Lieutenant Governor may call for; and

(c) If the Lieutenant Governor so requires, to submit for the consideration of the Council of Ministers any matter on

which a decision has been taken by a Minister but which has not been considered by the Council."

61. In exercise of the powers conferred by Section 44 of the GNCTD Act, the President of India made rules including (i) Transaction of Business of the Government of NCT of Delhi Rules, 1993 (for short 'Transaction of Business Rules') and (ii) Government of NCT of Delhi (Allocation of Business) Rules, 1993 (for short 'Allocation of Business Rules').

62. We may also refer to the relevant Transaction of Business Rules, 1993:

Chapter III

Disposal of Business allocated among Ministers

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Rule 10. (1) While directing that a proposal shall be circulated, the Chief Minister may also direct, if the matter be of urgent nature, that the Ministers shall communicate their opinion to the Secretary to the Council by a particular date, which shall be specified in the memorandum referred to in rule 9.

(2) If any Minister fails to communicate his opinion to the Secretary to the Council by the date so specified in the memorandum, it shall be assumed that he has accepted the recommendations contained therein.

(3) If the Minister has accepted the recommendations contained in the memorandum or the date by which he was required to communicate his opinion has expired, the Secretary to the Council shall submit the proposal to the Chief Minister.

(4) If the Chief Minister accepts the recommendations and if he has no observation to make, he shall return the proposal with his orders thereon to the Secretary to the Council.

(5) On receipt of the proposal, the Secretary to the Council shall communicate the decision to the Lieutenant Governor and pass on the proposal to the Secretary concerned who shall thereafter take necessary steps to issue the orders unless a reference to the Central Government is required in pursuance of the provisions of Chapter V.

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Rule 14. (1) The decision of the Council relating to each proposal shall be separately recorded and after approval by the Chief Minister, or the Minister presiding , shall be placed with the records of the proposal. After approval by the Chief Minister or the Minister presiding , the decision of the Council as approved, shall be forwarded by the Secretary to the Council to the Lieutenant Governor.

(2) Where a proposal has been approved by the Council and the approved record of the decision has been communicated to the Lieutenant Governor, the Minister concerned shall take necessary action to give affect to the decision.

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Rule 23. The following classes of proposals or matters shall essentially be submitted to the Lieutenant Governor through the Chief Secretary and the Chief Minister before issuing any orders thereon, namely:

(i) matters which affect or are likely to affect the peace and tranquility of the capital;

(ii) matters which affect or are likely to affect the interest of any minority community, Scheduled Castes and backward classes;

(iii) matters which affect the relations of the Government with any State Government , the Supreme Court of India or the High Court of Delhi;

(iv) proposals or matters required to be referred to the Central Government under the Act or under Chapter V;

(v) matters pertaining to the Lieutenant Governor's Secretariat and personnel establishment and other matters relating to his office;

(va) matters on which Lieutenant Governor is required to make order under any law or instrument in force;

(vi) petitions for mercy from persons under sentence for death and other important cases in which it is proposed to recommend any revision of a judicial sentence;

(vii) matters relating to summoning, prorogation and dissolution of the Legislative Assembly, removal of disqualification of voters at elections to the Legislative Assembly, Local Self Government Institutions and other matters connected with those; and

(viii) any other proposals or matters of administrative importance which the Chief Minister may consider necessary.

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Chapter IV

Disposal of Business relating to Lieutenant Governor's executive functions

Rule 45. The Lieutenant Governor, may by standing orders in writing, regulate the transaction and disposal of the business relating to his executive functions:

Provided that the standing orders shall be consistent with the provisions of this Chapter, Chapter V and the instructions issued by the Central Government for time to time.

Provided further that the Lieutenant Governor shall in respect of matters connected with 'public order', 'police' and 'land' exercise his executive functions to the extent delegated to him by the President in consultation with the Chief Minister, if it is so provided under any order issued by the President under article 239 of the Constitution.

Provided further that 'standing orders' shall not be inconsistent with the rules concerning transaction of business.

Rule 46.(1) With respect to persons serving in connection with the administration of the National Capital Territory, the Lieutenant Governor shall, exercise such powers and perform such functions as may be entrusted to him under the provisions of the rules and orders regulating the conditions of service of such persons or by any other order of the President in consultation with the Chief Minister, if it is so provided under any order issued by the President under article 239 of the Constitution.

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CHAPTER-V

Referring to the Central Government

Rule 48. (Omitted)

Rule 49. In case of difference of opinion between the Lieutenant Governor and a Minister in regard to any matter, the Lieutenant Governor shall endeavour by discussion on the matter to settle any point on which such difference of opinion has arisen. Should the difference of opinion persist, the Lieutenant Governor may direct that the matter be referred to the Council.

Rule 50. In case of difference of opinion between the Lieutenant Governor and the Council with regard to any matter, the Lieutenant Governor shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President.

Rule 51. Where a case is referred to the Central Government in pursuance of rule 50, it shall be competent for the Lieutenant Governor to direct that action shall be suspended pending the decision of the President on such case or in any case where the matter, in his opinion, is such that it is necessary that immediate action should be taken to give such direction or take such action in the matter as he deems necessary.

Rule 52. Where a direction has been given by the Lieutenant Governor in pursuance of rule 51, the Minister concerned shall take action to give effect to such direction.

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Rule 56. When a matter has been referred by the Lieutenant Governor to the Central Government under these rules, further action thereon shall not be taken except in accordance with the decision of the Central Government."

(emphasis supplied)

63. On a conjoint reading of Article 239AA and the above noticed provisions of the Government of NCT of Delhi Act, 1991 and the Rules made thereunder, it becomes manifest that Delhi continues to be a Union Territory. By virtue of Article 239AA, Delhi has been provided with a Legislative Assembly and a Council of Ministers consisting of not more than 10% of the total number of members in the Legislative Assembly with the Chief Minister at the head. While the Legislative Assembly has been empowered to make laws for the whole or any part of the National Capital Territory with respect to certain matters as provided in Clause (3) of Article 239AA, Clause (4) of Article 239AA enabled the Council of Ministers with the Chief Minister at the head to take part in executive functions by tendering aid and advice to 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 insofar as he is, by or under any law, required to act in his discretion. Matters in which the Lt. Governor may act in his discretion have been enumerated in Section 41 of GNCTD Act, 1991 and the procedure to be adopted for transaction of business with the Ministers and in case of difference of opinion between Lt. Governor and

Council of Ministers has been provided in the Rules made under Section 44 of the said Act.

64. That being broadly the Constitutional scheme with regard to administration of Delhi, we shall now notice the respective claims of the GNCTD and the Union of India.

Case of Govt. of NCT of Delhi:

65. The Govt. of NCT of Delhi claims that by virtue of Article 239AA constituting a Legislative Assembly for NCTD and conferring upon it exclusive legislative competence in respect of subjects mentioned in clause (3), Delhi has been given special status. It is claimed that consequent to the said Constitutional conferment of legislative power, the Lt. Governor is bound to act only on the aid and advice tendered to him by the Council of Ministers of the GNCTD with regard to those subjects in respect of which exclusive legislative competence is conferred on the Legislative Assembly of NCTD.

66. The contentions of Sh.Dayan Krishnan, the learned Senior Counsel who appeared for GNCTD in W.P.(C) No.5888/2015 regarding the status of Govt. of NCTD under the Constitutional scheme may be summarized as under:

> (i) Consequent to the exclusive legislative competence conferred upon the Legislative Assembly of the Government of NCT of Delhi by clause (3) of Article 239AA in respect of all subjects other than those specifically excluded therein, the Lt. Governor is bound to act only on the aid and advise of the Council of Ministers in the exercise of his

functions in relation to those matters with respect to which the Legislative Assembly has power to make laws.

(ii) In terms of Section 41 of the GNCTD Act, 1991 and Rule 45 Proviso (2) of the Transaction of Business Rules even in respect of Entries 1, 2 and 18 of the State List, to the extent the Lt. Governor is authorized by Presidential delegation, the Lt. Governor is required to consult the Chief Minister except in those cases where for reasons to be recorded in writing he does not consider it expedient to do so.

(iii) The Lt.Governor is bound by the "aid and advise" tendered by the Council of Ministers as interpreted by the Constitution Bench of the Supreme Court in ***Samsher Singh v. State of Punjab;*** **(1974) 2 SCC 831** which has been reiterated and applied in ***Rajendra Singh Verma v. Lt. Governor;*** **(2011) 10 SCC 1** .

(iv) The two Division Benches of this Court in ***Om Prakash Pahwa v. State of Delhi;*** **(1998) 46 DRJ 719** and ***United RWAS Joint Action v. Union of India,*** **W.P. No.895/2011 and batch, judgment dated 30.10.2015** have interpreted Article 239AA(3) read with Article 239AA(4) to hold that Lt. Governor is bound to act on the aid and advise of the Council of Ministers in matters in which the Legislative Assembly of GNCTD has the power to legislate. The said two judgments of the Coordinate Benches cannot be ignored or distinguished on any ground whatsoever, particularly, in view of the fact that one of us (Chief Justice) is a member to the Division Bench which rendered the judgment in ***United RWAS Joint Action v. Union of India.*** It is also contended that in case this Bench is inclined to take a different view, then it is necessary to refer the matter to a Larger

Bench in view of the law laid down in ***Mahadeolal Kanodia v. Administrator General of West Bengal;*** **(1960) 3 SCR 578;** ***State of Tripura v. Tripura Bar Association and Others;*** **(1998) 5 SCC 637;** ***Dr. Vijay Laxmi Sadho v. Jagdish;*** **(2001) 2 SCC 247;** ***Official Liquidator v. Dayan and Others;*** **(2008) 10 SCC 1;** ***U.P. Power Corpn. Ltd. v. Rajesh Kumar;*** **(2012) 7 SCC 1;** ***Sundarjas Kanyalal Bhatija v. Collector;*** **(1989) 3 SCC 396** and ***P. Suseela v. University Grants Commission and Others;*** **(2015) 8 SCC 129.**

(v) The Lt.Governor occupies a hybrid position, that is to say, in matters where the legislative competence vests with the Legislative Assembly of Delhi, he would act on the aid and advise of the Cabinet and in subjects where the exclusive power is reserved to him as a delegate of the President, the same would be exercised by him in consultation with the Chief Minister.

(vi) Article 239AA constituted a full-fledged Legislature for Delhi which is different from the body constituted by Parliament under Article 239A to function as a Legislature for a Union Territory. Placing reliance upon ***Shiv Kirpal Singh v. V.V. Giri;*** **(1970) 2 SCC 567,** it is contended that there is a distinction between a body constituted by the Parliament and the Legislature created by the Constitution.

(vii) Placing reliance upon ***U.N.R. Rao v. Indira Gandhi;*** **(1971) 2 SCC 63,** ***Manoj Narula v. Union of India;*** **(2014) 9 SCC 1,** ***S.R. Chaudhuri v. State of Punjab;*** **(2001) 7 SCC 126** and ***B.P. Singhal v. Union of India;*** **(2010) 6 SCC 331,** it is contended that under Article 239AA a Cabinet form of Government has been put in place

for Delhi wherein the Council of Ministers along with the Chief Minister are collectively responsible to the people of Delhi and consequently the Lt. Governor is bound by the aid and advise of the Council of Ministers headed by the Chief Minister.

(viii) The proviso to Article 239AA(4) operates only in case of conflict of opinion between Council of Ministers and the Lt. Governor in the event of inconsistency between law made by Parliament and the law made by Delhi Legislative Assembly or in the event of Lt. Governor exercising power on reserved subjects or in situations requiring him to consult the Chief Minister/Council of Ministers as provided under Rule 45 of the Transaction of Business Rules.

(ix) As per Section 41 of GNCTD Act, 1991, the discretion of the Lt.Governor extends only to matters which fall outside the legislative competence of the Legislative Assembly of Delhi or in respect of matters of which powers are entrusted or delegated to him by the President or where he is required by law to act in his discretion or to exercise any judicial or quasi-judicial functions and therefore the Lt. Governor cannot exercise discretionary powers in any other matter.

(x) Section 45 of GNCTD Act being analogous to Article 167 of the Constitution, the obligation of the Chief Minister to communicate the Lt. Governor is limited to the final decision taken.

(xi) In terms of Section 44(3) of the GNCTD Act and the Rules for authentication as laid down by the Lt. Governor, it is always open to GNCTD to issue an order or instrument in the name of the Lt. Governor without his approval. For the said purpose, reliance has

been placed upon ***A. Sanjeevi Naidu v. State of Madras;*** **(1970) 1 SCC 443.**

(xii) The power to refer a matter to the President is available to the Lt. Governor only in respect of reserved subjects as provided under Rules 49 and 50 of the Transaction of Business Rules, 1993.

67. It is contended by Ms.Indira Jaising, the learned Senior Counsel who appeared for GNCTD in W.P.(C) Nos.7934/2015 and 8867/2015 as under:

Article 239 of the Constitution is not applicable to NCT of Delhi since Article 239AA does not incorporate by reference Article 239. Article 239AA is not only a special provision that confers on Delhi the status of National Capital Territory but also is a self contained code. Hence, the powers of the Lieutenant Governor under Article 239AA are different from the powers of the Administrator under Article 239. Further, the powers of Lieutenant Governor are circumscribed by Article 239AA of the Constitution, GNCTD Act, 1991, Transaction of Business Rules and Allocation of Business Rules, 1993.

68. The contentions of Sh.P.P. Rao, the learned Senior Counsel who appeared for GNCTD in W.P.(Crl.) No.2099/2015 are as under:

(i) The office of Lt. Governor is not comparable to the Governor of a State. Unlike the Governor of a State who holds an independent constitutional office, the Lt. Governor of the Government of NCTD acts as an agent of the Central Government. In support of the said

submission, reliance has been placed on ***Hargovind Pant v. Dr. Raghukul Tilak;*** **(1979) 3 SCC 464.**

(ii) As held in ***P.V. Narsimha Rao v. State;*** **(1998) 4 SCC 626** and ***Ravi Yashwant Bhoir v. District Collector, Raigad;*** **(2012) 4 SCC 407,** Parliamentary democracy is a part of the basic structure of the Constitution and the Government is responsible to the people through the elected representatives.

(iii) With respect to matters which are within the competence of the Legislative Assembly of Delhi, the Lt. Governor has to act on the aid and advice of the Council of Ministers and even with respect to matters which are required to be referred to the Lt. Governor by the Rules of Business, the Lt. Governor does not have any veto power.

(iv) With regard to the proviso to Article 239AA(4), it is sought to be contended that only differences which could not be settled by discussion can be referred to the President as provided under Rule 49 of the Transaction of Business Rules.

(v) The power conferred by the proviso to Article 239AA(4) shall be exercised in accordance with the procedure prescribed by Rules 49 to 51 of the Transaction of Business Rules or not at all. In this regard, reliance has been placed upon ***State of U.P. v. Singhara Singh & Ors.;*** **(1964) 4 SCR 485.**

69. The learned Senior Counsels appearing for GNCTD in other writ petitions have also made submissions on similar lines with regard to the Constitutional scheme regarding the administration of National Capital Territory of Delhi.

Case of the Union of India:

70. Per contra, it is contended by Sh.Sanjay Jain, the learned ASG that the Central Government acting through the Lt. Governor has exclusive supremacy over the NCT of Delhi. His submissions are:

(i) Even after the insertion of Article 239AA in the Constitution, Delhi remains under the overall control of the Central Government and continues to be a Union Territory. Thus, Article 239 continues to be applicable to it and the Lt. Governor continues to act as Administrator. For this, the learned ASG relied upon ***NDMC v. State of Punjab***; **(1997) 7 SCC 339**. Reliance has also been placed upon recommendations in the Report dated 14.12.1989 of the Balakrishnan Committee which was constituted for "Reorganization of the Delhi Set-Up" and which formed the basis of the 69th Amendment to the Constitution as well as enactment of Government of NCT of Delhi Act, 1991, to highlight the intention and object of introduction of Article 239AA of the Constitution.

(ii) The learned ASG relied upon the judgments of the Supreme Court in ***R.S.Nayak v. A.R.Antulay;*** **(1984) 2 SCC 183**, ***Shrimant Shamrao Suryavanshi & Anr. v. Prahlad Bhairoba Suryavanshi by LRs & Ors.;*** **(2002) 3 SCC 676** and ***T.M.A. PAI Foundation v. State of Karnataka;*** **(2002) 8 SCC 481**, to contend that the report of the Balakrishnan Committee on the basis of which Article 239AA has been inserted in the Constitution can be looked into for the purpose of seeing the real intention of Parliament in enacting the said provision.

(iii) Clause (3) of Article 239AA of the Constitution makes it clear that the Parliament will have legislative supremacy with respect to any laws made in Delhi. As a natural corollary, the Central Government will also have executive supremacy over the NCT of Delhi.

(iv) The discretion conferred on the Lt. Governor under the proviso to Article 239AA(4) of the Constitution to refer the matter to the President in case of a difference of opinion between the Chief Minister and Lt. Governor is not available under Articles 74 and 163 of the Constitution dealing with the powers of the President and the Governor.

(v) The scope of "aid and advise" in Article 239AA(4) of the Constitution is not comparable to the scope of "aid and advise" received by the Governor of a State under Article 162 of the Constitution as explained in ***Devji Vallabhbhai Tandel v. Administrator Goa, Daman & Diu***; **(1982) 2 SCC 222**.

(vi) The judgments of the Coordinate Benches of this Court in ***O.P. Pahwa*** (supra) and ***United RWAs Joint Action*** (supra) are not applicable and that they are per incuriam since the law laid down by the Supreme Court in ***Devji Vallabhbhai Tandel*** (supra) was not brought to the notice of this Court.

(vii) The decision in ***Samsher Singh*** (supra) in which the Supreme Court was dealing with "aid and advise" with reference to Articles 74, 162 and 163 of the Constitution is not applicable.

Submissions on behalf of Intervener/Reliance Industries Ltd.

71. Dr. Abhishek Manu Singhvi, the learned Senior Counsel appearing on behalf of the intervener argued:

(a) As provided under Article 309 of the Constitution as well as Entry 70 of List I and Entry 41 of List II, there are only two services, one of the Union and the other of each State. The appropriate legislature may regulate the recruitment and conditions of service of person so appointed to the public services and posts in connection with the affairs of the Union or any of the State.

(b) Therefore, the services under the NCT of Delhi are necessarily the services of the Union and they are expressly covered only by Entry 70 of List I.

(c) The Legislative Assembly of NCT of Delhi has no legislative competence to legislate in respect of any subjects covered under Entries 1, 2 and 18 of State List and Entry 70 of the Union List. As a corollary, the GNCTD has no executive authority in respect of these enumerated subjects.

(d) In view of Section 41 of the GNCTD Act, 1991, the Lt. Governor is required to act in his discretion in respect of these matters and not on the aid and advice of the Council of Ministers.

72. In the light of the rival submissions noticed above, the following issues arise for consideration:

A. Whether the Lt. Governor is bound to act only by the aid and advice of the Council of Ministers in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of NCT of Delhi has power to make laws?

B. Whether it is necessary to refer the issue to a larger Bench in the light of the judgments of the co-ordinate Benches of this Court in ***O.P. Pahwa v. State of Delhi*** (supra)***, Delhi High Court Bar Association v. Union of India*** (supra) and ***United RWAS Joint Action v. Union of India*** (supra)?

Aid and Advice of the Council of Ministers - whether binding on the Lt. Governor:

73. The contention of Shri Dayan Krishnan, the learned Senior Counsel on behalf of the GNCTD is that the Lt. Governor is bound by the aid and advise of the Council of Ministers headed by the Chief Minister. It is contended that since Delhi is being governed by a democratically elected Government, the purport of Article 163 of the Constitution is squarely applicable and as per the ratio laid down by the Constitution Bench in ***Samsher Singh v. State of Punjab*** (supra), the Lt. Governor is bound by the aid and advise of the Council of Ministers.

74. It is also submitted that in the light of the law laid down in ***Rajendra Singh Verma*** (supra) which was rendered after applying the ratio laid down by the Seven Judge Bench of the Supreme Court in ***Samsher Singh*** (supra),

the issue as to whether the Lt.Governor is bound by the aid and advice tendered by the Council of Ministers is no longer *res integra*.

75. We have carefully gone through the Constitution Bench decision of the Supreme Court in ***Samsher Singh*** (supra) as well as the later decision in ***Rajendra Singh Verma*** (supra).

76. In ***Samsher Singh*** (supra)**,** one of the appellants, Samsher Singh, was a member of the Punjab Civil Services (Judicial Branch). His services were terminated with immediate effect vide order of the Governor of Punjab dated 27.04.1967 under the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, on the recommendation of the High Court of Punjab and Haryana. Since his writ petition was dismissed by the High Court, the matter was carried to the Supreme Court contending *inter alia* that the power of the Governor under Article 234 of the Constitution to appoint or terminate the services of subordinate judges is to be exercised individually and personally in his discretion since the power is conferred on him eo-nominee and that the said power cannot be exercised like an executive function on the aid and advice of the Council of Ministers under Article 163 of the Constitution. The said contention was made on the basis of the decision in ***Sardari Lal v. Union of India*****; (1971) 1 SCC 411**. On the other hand, the contention on behalf of the Respondents was that the President and the Governor exercise all powers and functions conferred on them by or under the Constitution on the aid and advice of the Council of Ministers.

77. Since the correctness of the decision rendered by 5 Judges Bench in ***Sardari Lal v. Union of India*** (supra) was doubted, ***Samsher Singh*** (supra)

was decided by a larger Bench of seven Judges. Having analyzed the purport of Article 74 which provides for Council of Ministers to aid and advice President in the exercise of his functions vis-a-vis Article 163 which provides for Council of Ministers to aid and advice Governor in the exercise of his functions except in so far as he is by or under the Constitution required to exercise his functions in his discretion, the larger Bench in ***Samsher Singh*** (supra) observed:

> "28. Under the Cabinet system of Government as embodied in our Constitution, the Governor is the Constitutional or formal Head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers ***save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion***." *(emphasis supplied)*

78. The distinction between Article 74(1) and Article 163(1) has further been explained in Para 44:

> "44. The distinction made by this Court between the executive functions of the Union and the executive functions of the President does not lead to any conclusion that the President is not the constitutional head of Government. Article 74(1) provides for the Council of Ministers to aid and advise the President in the exercise of his functions. Article 163(1) makes similar provision for a Council of Ministers to aid and advise the Governor. Therefore, **whether the functions exercised by the President are functions of the Union or the functions of the President they have equally to be exercised with the aid and advice of the Council of Ministers, and the same is true of the functions of the Governor except those which he has to exercise in his discretion**." *(emphasis supplied)*

79. Thus, it was concluded in Paras 57 and 88:

> "57. ……..**the President or the Governor acts on the aid and advice of the Council of Ministers** with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State **in all matters which vests in the Executive** whether those functions are executive or legislative in character. **Neither the President nor the Governor is to exercise the executive functions personally**. The present appeals concern the appointment of persons other than District Judges to the Judicial Services of the State which is to be made by the Governor as contemplated in Article 234 of the Constitution after consultation with the State Public Service Commission and the High Court. Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution."
>
> *(emphasis supplied)*

> "88. For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional head of the Executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the

Union or the State and not against the President or the Governor."

80. As could be seen, ***Samsher Singh (supra)*** was rendered in the context of the executive functions of the Governor of a State. It was laid down that being the Constitutional head of the State, the Governor exercises all his powers and functions conferred under the Constitution on the aid and advice of the Council of Ministers except where he is required by or under the Constitution to exercise his functions in his discretion in which event he acts on his own judgment. It was also held that the appointment and removal of services of subordinate Judges of the State is not a personal function and that the Governor under Article 234 acts as the Constitutional head of the Executive and exercises the said functions on the aid and advice of the Council of Ministers in accordance with the provisions under the Constitution.

81. The contention of Shri Dayan Krishnan, the learned Senior Counsel appearing for GNCTD is that the ratio laid down in ***Samsher Singh*** (supra) has been applied and reiterated in ***Rajendra Singh Verma*** (supra) while holding that the Lt. Governor is bound by the aid and advice of the Council of Ministers headed by the Chief Minister in the exercise of the executive functions under Article 239AA of the Constitution.

82. We are unable to accept the contention of Shri Dayan Krishnan.

83. In ***Rajendra Singh Verma*** (supra), the contention of the appellant therein was that the order of compulsory retirement passed by the Lt.Governor without seeking aid and advice of his Council of Ministers as required under Article 239AA(4) is *ultra vires* and illegal. In support of the

said submission, the appellant relied upon ***Samsher Singh*** (supra). The contention on behalf of the respondents was that under Article 235, it is the High Court which has to exercise supervision and control over the subordinate judiciary and not the State Government and therefore the recommendations of the High Court are binding on the State Government/Governor. In other words, the contention was that the Lt. Governor has to act on the recommendation of the High Court and the impugned order of compulsory retirement cannot be held to be illegal for not seeking aid and advice of Council of Ministers.

84. After noticing the contents of Article 163(1) and Article 239AA(4), the Supreme Court explained the legal position as under:

> "97. A meaningful and conjoint reading of Article 163 of the Constitution makes it clear that the Governor has to act on the aid and advice of the Council of Ministers with the Chief Minister at the head except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion. In view of the provisions of Clause (4) of Article 239-AA of the Constitution, the Lt. Governor has to take aid and advice of the Council of Ministers in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws. Article 235 provides that the control over the subordinate courts is vested in the High Court of a State.
>
> 98. The expression "control" has been elucidated in several reported decisions of this Court, the leading case being *Samsher Singh v. State of Punjab.* The "control" vested in the High Court is a mechanism to ensure independence of the subordinate judiciary. Under Article 235 of the Constitution, the control over the subordinate judiciary, vested in the High Court, is exclusive in nature, comprehensive in extent and effective in operation and it is to subserve a basic feature of the Constitution i.e. independence of judiciary. …….

99. The scheme envisaged by the Constitution does not permit the State to encroach upon the area reserved by Articles 233, 234 and the first part of Article 235 either by legislation or rules or executive instructions. Article 235 has no concern with the conferring of jurisdiction and powers on the Court but it only relates to administrative and disciplinary jurisdiction over the subordinate courts. Therefore, the conferment of power of the prescribed authority by the State Legislature on the judicial officers cannot be construed to mean that the power of the High Court under Article 235 is inoperative or inchoate as the High Court alone is the sole authority competent to initiate disciplinary proceedings against the subordinate judicial officers or to impose various punishments including passing of order of compulsory retirement on verification of the service record. The State is least competent to aid and advise the Governor on such subjects.

100. While the High Court retains the power of disciplinary control over the subordinate judiciary including power to initiate disciplinary proceedings, suspend them during enquiries and impose punishment on them, but when it comes to the question of dismissal, removal or reduction in rank or termination of services of judicial officers on any count whatsoever, the High Court becomes the recommending authority and cannot itself pass the orders. The formal order to give effect to such a decision has to be passed by the State Governor on the recommendations of the High Court. In disciplinary proceedings if an action is taken by the High Court against the judicial officer the recommendations made by the High Court bind the Governor and he is left with no discretion except to act according to the recommendations. The Governor, under the scheme of Articles 233, 234 and 235 of the Constitution cannot refuse to act in terms of the recommendations made by the High Court on the ground that he is not aided and advised by the Council of Ministers and this is the true import of total control of the High Court over the subordinate judiciary."

85. Finally, it was concluded in Paras 135 and 136 that the order of the Lt.Governor compulsorily retiring the appellants therein without seeking aid and advice of his Council of Ministers is neither *ultra vires* nor illegal observing:

> "135. Thus, it is fairly well settled by a catena of decisions of this Court that in the matter of compulsory retirement of a judicial officer the Governor cannot act on the aid and the advice of the Council of Ministers but has to act only on the recommendation of the High Court. Though the Lt. Governor is a party to these appeals, he has not raised any plea that the recommendation made by the Delhi High Court was not binding on him and he could have acted in the matter only on the aid and advice of his Council of Ministers. Thus the order of the Lt. Governor compulsorily retiring the appellants without seeking aid and advice of his Council of Ministers is neither ultra vires nor illegal and is rightly sustained by the High Court. The Governor could not have passed any order on the aid and advice of the Council of Ministers in this case. The advice should be of no other authority except that of the High Court in the matter of judicial officers. This is the plain implication of Article 235.
>
> 136. Reliance on Article 239-AA(4) is entirely out of place so far as the High Court is concerned, dealing with the judicial officers. To give any other interpretation to Article 239-AA(4) will be to defeat the supreme object underlying Article 235 of the Constitution, specially intended for protection of the judicial officers and necessarily independence of the subordinate judiciary. It is absolutely clear that the Governor cannot take the aid and advice of his Council of Ministers in the case of judicial officers and accept its advice and act according to it. There is no room for any outside body between the Governor and the High Court. Therefore, this Court does not find any substance in this contention also and the same is rejected."

86. The above analysis shows that it was clearly laid down in both ***Samsher Singh*** (supra) and ***Rajendra Singh Verma*** (supra) that in terms of Article 163 of the Constitution, the Governor of a State has to act on the aid and advice of the Council of Ministers except in so far as he is by or under the Constitution required to exercise his functions in his discretion. In both the cases the impugned orders were passed in exercise of the powers conferred on the Governor under Article 234 of the Constitution terminating/compulsorily retiring the officers of judicial service. In ***Samsher Singh*** (supra), the Governor had acted on the recommendation of the High Court and with the aid and advice of the Council of Ministers. The said order was upheld by the Supreme Court rejecting the contention of the appellant therein that the power conferred on the Governor has to be exercised personally but not like an executive function on the aid and advice of the Council of Ministers under Article 163. In ***Rajendra Singh Verma*** (supra), the Lt. Governor passed the order on the recommendation of the High Court but without seeking aid and advice of the Council of Ministers. The contention of the appellant therein that under Clause (4) of Article 239AA it is mandatory to seek aid and advice was not accepted and it was held that the recommendation made by the High Court is binding on the Governor and he cannot refuse to act on the ground that he is not aided and advised by the Council of Ministers.

87. In ***Rajendra Singh Verma*** (supra), it was contended by the appellant that in ***Samsher Singh*** case it was ruled that the Governor is bound to act as per the aid and advice tendered by the Council of Ministers and not on the

recommendations of the High Court in the matter of termination of services of Judicial Officers.

88. Rejecting the contention, it was clarified as under:

> "106. In view of what is categorically, clearly and authoritatively held in para 78 of the reported decision there is no manner of doubt that it is ruled by seven-Judge Bench of this Court in *Samsher Singh*, that the Governor has to act on the recommendation of the High Court and that is the broad basis of Article 235.
>
> 107. The appellant Samsher Singh was appointed on 1-5-1964 as Subordinate Judge. He was on probation. On 22-3-1967, the Chief Secretary issued a notice to him substantially repeating the same charges which had been communicated to him by the Registrar on 15-12-1966, and asked the appellant to show cause as to why his services should not be terminated as he was found unsuitable for the job. The appellant gave an answer. On 29-4-1967, the services of the appellant were terminated. Samsher Singh, in the context of the Rules of Business, contended that the removal of a Subordinate Judge from service was a personal power of the Governor and was incapable of being delegated or dealt with under the Rules of Business. This Court held that the Governor can allocate the business of the Government to the Ministers and such allocation is no delegation and it is an exercise of executive power by the Governor through the Council or officers under the Rules of Business. Therefore, the contention of the appellant that the order was passed by the Chief Minister without the formal approval of the Governor was found to be untenable and it was held that the order was of the Governor.
>
> 108. Thereafter, this Court in Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192] noted the contents of the show-cause notice, reply given to the said notice by the appellant, protection granted by Rule 9, etc. and held that it was clear that the order of termination of services of Samsher Singh was one of punishment and set it aside. In the light of the contention raised on behalf of Samsher Singh in the context of the Rules of Business, this Court, in para 88 of the said decision, held

> that the President and the Governor act on the aid and advice of the Council of Ministers in executive action and the appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution.
>
> 109. Thus what is observed by the Supreme Court, in para 88 of the reported decision in *Samsher Singh case*, will have to be read in the light of the submission made on behalf of the appellant Samsher Singh and subject to clear, unambiguous and manifest proposition of law laid down in para 78 of the reported decision. **Therefore, it is wrong to contend that in *Samsher Singh case*, it is ruled by this Court that the Governor is bound to act as per the aid and advice tendered by the Council of Ministers and not on the recommendations of the High Court in the matter of termination of services of the judicial officers on any count whatsoever**."
>
> *(emphasis supplied)*

89. We are, therefore, of the view that the submission of Sh.Dayan Krishnan that in the light of ***Samsher Singh*** (supra) and ***Rajendra Singh Verma*** (supra), it is no longer *res integra* that the Lt. Governor is bound by the aid and advice tendered by the Council of Ministers is not correct.

90. What we have found is that in ***Samsher Singh*** (supra), while drawing a distinction between the exercise of the executive functions by the President and the exercise of the executive functions by the Governor of a State, it was laid down that so far as the Governor of a State is concerned, he acts on the aid and advice of the Council of Ministers except in so far as he is by or under the Constitution required to exercise his functions in his discretion. Following the said dicta, it was added in ***Rajendra Singh Verma*** (supra) that the Governor under the scheme of Articles 233, 234 and 235 of the

Constitution is bound by the recommendations of the High Court. It was also added that reliance on Article 239AA(4) is entirely out of place so far as the High Court is concerned, dealing with the judicial officers.

91. However, it is vehemently contended by Shri Dayan Krishnan, the learned Senior Counsel appearing for GNCTD that since there is an elected Assembly with the Council of Ministers headed by the Chief Minister in NCT of Delhi, the status of the Lt. Governor of NCT of Delhi is similar to that of a Governor in the matter of discharge of executive functions and therefore, in terms of the dicta laid down in ***Samsher Singh*** (supra), the Lt. Governor cannot act on his own with regard to those subjects in respect of which exclusive legislative competence is conferred on the Legislative Assembly of NCTD and he is bound to act only on the aid and advice of the Council of Ministers headed by the Chief Minister. It is also his contention that in respect of matters which are beyond the purview of the Legislative Assembly, the Lt. Governor, to the extent of functions delegated by the President, is required to consult the Chief Minister in terms of Rule 45 Proviso (2) of Transaction of Business Rules.

92. According to us, these contentions are also of no substance for the following reasons:

93. A comparison of the language of Article 163(1) read with the language of Article 239AA(4) clearly shows the difference between the position of the Governor of a State on the one hand and the Lt. Governor of NCTD on the other hand. Article 163(1) and Article 239AA(4) may be reproduced hereunder for ready reference:

"**163. Council of Ministers to aid and advise Governor**. - (1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, **except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion**.

xxx xxx xxx

239AA(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(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 Lieutenant 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."

(emphasis supplied)

94. As is evident, both Article 163(1) and Article 239AA(4) of the Constitution provide for the Governor/Lt. Governor acting in his discretion. However, the discretion of the Governor of a State under Article 163(1) is confined only to the Constitutional provisions, whereas under Article 239AA(4), the Lt. Governor may act in his discretion with regard to all the

matters in respect of which he is required to act in his discretion "by or under any law".

95. It may be elaborated that Article 163(1) has to be read in conjunction with such other Articles of the Constitution which specifically reserve the power to the Governor to act in his discretion and those matters are exceptions under which the Governor can act in his own discretion. In such matters provided under the Constitution, the powers are conferred on the Governor *eo-nominee* and such functions and powers are not the executive powers of the State within the meaning of Article 154 read with Article 162 of the Constitution.

96. The above legal position has been consistently reiterated by the Supreme Court in various decisions. Suffice it to refer to the recent authoritative pronouncement of the Constitution Bench dated 13.07.2016 in SLP(C)No.1259-1260/2016 titled ***Nabam Rebia and Bamang Felix v. Deputy Speaker & Ors.*** in which the duties and responsibilities of the Governor under Article 163 of the Constitution have been distinctly and explicitly interpreted. While adjudicating upon the question as to whether the underlying cardinal principle with reference to the discretionary power of the Governor is to be traced from Article 163(1) or Article 163(2) of the Constitution, it was observed by Justice Jagdish Singh Khehar, who authored the judgment for himself, Justice Pinaki Chandra Ghosh and Justice N.V. Ramana, in para 137:

> "137. First of all, it is extremely essential to understand, the nature of powers and the functions of the Governor, under the provisions of the Constitution. Insofar as the instant aspect of the matter is concerned, it is apparent that the Governor has been

assigned functions and powers, concerning the executive and the legislative affairs of the State. The executive functioning of the States is provided for under Part VI Chapter II of the Constitution, which includes Articles 153 to 167. Article 154 mandates, that the executive power of the State is vested with the Governor, and is to be exercised by him either directly or through officers subordinate to him "in accordance with this Constitution". **Article 163 further warrants, that the Governor would exercise his functions, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The above edict is not applicable, in situations where the Governor is expressly required to exercise his functions, "…by or under this Constitution…", "… in his discretion...".** The question that will need determination at our hands is, whether the underlying cardinal principle, with reference to the discretionary power of the Governor, is to be traced from Article 163(1) or from Article 163(2). Whilst it was the contention of the learned counsel for the appellants, that the same is expressed in sub-article (1) of Article 163, the contention on behalf of the respondents was, that the amplitude of the discretionary power of the Governor is evinced and manifested in sub-article (2) of Article 163. Undoubtedly, all executive actions of the Government of a State are expressed in the name of the Governor, under Article 166. That, however, does not *per se* add to the functions and powers of the Governor. It is also necessary to appreciate, that in the discharge of executive functions, the Governor of a State has the power to grant pardons, reprieves, respites or remissions of punishments or to suspend, remit or commute sentences (under Article 161). **The Governor's power under Article 161, is undisputedly exercised on the aid and advice of the Chief Minister and his Council of Ministers.** The Governor has power to frame rules for the convenient transaction of executive business of the Government, under Article 166. The instant responsibility is also discharged, on aid and advice. All in all, it is apparent, that the Governor is not assigned any significant role in the executive functioning of the State. We would also endeavour to examine the duties and responsibilities of the Governor in the legislative functioning of a State. Details

with reference to the same are found incorporated in Part VI Chapter III of the Constitution, which includes Articles 168 to 212. Even though Article 168 postulates, that the legislature of a State would comprise of the Governor, yet the Governor is not assigned any legislative responsibility in any House(s) of the State Legislature, irrespective of whether it is the legislative process relating to Ordinary Bills or Money Bills. Article 158 (dealing with the conditions of the Governor's office) provides, that the "… Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule …". Insofar as the legislative process is concerned, the only function vested with the Governor is expressed through Article 200 which *inter alia* provides, that a Bill passed by the State Legislature, is to be presented to the Governor for his assent. And its ancillary provision, namely, Article 201 wherein a Bill passed by the State Legislature and presented to the Governor, may be reserved by the Governor for consideration by the President. The only exception to the non-participation of the Governor in legislative functions, is postulated under Article 213 (contained in Part VI Chapter IV of the Constitution), which apparently vests with the Governor, some legislative power. The Governor under Article 213 can promulgate Ordinances, during the period when the House(s) of the State Legislature, is/are not in session. This function is exercised by the Governor, undisputedly, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The Governor is also required to summon the House or Houses of State Legislature, or to prorogue or dissolve them under Article 174. We shall exclusively deal with the connotations of the instant responsibility entrusted with the Governor, immediately after drawing our conclusions with reference to Article 163. Articles 178 to 187 deal with the officers of the State Legislature, including the Speaker and the Deputy Speaker, as well as, the secretariat of the State Legislature. The above Articles are on the subject of appointment and removal of the Speaker and the Deputy Speaker of the Legislative Assembly, as also, the Chairman and Deputy Chairman of the Legislative Council, as well as, other ancillary matters. Whilst Article 179 provides for

> vacation, resignation and removal of the Speaker (and the Deputy Speaker) of the Legislative Assembly. Article 183 provides for vacation, resignation and removal of the Chairman (and the Deputy Chairman) of the Legislative Council. In neither of the above Articles, the Governor has any assigned role. The only responsibility allocated to the Governor under Article 208, is of making rules as to the procedure with respect to communications between the two Houses of State Legislature. All in all, it is apparent, that the Governor is not assigned any significant role even in the legislative functioning of the State."
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> *(emphasis supplied)*

97. After extensively referring to the Constituent Assembly debates and Reports of Justice Sarkaria Commission and Justice M.M. Punchhi Commission on 'Centre-State relations' and 'Constitutional Governance and Management of Centre-State Relations' respectively, it was further held:

> "141. Though the debate could be endless, yet we would consider it apposite to advert to the decisions rendered by this Court in the *Sardari Lal case* {(1971) 1 SCC 411} and the *Samsher Singh case* {(1974) 2 SCC 831}Insofar as the Sardari Lal case (supra) is concerned, this Court had held therein, that the President or the Governor, as the case may be, would pass an order only on his personal satisfaction. In the above case, this Court while examining the case of an employee under Article 311(2) (more particularly, under proviso (c) thereof), recorded its conclusions, in the manner expressed above. The same issue was placed before a seven-Judge Bench constituted to re-examine the position adopted in the *Sardari Lal case* (supra). The position came to be reversed. This Court in the Samsher Singh case (supra) declared, that wherever the Constitution required the satisfaction of the President or the Governor, for the exercise of any power or function, as for example under Articles 123, 213, 311(2), 317, 352(1), 356 and 360, the satisfaction required by the Constitution was not the personal satisfaction of the President or the Governor. "⋯ but is the satisfaction of the President or of the Governor in the

constitutional sense under the Cabinet system of Government …" . It is therefore clear, that even though the Governor may be authorized to exercise some functions, under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice tendered to him under Article 163, unless the Governor has been expressly authorized, by or under a constitutional provision, to discharge the concerned function, in his own discretion.

142. **We are therefore of the considered view, that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides, that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the concerned constitutional provision, could not be construed otherwise. We therefore hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever the Governor in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review. We are of the view, that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e., where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms."**

"143. We may therefore summarise our conclusions as under:

Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article

> 163(1). **Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion**. Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the concerned provision, and the same cannot be construed otherwise. Fourthly, in situations where this Court has declared, that the Governor should exercise the particular function at his own and without any aid or advice, because of the impermissibility of the other alternative, by reason of conflict of interest. Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review.....".
>
> *(emphasis supplied)*

98. It is clear from the above analysis made by the Constitution Bench in ***Nabam Rebia and Bamang Felix v. Deputy Speaker & Ors.*** (supra) that even though the Governor is authorized to exercise some functions under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice rendered by him under Article 163 unless the Governor has been expressly authorized by or under a Constitutional provision to discharge the concerned function in his own discretion.

99. Coming to the executive powers of the Lt. Governor of NCT of Delhi, the discretion provided is wider than the discretion that may be exercised by the Governor of a State under Article 163(1) in view of the expression "except in so far as he is, by or under any law, required to act in his discretion" employed in clause(4) of Article 239AA. In other words, the power of the Lt. Governor to act in his discretion is not confined to Constitution merely. The Lt. Governor while exercising such powers and discharging such functions which "any law" requires to be done "in his discretion" acts on his own judgment without seeking aid and advice of the Council of Ministers. Further, the proviso to Article 239AA(4) enables the Lt.Governor in case of difference of opinion to refer the matter to the President for decision and act according to the decision given thereon by the President. Pending such decision of the President, the Lt. Governor is empowered to take such action or to give such direction if in his opinion the matter is so urgent that it is necessary for him to take immediate action.

100. In view of this fundamental difference in the powers conferred upon a Governor of State and the Lt. Governor of NCT of Delhi, it is not possible to hold that the Lt.Governor is bound to act only on the aid and advice of the Council of Ministers.

101. This view of ours is fortified by the decision in ***Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu And Anr.***; **(1982) 2 SCC 222** in which the Supreme Court was dealing with an order of detention under COFEPOSA passed by the Administrator of Union Territory of Goa, Daman and Diu, which also has an elected Assembly with Council of Ministers. While considering the provisions of the Government of Union

Territories Act, 1963 which are *pari materia* with Article 239AA(4) and the Government of NCT Act, 1991, the Supreme Court has answered the question whether the status of the Administrator of Union Territory is similar to that of the Governor of a State and whether the Administrator has to act with the aid and advice of the Council of Ministers.

102. ***Devji Vallabhbhai Tandel*** (supra) was a writ petition filed under Article 32 of the Constitution challenging the order of preventive detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) passed by the Administrator of Union Territory of Goa, Daman & Diu. As per the Government of Union Territories Act, 1963, there was an elected assembly with a Council of Ministers in Union Territory of Goa, Daman & Diu. Section 44 of the said Act which is analogous to Clause (4) of Article 239AA of the Constitution provides that the Council of Ministers with the Chief Minister at the head to aid and advice the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws except insofar as he is required by or under the said Act to act in his discretion or by or under any law to exercise any judicial or quasi judicial functions. Section 3(1) of COFEPOSA empowers the Central Government or the State Government to make an order of detention in terms thereof. Under Section 2(f), 'State Government' in relation to a Union Territory means the Administrator thereof. However, having regard to the fact that there is an elected Assembly with the Council of Minister in Union Territory of Goa, Daman & Diu, it was contended by the petitioner therein that the status of the Administrator is similar to that of

the Governor of the State and as such the Administrator has to act with the aid and advice of the Council of Ministers. Thus, the contention was that the Administrator on his own cannot make an order of detention. To substantiate the said submission, the petitioner therein relied upon the ratio in ***Samsher Singh (supra)***, that the Governor acts on the aid and advice of the Council of Ministers in all matters which vest in the executive whether those functions are executive or legislative in character and that the Governor does not exercise the executive functions personally. Rejecting the said contention, the Supreme Court held that:

> "14. Article 74 provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. The proviso to the Article is not material. Similarly, Article 163 provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion. Once we compare the language of Articles 74 and 163 with the language of Section 44 of the Act, the difference between the position of the President and the Governor on the one hand and the Administrator of the Union Territory on the other becomes manifest. The first difference is that he is similarly situated with the Governor but not with the President when he is to act in his discretion under the Act. Further, the Administrator has to act on his own unaided by the Council of Ministers when he is to exercise any judicial or quasi-judicial functions. The nearest analogy to this provision is one to be found in Article 217(3) when the President has to determine the age of a Judge of the High Court. It has been held that while exercising the power conferred by Article 217(3), the President discharges a judicial function and is not required to act on the advice of the Council of Ministers, his only obligation being to decide the question

about the age of the Judge after consulting the Chief Justice of India (*see Union of India v. Jyoti Prakash Mitter*). But there the analogy ends. The Administrator even in matters where he is not required to act in his discretion under the Act or where he is not exercising any judicial or quasi-judicial function, is not bound to act according to the advice of the Council of Ministers. This becomes manifest from the proviso to Section 44(1). It transpires from the proviso that in the event of a difference of opinion between the Administrator and his Ministers on any matter, the Administrator shall refer the matter to the President for decision and act according to the decision given thereon by the President. If the President in a given situation agrees with what the Administrator opines contrary to the advice of the Council of Ministers, the Administrator would be able to override the advice of the Council of Ministers and on a reference to the President under the proviso, obviously the President would act according to the advice of the Council of Ministers given under Article 74. Virtually, therefore, in the event of a difference of opinion between the Council of Ministers of the Union Territory and the Administrator, the right to decide would vest in the Union Government and the Council of Ministers of the Union Territory would be bound by the view taken by the Union Government. Further, the Administrator enjoys still some more power to act in derogation of the advice of the Council of Ministers.

15. The second limb of the proviso to Section 44(1) enables the Administrator that in the event of a difference of opinion between him and the Council of Ministers not only he can refer the matter to the President but during the interregnum where the matter is in his opinion so urgent that it is necessary for him to take immediate action, he has the power to take such action or to give such directions in the matter as he deems necessary. In other words, during the interregnum he can completely override the advice of the Council of Ministers and act according to his light. Neither the Governor nor the President enjoys any such power. This basic functional difference in the powers and position enjoyed by the Governor and the President on the one hand and the Administrator on the other is so glaring that it is

not possible to hold on the analogy of the decision in *Samsher Singh case* that the Administrator is purely a constitutional functionary bound to act on the advice of the Council of Ministers and cannot act on his own. Therefore, for this additional reason also the submission of Mr Jethmalani must be rejected."

103. Section 44(1) of the Government of Union Territories Act, 1963 which is *pari materia* with Article 239AA(4) may be reproduced hereunder for ready reference:

> "**44. Council of Ministers.-**(1) There shall be a Council of Ministers in each Union territory with the Chief Minister at the head to aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union territory has power to make laws except in so far as he is required by or under this Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions :
>
> Provided that, in case of difference of opinion between the Administrator and his Ministers on any matter, the Administrator 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 Administrator in any case where the matter is in his opinion 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.
>
> xxxx xxxx xxxx xxxx"

104. As noticed above, the discretion conferred on the Lt. Governor under the Proviso to Article 239AA(4) to refer the matter to the President in case of a difference of opinion between the Chief Minister and Lt. Governor is not available under Article 163. Therefore, the scope of aid and advice under Article 239AA(4) is not comparable to the scope of aid and advice

received by the Governor of State under Article 163 of the Constitution, but it is analogous to Section 44(1) of the Government of Union Territories Act, 1963. Therefore, in our considered opinion, the ratio laid in ***Devji Vallabhbhai Tandel*** (supra) squarely applies to the case on hand.

105. In this regard, it is also relevant to refer to Chapter V of the Transaction of Business Rules which prescribed the procedure to be followed in case of difference of opinion between the Lt. Governor and the Council of Ministers. Rule 50 provides that in case of difference of opinion the Lt. Governor shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President. Whenever such reference is made, under Rule 51 the Lt. Governor is competent to direct that action shall be suspended pending the decision of the President on such case or in any case. He is also competent in a case where in his opinion it is necessary that immediate action should be taken to give such direction as he deems necessary. Rule 52 further provides that where a direction has been given by the Lt. Governor in terms of Rule 51, the Minister concerned shall take action to give effect to such direction. Rule 56 also states that when a matter has been referred by the Lieutenant Governor for the decision of the President further action thereon shall not be taken except in accordance with the decision of the Central Government. It is clear from the above provisions of the Transaction of Business Rules that it is always open to the Lt. Governor to differ with the decision of the Council of Ministers, in which event, he has to follow the procedure as prescribed under Chapter V of the Transaction of Business Rules.

106. It is also relevant to note Rule 10 of the Transaction of Business Rules which prescribed the procedure for circulation of the proposals referred to in the Schedule to the Rules from the Minister concerned to the Chief Minister. Sub-Rule (5) of Rule 10 expressly provides that on receipt of the acceptance of the Chief Minister to the recommendations contained in the proposal, the Secretary to Council of Ministers shall communicate the decision to the Lieutenant Governor and the same can be passed on to the Secretary concerned for taking necessary steps to issue the orders in case no reference to the Central Government is required in pursuance of the provisions of Chapter V.

107. In the light of the above-noticed provisions, we have no manner of doubt to conclude that every decision taken by the Council of Ministers shall be communicated to the Lt. Governor for his views. The orders in terms of the decision of the Council of Ministers can be issued only where no reference to the Central Government is required as provided in Chapter V of the Transaction of Business Rules.

108. Making a reference by the Lt. Governor to the Central Government as provided under Chapter V of the Transaction of Business Rules is possible only when the decision is communicated to the Lt. Governor. Therefore, there is no substance in the contention that an order can be passed pursuant to the decision of the Council of Ministers without communicating such decision to the Lt.Governor for his views/concurrence with respect to any of the matters enumerated in List-II or List-III except the three reserved matters in Entries 1, 2 and 18 of List-II. The emphasis sought to be laid by the learned Senior Counsels who appeared for GNCTD on Rule 23 of the

Transaction of Business Rules to substantiate the contention that those proposals which are mentioned in Rule 23 alone are required to be submitted to Lt. Governor is misplaced. The word "essentially" employed in Rule 23 makes clear the legislative intent that the proposals specified (i) to (viii) therein are not exhaustive. Any interpretation contra would render the Transaction of Business Rules *ultra vires* Clause (4) of Article 239AA of the Constitution.

109. Our above interpretation of the constitutional provision is in consonance with the object of the 69th Constitution Amendment. We may note that Article 239 AA of the Constitution was inserted by the 69th Constitution Amendment as per the recommendations of the Balakrishnan Committee which was set up to give its report on "Re-organization of Delhi Set-up. The relevant recommendation in this regard reads as follows:

> "6.5.5 In paragraphs 6.5.2 and 6.5.3 we have briefly summarised the arguments for and against making Delhi a constituent State of the Union. After the most careful consideration of all the arguments and on an objective appraisal, we are fully convinced that most of the arguments against making Delhi a State of the Union are very substantial, sound and valid and deserve acceptance. This was also the view expressed before us by some of the eminent and knowledgeable persons whom we interviewed. As these arguments are self-evident we find it unnecessary to go into them in detail except those relating to constitutional and financial aspects covered by them.
>
> 6.5.6 The important argument from the Constitutional angle is based on the federal type of our Constitution under which there is a constitutional division of powers and functions between the Union and the State. If Delhi becomes a full-fledged State,

there will be a constitutional division of sovereign, legislative and executive powers between the Union and the State of Delhi. One of the consequences will be that in respect of matters in the State List, Parliament will have no power on (sic) jurisdiction to make any law except in the special and emergency situations provided for under the Constitution and to that extent the Union Executive cannot exercise executive powers or functions. The constitutional prohibition on the exercise of powers and functions will make it virtually impossible for the Union to discharge its special responsibilities in relation to the national capital as well as to the nation itself. We have already indicated in an earlier chapter the special features of the national capital and the need for keeping it under the control of the Union Government. Such control is vital in the national interest irrespective of whether the subject matter is in the State field or Union field. If the administration of the natural capital is divided into rigid compartments of State of field and Union field, conflicts are likely to arise in several vital matters, particularly if the two Governments are run by different political parties. Such conflicts may, at times, prejudice the national interest.....

6.5.9 We are also impressed with the argument that Delhi as the national capital belongs to the nation as a whole and any constituent State of the Union of which Delhi will become a part would sooner or later acquire a predominant position in relation to other States. Sufficient constitutional authority for Union intervention in day-to-day matters, however vital some of, them may be, will not be available to the Union, thereby prejudicing the discharge of its national duties and responsibilities.

……..

LT. GOVERNOR AND COUNCIL OF MINISTERS

6.7.19 As a necessary corollary to the establishment of a responsible Government for Delhi the structure of the executive should be more or less on the pattern provided by the Constitution. Accordingly, there should be a Head of the

Administration with a Council of Ministers answerable to the Legislative Assembly. As Delhi will continue to have the status of a Union territory, Article 239 will apply to it and so it will have an Administrator with such designation as may be specified. The present designation of the Lt. Governor may be continued and recognized in the Constitution itself.

6.7.21 The Administrator should be expressly required to perform his functions on the aid and advice of the Council of Ministers. The expression "to aid and advice" is a well understood term of art to denote the implications of the Cabinet system of Government adopted by our Constitution. Under this system, the general rule is that the exercise of executive functions by the Administrator has to be on the aid and advice of his Council of Ministers which means that it is virtually the Ministers that should take decisions on such matters. However, for Delhi, the following modifications of this general rule will have to be adopted:

…….

(iii) Thirdly, there is need for a special provision to resolve differences between the Administrator and his Council of Ministers on any matter concerning the administration of Delhi. Normally, the general principle applicable to the system of responsible Government under the Constitution is that the Head of the Administration should act as a mere Constitutional figurehead and will have to accept the advice of the Council of Ministers except when the matter is left to his discretion. However, by virtue of Article 239 of the Constitution, the ultimate responsibility for good administration of Delhi is vested in the President acting through the Administrator. Because of this the Administrator has to take a somewhat more active part in the administration than the Governor of a State. It is, therefore, necessary to reconcile between the need to retain the responsibility of the Administrator to the Centre in this regard and the need to enforce the collective responsibility of the Council of Ministers to the Legislature. The best way of doing this is to provide that in case of difference of opinion which cannot be resolved between the Administrator and his

> Council of Ministers, he should refer the question to the President and the decision of the President thereon will be final. In cases of urgency, if immediate action is necessary, the Administrator may direct action to be taken pending such decision of the President. A provision of this kind was made for this very reason not only in the 1951 Act, but also in the 1963 Act relating to the other Union territories as well as in the 1978 Bill."

110. It may also be useful to refer to the Parliamentary Debate of Rajya Sabha when 69th Amendment of the Constitution was tabled. The Minister concerned stated as follows:

> "At no time in the past has it ever been considered possible to make Delhi a full-fledged State. The Constituent Assembly went into the matter in great depth. It was observed during debates that "in the capital city of a large federation like ours the arrangement should be that in the area over which the federal Government has to function daily, practically in all details, that Government should have unfettered power, power which is not contested by another and subordinate Legislature." The States Re-organisation Committee and all other committees have reached the same conclusion.
>
> Several important national and international institutions like the President, the Parliament, the Supreme Court, etc., as well as all foreign diplomatic missions, international agencies etc. are located in Delhi. It is also a place to which high dignitaries from other nations pay official visits frequently and it is in the national interest that the highest possible standards should be maintained in the administration of the National Capital. It is also in the national interest that the Centre should have control over the National Capital in all matters irrespective of whether they are in the State field or Union field.

> If Delhi is made, a full-fledged State it would be constitutionally impossible for, the Central Government to intervene in any matter relatable to the State List, such as public order, public health, essential supplies municipal services, etc. This complete constitutional prohibition will make it impossible for the Central Government to discharge its national and international responsibilities in relation to Capital, if Delhi becomes a full State.
>
> The Balakrishnan Committee has gone into the matter in depth and has given several reasons why Delhi, cannot be made a full-fledged State. It has categorically stated that it will be against the national international responsibility a relation State. (sic)"

111. Hence, the accepted object when the 69th Amendment to the Constitution was incorporated was that Delhi being the National Capital has special features. The city is of vital importance to the Central Government as it is the seat of a large number of important and vital institutions such as the Head of the State, National Legislature, National Executive, Apex Judiciary, Heads of Armed Forces, Para Military Forces, Foreign Diplomatic Missions, International Organizations, Important Educational, Medical and Cultural Centres, etc. It reflects the ethnic cultural and socio political diversity of the country and acts as a window for the rest of the world. The object of the amendment in view of the stated position of Delhi was to preserve the ultimate responsibility of administration on the President.

112. The settled legal position is that the historical facts and the report preceding the legislation would throw light in ascertaining the intention behind the provision and are permissible external aids to Constitution.

113. The Supreme Court has in several judgments accepted the said proposition. Reference may be had to the judgment of the Supreme Court in the case of ***R.S.Nayak v. A.R.Antulay;*** **(1984) 2 SCC 183,** where the court held as follows:

> "33. The trend certainly seems to be in the reverse gear in that in order to ascertain the true meaning of ambiguous words in a statute, reference to the reports and recommendations of the Commission or Committee which preceded the enactment of the statute are held legitimate external aids to construction. The modern approach has to a considerable extent eroded the exclusionary rule even in England. A Constitution Bench of this Court after specifically referring to Assam Railways and Trading Co. Ltd. v. I.R.C. in State of Mysore v. R.V. Bidap; (1973) II LLJ 41 8SC observed as under:
>
> The trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.... There is a strong case for whittling down the Rule of Exclusion followed in the British courts, and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute. Where it is plain, the language prevails, but where there is obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance such as the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters….

114. In the case of ***Shrimant Shamrao Suryavanshi & Anr. v. Prahlad Bhairoba Suryavanshi by LRs & Ors.;*** **(2002) 3 SCC 676**, the court relying upon the judgment of ***R.S.Nayak v. A.R.Antulay*** (supra), held as follows:

"8. Earlier, the assistance of historical facts or any document preceding the legislation was very much frowned upon for purposes of construction of statutes. At that time, there was some injunction against applying principle of looking into the historical facts or reports preceding the legislation in construing a statute. However, by passage of time, this embargo has been lifted.

9. In R.S. Nayak v. A.R. Antulay AIR 1984 SC 684 AT P.686, it was held thus:

"Reports of the Committee which preceded the enactment of legislation, reports of Joint Parliamentary Committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction. If the basic purpose underlying construction of a legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment, existing state of Law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction.

The modern approach has to a considerable extent eroded the exclusionary rule even in England."

10. Now the accepted view is that the document or report preceding the legislation can legitimately be taken into consideration while construing the provisions of an Act."

115. In the case of ***T.M.A. Pai Foundation v. State of Karnataka;*** **(2002) 8 SCC 481,** the Supreme Court again relying upon the judgment of ***R.S.Nayak v. A.R.Antulay*** (supra), held as follows:

"203. One of the known methods to interpret a provision of an enactment of the Constitution is to look into the historical facts or any document preceding the legislation.

204. Earlier, to interpret a provision of the enactment or the Constitution on the basis of historical facts or any document preceding the legislation was very much frowned upon, but by passage of time, such injunction has been relaxed.

205. In Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461, it was held that the Constituent Assembly debates although not conclusive, yet the intention of framers of the Constitution in enacting provisions of the Constitution can throw light in ascertaining the intention behind such provision.

206. In R.S. Nayak v. A.R. Antulay; AIR 1984 SC 684 AT P.686, it was held thus:

"Reports of the Committee which preceded the enactment of legislation, reports of Joint Parliamentary Committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction. If the basic purpose underlying construction of a legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a Special Committee preceding the enactment, existing state of Law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction.

The modern approach has to a considerable extent eroded the exclusionary rule even in England."

207. Thus, the accepted view appears to be that the report of the Constituent Assembly Debates can legitimately be taken into consideration for construction of the provisions of the Act or the Constitution. In that view of the matter, it is necessary to look into the Constituent Assembly Debates which led to enacting Articles 29 and 30 of the Constitution.”

116. For the aforesaid reasons, we are of the considered view that it is mandatory under the Constitutional scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCTD and an order thereon can be issued only where the Lt. Governor does not take a different view.

117. Hence, the contention on behalf of the Government of NCT of Delhi that the Lt. Governor is bound to act only on the aid and advice of the Council of Ministers is untenable and cannot be accepted.

Reference to a Larger Bench-if warranted:

118. It is contended by Sh.Dayan Krishnan, the learned Senior Counsel appearing for the GNCTD that since it has been authoritatively held by two Coordinate Benches i.e. ***Om Prakash Pahwa v. State of Delhi*** (supra) and ***United RWAs Joint Action v. Union of India*** (supra) of this Court that the Lt.Governor of GNCTD is bound by the aid and advice tendered by the Council of Ministers, it is not open to this Bench to hold otherwise.

119. On the other hand, by placing reliance on the decision of the Supreme Court in ***Devji Vallabhbhai Tandel*** (supra) and the decision of another Co-ordinate Bench of this Court in ***Delhi High Court Bar Association v. Union of India*** (supra), it is contended by Sh.Sanjay Jain, the learned ASG that the decisions in ***Om Prakash Pahwa v. State of Delhi*** (supra) and ***United RWAs Joint Action v. Union of India*** (supra) are *per incuriam* and are not binding.

120. The Govt. of NCTD also filed applications being CM Nos.12673, 12674, 12754, 13616, 12753, 12752 and 13619 of 2016 in W.P.(C) Nos.8867, 8382, 9164, 7887, 7934, 8190/2015 and W.P.(C) 348/2016 respectively, with a specific prayer to constitute a Larger Bench and refer the present petitions to the Larger Bench. Similar application being Crl.M.A. No.4864/2016 has been filed in W.P.(Crl.) No.2099/2015.

121. Ms.Indira Jaising, Senior Advocate appeared for the applicant/GNCTD in all the said applications and contended that in view of the perceived conflict between the judgments rendered by the Co-ordinate Benches of this Court, it would be appropriate that the issue is referred to a Larger Bench after framing questions of law which require consideration. Placing reliance upon ***Mahadeolal Kanodia v. Administrator General of West Bengal;*** **(1960) 3 SCR 578,** ***State of Tripura v. Tripura Bar Association and Others;*** **(1998) 5 SCC 637,** ***Dr. Vijay Laxmi Sadho v. Jagdish;*** **(2001) 2 SCC 247,** ***Official Liquidator v. Dayan and Others;*** **(2008) 10 SCC 1,** ***U.P. Power Corpn. Ltd. v. Rajesh Kumar;*** **(2012) 7 SCC 1,** ***Sundarjas Kanyalal Bhatija v. Collector;*** **(1989) 3 SCC 396** and ***P. Suseela v. University Grants Commission and Others;*** **(2015) 8 SCC 129**, it is also contended that the law laid down by the Co-ordinate Benches cannot be distinguished either on the ground that they are distinguishable on facts or as *per incuriam*.

122. It is no doubt true that in ***Om Prakash Pahwa v. State of Delhi*** (supra), ***United RWAs Joint Action v. Union of India*** (supra) and ***Delhi High Court Bar Association v. Union of India*** (supra), the provisions of

Article 239AA of the Constitution of India have been considered and interpreted by the Coordinate Benches of this Court. It is also not in dispute that the judicial decorum and legal propriety demand that where a Single Judge or a Division Bench does not agree with the decision of a Bench of Coordinate jurisdiction, the matter shall be referred to a Larger Bench [Vide ***A.P. v. B.Satyanarayana Rao;*** **(2000) 4 SCC 262,** ***CIT v. Saheli Leasing & Industries Ltd;*** **(2010) 6 SCC 384** and ***U.P. Power Corpn. Ltd. v. Rajesh Kumar;*** **(2012) 7 SCC 1**].

123. However, having carefully gone through the abovesaid three judgments rendered by the Co-ordinate Benches, we are of the view that in none of the matters, the issue as to whether the Lt. Governor of NCT of Delhi while exercising the executive functions under Article 239AA(4) is bound to act only on the aid and advice of the Council of Ministers was considered or decided. To clarify, we shall discuss in brief the issues involved in these three decisions as well as the observations made/conclusions reached by this Court.

124. In ***Om Prakash Pahwa v. State of Delhi*** (supra), the challenge was to a public notification issued by the Government of NCT of Delhi under Section 100(3) of the Motor Vehicles Act, 1988 approving a scheme earlier proposed under Section 99 of the Act. Section 99 and Section 100 of Motor Vehicles Act employed the expression "State Government". The State Government has to formulate the scheme and consider the objections received from the public. One of the contentions raised on behalf of the petitioners therein was since Sections 99 and 100 of the Motor Vehicles Act, 1988 use the expression "State Government", the function of

hearing and deciding objections under Section 100(2) must be discharged by the Lt. Governor himself. It is contended that under Section 41 of the GNCTD Act, 1991, the Lt. Governor shall act in his discretion in a matter which is required by any law to act in his discretion. The objection was that the hearing contemplated by Section 100(2) is a function which could not have been delegated. In Para 60, the Division Bench proceeded to consider the nature of power exercised and functions discharged by the State Government under Sections 99 and 100 of Motor Vehicles Act and to find out what is the concept of "State Government" in relation to Union Territory. In para 62 and para 63, the Division Bench noticed Clause (4) of Article 239AA of the Constitution and Sections 41 and 44 of the GNCTD Act, 1991. The Division Bench also noticed Allocation of Business Rules, 1993 made by the President in exercise of the powers conferred by Section 44 of GNCTD Act in particular Rule 3 which provides that the Lieutenant Governor shall in consultation with the Chief Minister allocate to the Ministers the business of the GNCTD regarding the matters with respect to which the Council of Ministers is required under Article 239AA to aid and advice the Lt. Governor. The Division Bench examined the scope and impact of Article 239AA in the light of the ratio laid down in ***Samsher Singh*** (supra) and held:

> "67. The phraseology employed by Clause (4) of Article 239AA deserves to be compared with that employed in Article 163. The Lt Governor of NCT of Delhi would be aided and advised by the Council of Ministers in the exercise of his functions in relation to the matters with reference to which the legislative assembly has power to make laws. However, the Governor while exercising such powers and discharging such functions which 'any law' requires to be done 'in his discretion'

are not associated with the aid and advice of the council of ministers. There the Lt Governor acts in his discretion.

68. To put it briefly what the Governor of a State may do at his discretion must be so provided for by the Constitution. What the Lt Governor of NCT of Delhi may do at his discretion may be provided by or under 'any law' and not the Constitution merely.

xxx xxx xxx

76. In all matters which vest in the executive, whether those functions are executive or legislative in character, the President or the Governor acts on the aid and advice of the council of ministers. Neither the President nor the Governor exercises the executive function personally excepting when the Constitutional scheme itself dictates to the contrary such as Articles 356 and 163(2) of the Constitution.

77. The power to prepare and publish a proposal regarding road transport service of a STU within the meaning of Section 99 is done in exercise of the executive power of the State. Under Section 99 read with Section 2(41), the Lt Governor while formulating the proposal would act on the aid and advice of the council of ministers. It is a policy decision to be taken in public interest as contemplated by Section 99. Section 99 is not a provision which requires the Governor to act in his discretion.

78. Receiving, considering and deciding the objections under Section 100 is not a power referable to the executive power of the State. Under Section 100 read with Section 2(41) of the Act, the Parliament has conferred a power on the Lt Governor and requires the Lt Governor to act 'in his discretion'. The nature of the function is quasi-judicial. Here Section 41 of the Govt of NCT of Delhi Act, 1991, is attracted, whereunder the Lt Governor has to act 'in his discretion', the exercise being quasi judicial. In G. Nageshwara Rao (supra), the exercise of the power conferred on the State Govt. under section 68D of the Motor Vehicle Act, 1939 was held to be 'judicial' in nature. It was because under the scheme of the then legislation there was a dispute between the two parties i.e. the objectors and the STU-pitted like adversaries in litigation, and the State Govt was

> obliged to decide the dispute after giving a personal hearing and following the rules of judicial procedure. Under Section 99 of the Motor Vehicles Act, 1988 there are no adversaries. The Lt Governor prepares and publishes the proposal under Section 99 read with Section 100(1) and receives, hears and decides the objections under Section 100(2). So the authority proposing the scheme and deciding the objections is the same but the character of the two functions differs. The Lt Governor though head of the State is an executive head of the State exercising the executive power of the State under Section 99 but is merely an administrative authority acting at 'his own discretion' under Section 100. Inasmuch as the principles of natural justice must be complied with the nature of the power exercised by the Lt Governor under section 100 becomes quasi-judicial. The procedure for receiving and considering the objections not provided by the statute itself can be devised."

125. As could be seen, the Division Bench having considered the nature of the power exercised by the Lt.Governor under Sections 99 and 100 of the Motor Vehicles Act held that the power to prepare and publish a proposal under Section 99 being the executive power of the State, the Lt. Governor would act on the aid and advice of Council of Ministers. With regard to the power under Section 100 to receive, consider and decide the objections, it was held that the said power being quasi judicial is not referable to the executive power of the State.

126. Coming to ***United RWAs Joint Action*** **case**, the Division Bench, of which one of us (Chief Justice) is a Member, was dealing with the question whether under Section 20(1) of CAG Act, 1971, the CAG can be requested to undertake the audit of accounts of DISCOMS which are public-private partnerships. One of the contentions raised on behalf of the petitioners/appellants was Delhi has its special status under Article 239AA

of the Constitution and that under Article 239AA(4) the Council of Ministers are to aid and advice the Administrator of Delhi in exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws. It was also contended that since the power to make laws with respect to "audit of the accounts of the Union and of the States" lies with the Parliament in terms of Entry 76 of List I of Schedule VII of the Constitution, and not with the Legislative Assembly of NCT of Delhi, the Lt. Governor of NCTD in exercise of powers conferred under Section 20 is not to act on the aid and advise of the Council of Ministers. In other words, CAG Act being a law made by the Parliament, the Lt.Governor in taking decision under Article 239AA(4) is not to act on the aid and advice of the Council of Ministers.

127. The Division Bench rejected the said contention holding that whether CAG is to be requested to undertake the audit of the accounts of any body or authority in terms of Section 20(1) of CAG Act, has to be decided by the Lt. Governor of Delhi, depending upon whether such body or authority is under the domain of Union/Parliament or under the domain of GNCTD/State Legislature. It was also held that "electricity" being a concurrent subject, it is the Legislative Assembly of NCTD which is concerned with the functioning of DISCOMS and it is GNCTD which is concerned with the State Level transmission and distribution of electricity. Having opined that Lt. Governor in the matter of issuing a direction under Section 20 of CAG Act, does not act as the representative of Union of India, it was held that the direction of the Administrator of Delhi for audit of DISCOMS in exercise of power under Section 20 of the CAG Act has to be on the aid and advice of

the Council of Ministers, GNCTD and not *eo-nominee*. In concluding that the Administrator exercises the power under Section 20 of CAG Act does not act eo-nominee, the Division Bench followed the law laid down in ***State of Gujarat v R. A. Mehta;*** **2013 (3) SCC 01/2013 (1) SCC 01** and the language of sub-section (1) of Section 20 of CAG Act.

128. The relevant paragraphs from ***United RWAs Joint Action*** (supra) may be reproduced hereunder for ready reference:

> "45. In our opinion, there is no merit in the said challenge also. The reasons which prevail with us to hold so are as under:
>
> (A) The contention, that since the functions and powers of CAG are to be prescribed by a law made by the Parliament, the Administrator of Delhi in exercise of powers under Section 20 is not to act on the aid and advise of GNCTD and / or its Council of Ministers and the contention that under Entry 76 in List I of the 7th Schedule, the power to make law with respect to audit of accounts of Union and States is with the Parliament and not with the Legislature of State of Delhi, is misconceived.
>
> (B) The decision to be taken by the Administrator i.e. the Lt. Governor of Delhi under Section 20 is the need for directing CAG to audit the accounts of a body or authority and not a decision whether a law should be made in relation to the audit of the accounts of Union of India or of Delhi. The question, whether such decision is to be taken by the Administrator as Lieutenant Governor of Delhi, which by virtue of Article 239AA has a hybrid position, is dependent upon whether the body or authority direction qua accounts of which is to be issued is under the domain of Union / Parliament or under the domain of GNCTD / State Legislature.
>
> (C) It cannot be doubted that DISCOMs are under the domain of GNCTD and / or Legislature of State and not of the Union / Parliament. To say, that the Administrator for taking the said decision is to act as the representative of Union of India would

> defeat the very purpose inasmuch as Union would have no concern with the accounts of DISCOMs. It is the State Legislative Assembly which is concerned with the functioning of DISCOMs. Electricity is a concurrent subject and it is the State Government i.e. GNCTD only which alone is concerned with the State level transmission and distribution of electricity.
>
> (D) Once it is held that the Administrator of Delhi in the matter of issuance of a direction under Section 20 does not act as the representative of Union of India, the next question which arises is whether the Administrator, in exercise of such power, is to act eo nomine i.e. by or in that name or on the aid and advise of the Council of Ministers of GNCTD."

129. As is evident what was considered and decided in ***United RWAs Joint Action*** (supra) was while issuing the direction under Section 20 of CAG Act, whether the Lt.Governor exercises the executive powers of the State and thus is to act on the aid and advice of the Council of Ministers or whether he acts *eo-nominee* in exercise of his discretion. As noticed above, it was held that under Section 20 of CAG Act, the Lt.Governor does not act *eo-nominee* and that the exercise of power is to be on the advice of Council of Ministers only.

130. Thus it is clear that in both ***Om Prakash Pahwa*** (supra) and ***United RWAs Joint Action*** (supra), the Co-ordinate Benches had only considered the question as to whether the Lt.Governor of NCTD while passing the orders impugned therein was required to exercise the functions under the respective statutes i.e. Motor Vehicles Act and CAG Act in his discretion or in exercise of the executive powers of the State on the aid and advice of the Council of Ministers and the question was answered on interpretation of the statutory provisions under which the impugned orders were passed. The question whether the Lt. Governor while exercising his

functions in relation to matters with respect to which the Legislative Assembly of NCTD has powers to make laws is bound to act only on the aid and advice of the Council of Ministers or whether under the Constitutional scheme he can differ with the decision of the Council of Ministers was neither raised nor considered. The ratio laid in the said decisions, therefore, cannot be construed to mean that the Lt. Governor cannot discharge any function or exercise any power without the aid and advice of the Council of Ministers.

131. However, pointing out that in spite of the fact that 'audit of accounts' falls in Entry 76 of List-I and thus beyond the legislative competence of the Legislative Assembly of NCTD, it was held in ***United RWAs Action*** (supra) that the Lieutenant Governor was bound by the aid and advice of the Council of Ministers, it is sought to be contended on behalf of GNCTD that it was held in the said decision that even in respect of those matters for which the Legislative Assembly has no powers to make laws under Clause (3) of Article 239AA, the Lt. Governor in the exercise of his functions is bound by the aid and advice of the Council of Ministers.

132. We are unable to agree with the said contention. Such argument was neither addressed nor considered by the Division Bench. Though 'audit of accounts' falls outside the legislative competence of Legislative Assembly of NCTD, the Division Bench opined that the decision of the Lt. Governor under Section 20(1) of CAG Act depends upon whether the body or authority whose accounts are to be audited is under the domain of Union or the State. Having thus proceeded further, the Division Bench held that the exercise of powers by Lt. Governor under Section 20 of CAG Act is to be on

advice of Council of Ministers since DISCOMS are under the domain of GNCTD. The Division Bench had also taken into consideration the fact that 'electricity' is a concurrent subject and it is the GNCTD which is concerned with the State level transmission and distribution of electricity.

133. In ***Delhi High Court Bar Association*** (supra), the issue for consideration was the interpretation of clause (3)(c) of Article 239AA of the Constitution, with reference to the legislative competence of the Legislative Assembly of Delhi and the same has been explained while relying upon the interpretation and principles laid down by the Supreme Court and the Full Bench of this Court on Article 239AA of the Constitution. The said decision interprets Article 239AA of the Constitution only with regard to the competence of the Legislative Assembly of Delhi to legislate.

134. On a careful consideration of all the above-said three decisions of the Co-ordinate Benches, we are of the view that there is no conflict of view as sought to be portrayed by the learned Senior Counsels appearing for GNCTD. The said decisions, in our opinion, are binding precedents only to the extent of the provisions of the respective statutes, which were interpreted in the light of the nature of the functions of the Lt.Governor of NCTD under Article 239AA of the Constitution.

135. The law is well-settled that in order to enable the Court to refer any case to a Larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view. The judicial decorum and legal propriety demand that where

a learned Single Judge or a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter shall be referred to a Larger Bench [Vide: ***A.P. vs. Satyanarayana Rao;*** **(2000) 4 SCC 262,** ***CIT VS. Saheli Leasing & Industries Ltd.;*** **(2010) 6 SCC 384** and ***U.P. Power Corpn. Ltd. vs. Rajesh Kumar;*** **(2012) 7 SCC 1**].

136. None of the above-stated circumstances arise here and therefore, there is no need for reference to a Larger Bench. The applications filed on behalf of GNCTD seeking reference of these petitions to a Larger Bench are therefore liable to be dismissed.

137. In the light of the conclusions reached above, we propose to consider each writ petition on its facts.

138. Before doing so, it may be added that in W.P.(C) Nos.7934/2015, 8190/2015, 9164/2015 and 348/2016 filed as Public Interest Litigation, an objection has been raised by the learned counsel appearing for the Govt. of NCT of Delhi/respondent as to the maintainability of the said petitions on the ground that the petitions are motivated and not bona fide. However, we do not think it is necessary to express any opinion as to the correctness of the said allegations since the issues raised therein which, we are satisfied, are of public importance, are also the subject matter of other petitions heard by us. Though the genuineness of the petitioner in moving a public interest litigation is a test that needs to be applied to decide the maintainability of the PIL, as held in ***Vishwanath Chaturvedi v. Union of India;*** **AIR 2007 SC (Supp) 163**, it is not proper for the Court to decline to entertain the petition without looking into the subject matter of his complaint. Particularly, where it is established that there is failure of public duty or dereliction of

constitutional or statutory obligation on the part of the Government, this Court would be in error in declining to entertain the petition on the technicality of *locus standi*. Hence, we consider it appropriate to decide the writ petitions filed as PIL also on merits without going into the tenability of the objection raised with regard to the maintainability.

W.P.(C) No.5888/2015 (Govt. of NCT of Delhi vs. Union of India)

139. The Govt. of NCT of Delhi filed this petition challenging (i) Notification S.O.1368(E) dated 21.05.2015, and (ii) Notification S.O.1896(E) dated 23.07.2014 issued by the Union of India, Ministry of Home Affairs.

140. The averments in the writ petition in brief may be set out as under:

(i) Section 2(s) of the Code of Criminal Procedure, 1973 defines 'police station' as any post or place declared generally or specially by the State Government to be a police station and includes any local area specified by the State Government in that behalf. In exercise of the power so conferred, certain notifications were issued by the Administrator of the Union Territory of Delhi from time to time. One such notification was Notification No.12(7)88-HP-II dated 01.08.1986 whereunder the Anti-Corruption Branch, Delhi Administration at Tis Hazari, Delhi was declared to be a police station for (i) offences relating to illegal gratification under Sections 161, 162, 163, 164, 165 and 165A of the IPC, 1860; (ii) offences under the Prevention of Corruption Act, 1947 and (iii) attempts, abatement and conspiracies in relation to or in connection with the aforesaid offence

and any other offence committed in the same course of the same transaction arising out of the same set of facts.

(ii) With effect from 09.09.1988, the Prevention of Corruption Act, 1988 has come into force thereby repealing the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952. By virtue of the said Act of 1988, Sections 161 to 165A of IPC also stood omitted.

(iii) Consequent thereto vide Notification dated 08.11.1993 issued by the Lt. Governor of NCT of Delhi in exercise of the powers conferred by Section 2(s) of the Code of Criminal Procedure, 1973, the earlier notification under Section 2(s) dated 01.08.1986 was superseded and the Anti-Corruption Branch of NCT of Delhi, Delhi Police Station was declared to be the Police Station for offences under the Prevention of Corruption Act, 1988 and that it shall have jurisdiction all over the National Capital Territory of Delhi.

(iv) While so, by Notification dated 24.09.1998 issued by the Union of India, Ministry of Home Affairs, it was directed that the Lt. Governor of NCT of Delhi shall in respect of matters connected with 'public order', 'police' and 'service' exercise the power and discharge the function of the Central Government to the extent delegated from time to time to him by the President, in consultation with the Chief Minister of NCT of Delhi except in those cases where, for reasons to be recorded in writing, he does not consider it expedient to do so. The said notification was issued in terms of the direction of

the President in pursuance of the powers conferred under Article 239(1) of the Constitution.

(v) Thereafter on 23.07.2014, the Ministry of Home Affairs issued another notification declaring that the Notification dated 08.11.1993 issued by the Lt. Governor of NCT of Delhi shall be applicable to the officers and the employees of that Government only and accordingly effected the necessary amendment to the said Notification dated 08.11.1993.

(vi) By letter dated 30.09.2014, it was clarified by the Ministry of Home Affairs that the Notification dated 23.07.2014 is effective from the date of its publication in the official gazette.

(vii) In February, 2015 elections for the Legislative Assembly of the NCT of Delhi were held and a Legislative Assembly has been constituted.

(viii) On 16.05.2015, the Chief Secretary of Delhi was appointed in a temporary vacancy vide order passed by the Lt. Governor. However, before making such appointment, the Chief Minister and his Council of Ministers were not consulted.

(ix) Subsequently, by Notification dated 21.05.2015 issued by the Union of India, Ministry of Home Affairs (impugned notification in W.P.(C) No.5888/2015), the earlier Notification dated 08.11.1993 has been further amended to the following effect:

(a) Lt. Governor is empowered to exercise the powers and discharge the functions of the Central Government in respect of the matters connected with "services";

(b) The Notification dated 08.11.1993 declaring the Anti-Corruption Branch of NCT of Delhi as Police Station for offences under the Prevention of Corruption Act, 1988 shall apply only to officials and employees of National Capital Territory of Delhi; and that Anti-Corruption Branch Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government.

(x) GNCTD/petitioner was of the view that it is impermissible under law to add 'services' also as a subject in respect of which the Legislative Assembly of Delhi cannot make law. Similarly, withdrawing the powers of the Anti-Corruption Branch of Government of Delhi from enquiring/investigating into offences committed by the employees of the Central Government was also illegal.

(xi) On 27.05.2015, a resolution was passed by the Legislative Assembly of Delhi *inter alia* directing the Council of Ministers to continue allocating the work to its officers and employees notwithstanding the deletion of the subject 'services' from the legislative powers of the Government of NCT of Delhi as declared in the Notification dated 21.05.2015.

(xii) On 28.05.2015, the present writ petition came to be filed by the Government of NCT of Delhi with a prayer to declare the Notification dated 21.05.2015 as illegal and *ultra vires* the provisions of the Articles 14, 239 and 239AA of the Constitution and Section 41 of the Government of NCT of Delhi Act, 1991 and to quash the same. The Notification dated 23.07.2014 issued by the Ministry of Home Affairs is also sought to be quashed after declaring the same as illegal and *ultra vires* the provisions of the Articles 14, 239 and 239AA of the Constitution and Section 41 of the Government of NCT of Delhi Act, 1991.

141. The grievance of the writ petitioner/GNCTD is that by virtue of the impugned Notifications, the Legislative Assembly of National Capital Territory of Delhi has been deprived of the power to make laws on matters with respect to 'Services' without following due process of law. The contention is that the subjects which are beyond the legislative competence of the Legislative Assembly of the NCT of Delhi have been expressly mentioned in Article 239AA and that the same cannot be altered by the Ministry of Home Affairs by way of a Notification. In other words, the Ministry of Home Affairs, Government of India seeks to encroach upon the legislative powers of the Legislative Assembly of NCTD in respect of Entry 41 of List II without seeking the approval of the Parliament and thus the impugned Notification is illegal and unconstitutional. It is also contended that the power to amend the Constitution has been conferred only on the Parliament in terms of Article 368 of the Constitution and such power cannot be exercised by the Ministry of Home Affairs, Government of India.

142. The further contention is that the impugned action of restricting the executive control of GNCTD, acting through its ACB, to act on complaints under the PC Act against the employees and officers of Central Government is contrary to the scheme of Article 239AA of the Constitution read with GNCTD Act, 1991 and the Transaction of Business Rules.

143. The impugned notifications dated 21.05.2015 and 23.07.2014 may be reproduced hereunder for ready reference:

"**Ministry of Home Affairs**
Notification
New Delhi, the 21st May, 2015

S.O. 1368(E).—Whereas article 239 of the Constitution provides that every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify;

And whereas article 239AA inserted by 'the Constitution (Sixty-ninth Amendment) Act, 1991' provides that the Union Territory of Delhi shall be called the National Capital Territory of Delhi and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor;

And whereas sub-clause (a) of clause (3) of article 239AA states that the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union Territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18; and whereas Entry 1 relates to 'Public Order', Entry 2 relates to 'Police' and Entry 18 relates to 'Land'.

And whereas sub-clause (a) of clause (3) of article 239AA also qualifies the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to

Union Territories. Under this provision, a reference may be made to Entry 41 of the State List which deals with the State Public Services, State Public Service Commission which do not exist in the National Capital Territory of Delhi.

Further, the Union Territories Cadre consisting of Indian Administrative Service and Indian Police Service personnel is common to Union Territories of Delhi, Chandigarh, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu, Dadra and Nagar Haveli, Puducherry and States of Arunachal Pradesh, Goa and Mizoram which is administered by the Central Government through the Ministry of Home Affairs; and similarly DANICS and DANIPS are common services catering to the requirement of the Union Territories of Daman & Diu, Dadra Nagar Haveli, Andaman and Nicobar Islands, Lakshadweep including the National Capital Territory of Delhi which is also administered by the Central Government through the Ministry of Home Affairs. As such, it is clear that the National Capital Territory of Delhi does not have its own State Public Services. Thus, 'Services' will fall within this category.

And whereas it is well established that where there is no legislative power, there is no executive power since executive power is co-extensive with legislative power.

And whereas matters relating to Entries 1, 2 & 18 of the State List being 'Public Order', 'Police' and 'Land' respectively and Entries 64, 65 & 66 of that list in so far as they relate to Entries 1, 2 & 18 as also 'Services' fall outside the purview of Legislative Assembly of the National Capital Territory of Delhi and consequently the Government of NCT of Delhi will have no executive power in relation to the above and further that power in relation to the aforesaid subjects vests exclusively in the President or his delegate i.e. the Lieutenant Governor of Delhi.

Now, therefore, in accordance with the provisions contained in article 239 and sub-clause (a) of clause (3) of 239AA, the President hereby directs that –

(i) subject to his control and further orders, the Lieutenant Governor of the National Capital Territory of Delhi, shall in respect of matters connected with 'Public Order', 'Police', 'Land' and 'Services' as stated hereinabove, exercise the powers and discharge the functions of the Central Government, to the extent delegated to him from time to time by the President.

Provided that the Lieutenant Governor of the National Capital Territory of Delhi may, in his discretion, obtain the views of the Chief Minister of the National Capital Territory of Delhi in regard to the matter of 'Services' wherever he deems it appropriate.

2. In the Notification number F. 1/21/92-Home (P) Estt. 1750 dated 8th November, 1993, as amended vide notification dated 23rd July, 2014 bearing No. 14036/4/2014-Delhi-I (Pt. File), for paragraph 2 the following paragraph shall be substituted, namely:—

"2. This notification shall only apply to officials and employees of the National Capital Territory of Delhi subject to the provisions contained in the article 239AA of the Constitution."

after paragraph 2 the following paragraph shall be inserted, namely:—

"3. The Anti-Corruption Branch Police Station shall not take any cognizance of offences against Officers, employees and functionaries of the Central Government".

3. This Notification supersedes earlier Notification number S.O. 853(E) [F. No. U-11030/2/98- UTL] dated 24th September, 1998 except as respects things done or omitted to be done before such supersession.

[F. No. 14036/04/2014-Delhi-I (Part File)]
Rakesh Singh, Jt. Secy."

(emphasis supplied)

"**Ministry of Home Affairs**
Notification
New Delhi, the 23rd July, 2014

S.O.1896(E) - In pursuance of Section 21 of the General Clauses Act, 1897 (10 of 1897) read with the Government of India, Ministry of Home Affairs Notification Number S.O. 183(E), dated the 20th March, 1974 and having regard to the guidelines issued by the Central Vigilance Commission over the jurisdiction of the Central Bureau of Investigation and the Anti-Corruption Branch, Government of National Capital Territory of Delhi, the Central Government hereby declares that the notification number F.1/21/92-Home (P) Estt.1750, dated the 8th November, 1993 issued by the Lieutenant Governor of the National Capital Territory of Delhi shall be applicable to the officers and employees of that Government only and for that purpose amends the said notification, namely:-

In the said notification, after the existing paragraph, the following paragraph shall be inserted, namely:-

"2 This notification shall apply to the officers and employees of the Government of National Capital Territory of Delhi".

[FNo.14036/4/2014-Delhi-I(Pt.File)]
I.S. Chala, Jt. Secy."

144. As could be seen, the impugned Notification dated 21.05.2015 contains a direction of the President of India that the Lt. Governor of NCTD shall, in respect of matters connected with "services", exercise the powers and discharge the functions of the Central Government, to the extent delegated to him from time to time by the President. By way of the proviso, it was added that the Lt. Governor of NCTD may in his discretion obtain the views of the Chief Minister of NCTD in regard to the matter of "services"

wherever he deems it appropriate. The said notification also directs that the Anti-Corruption Branch shall not take cognizance of offences against officers, employees and functionaries of the Central Government.

145. It is stated in the Preamble to the said notification dated 21.05.2015 that Article 239AA(3)(a) of the Constitution while providing that the Legislative Assembly of NCTD shall have power to make laws with respect to any of the matters enumerated in the State List and Concurrent List except matters with respect to Entries 1, 2 & 18 of the State List further qualified "the matters enumerated in the State List or in the Concurrent List insofar as any such matter is applicable to Union Territories" and that Entry 41 of the State List deals with the 'State Public Services', 'State Public Service Commission', which do not exist in the National Capital Territory of Delhi and further the Union Territories Cadre is common to all Union Territories which is administered by the Central Government through the Ministry of Home Affairs and as such "services" fall outside the purview of the Legislative Assembly of NCTD. Executive power being co-extensive with legislative power, the Govt. of NCT of Delhi has no executive power in relation to "services".

"Services" - Whether fall outside the purview of the Legislative Assembly of NCT of Delhi:

146. The contention of the petitioner/GNCTD is that the Notification dated 21.05.2015 attempts to amend Article 239AA and creates a fourth reserved subject which is not provided by the Constitution. It is contended that the said Notification having impinged upon the constitutional right of GNCTD under Article 239AA to deal with the matters relating to "services" without

following due process of law is unconstitutional, *ultra vires* and patently mala fide.

147. It is contended by Shri Dayan Krishnan, the learned Senior Counsel appearing for the petitioner/GNCTD:

(i) that the impugned Notification dated 21.05.2015 which seeks to amend Article 239AA of the Constitution without following due process of law is illegal, arbitrary and *ultra vires* Articles 14, 239, 239AA of the Constitution;

(ii) that the subjects which are beyond the legislative competence of the Legislative Assembly of NCTD having been expressly mentioned in clause (3) of Article 239AA, the same cannot be altered by the Central Government by issuance of a mere notification without seeking the approval of the Parliament in terms of Article 368 of the Constitution;

(iii) that the impugned notification dated 21.05.2015 is contrary to Article 239AA(3) and (4) since Article 239AA(2) puts in place a parliamentary system of the Government for Delhi pursuant to which the Lt.Governor is bound by the aid and advice of the Council of Ministers headed by the Chief Minister;

(iv) that merely because the Legislative Assembly of Delhi has not exercised the power under clause (3) of Article 239AA with respect to matters in Entry-41 of List-II, it cannot be held that such power is not vested in it;

(v) that since the legislative power regarding "services", as per clause (3) of Article 239AA, lies with the Legislative Assembly of NCTD, the executive power would also lie with GNCTD.

(vi) that the mere fact that there is no State cadre for Delhi does not lead to the conclusion that the Legislative Assembly of NCTD has no power to make laws in relation to matters with respect to Entry- 41 of List-II since the existence of power and the exercise of the same are different;

(vii) that since NCTD has a parliamentary democracy with a Chief Minister, the officers of Union Services are under the operational control of the elected Government like the officers of IAS cadre are under the control of the State Governments and are entrusted with the functions and duties at the discretion of the State.

148. We have also heard Shri Sanjay Jain, the learned ASG appearing for Union of India.

149. The challenge to the exercise of powers directed to be exercised by the Lt.Governor in respect of matters connected with "services" is primarily on the ground that "services" being a matter covered by Entry 41 of List II of the State List, the executive power in respect of "services" vests with the Govt. of NCT of Delhi and such constitutional right conferred under clause (3) and clause (4) of Article 239AA of the Constitution cannot be curtailed by a mere notification issued by the Central Government. It is contended that the impugned notification dated 21.05.2015 amounts to altering the very scheme of the Constitution without seeking the approval of the Parliament in

terms of Article 368 of the Constitution. The further contention is that the Lt.Governor of Delhi is bound by the aid and advice of the Council of Ministers in all matters in respect of which the legislative competence vests with the Legislative Assembly of Delhi and in other matters where he acts as a delegate of the President, he is bound to exercise the functions in consultation with the Chief Minister as provided under Rule 45 of the Transaction of Business Rules and therefore, the impugned notification empowering the Lt. Governor to discharge the functions unilaterally is illegal and unconstitutional.

150. Clause (3)(a) of Article 239AA of the Constitution empowers the Legislative Assembly of NCTD 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 insofar as any such matter is applicable to Union Territories except matters with respect to Entries 1, 2 & 18 of the State List and Entries 64, 65 & 66 of that List insofar as they relate to the said Entries 1, 2 & 18.

151. The above-said Entries of List II deal with the following matters:

Entry 1 -	public order,
Entry 2 -	police
Entry 18 -	land
Entry 64 -	offences against laws with respect to any of the matters in State List
Entry 65 -	jurisdiction and power of all courts, except the Supreme Court, with respect to any of the matters in the State List
Entry 66 -	fees in respect of any of the matters in the State List but not including fees taken in any court) of the State List insofar as they relate to the said Entries 1, 2 and 18.

152. However, under the impugned notification dated 21.05.2015, the Lt. Governor of NCTD has been directed to exercise the powers and discharge the functions of the Central Government in respect of the matters connected with "services" on the premise that Entry 41 of List II, which deals with "State Public Services", "State Public Service Commission" is not applicable to NCT of Delhi, which is a Union Territory.

153. It is not in dispute that 'State Public Services' and 'State Public Service Commission' do not exist in the National Capital Territory of Delhi. However, the contention of the petitioner/GNCTD is that since the Legislative Assembly of NCTD has exclusive legislative competence with respect to Entry 41 of List II as provided under clause (3)(a) of Article 239AA of the Constitution, as a corollary the executive power lies with Govt. of NCT of Delhi irrespective of the fact that 'State Public Service' is not existing in NCTD. It is contended that the impugned notification, in fact amounts to taking away Entry 41 outside the purview of the Legislative Assembly of NCTD. It is further contended that such deletion is permissible only by way of amendment to Article 239AA in terms of Article 368 of the Constitution but not by executive fiat.

154. Contradicting the contention of the petitioner/GNCTD, it is pleaded in the counter affidavit filed on behalf of the Union of India that:

> "Entry-41 of the State List deals with "State Public Services" and "State Public Service Commission", which do not exist in the National Capital Territory of Delhi. Further, Union Territories cadre consisting of Indian Administrative Service and the Indian Police Service personnel is common to the Union Territory of Delhi, Chandigarh, Andamans and Nicobar Islands, Lakshdweep, Daman and Diu, Dadra and Nagar Haveli,

> Puducherry and the States of Arunachal Pradesh, Goa and Mizoram which are administered by the Central Government through the Ministry of Home Affairs. Similarly, DANICS and DANIPS are common services catering to the requirements of Union Territories of Daman and Diu, Dadra and Nagar Haveli, Andamans and Nicobar Islands, Lakshdweep including the NCT of Delhi which is also administered by the Central Government through the Ministry of Home Affairs. As such, it is clear that the NCT of Delhi does not have its own Public Services. Thus, "services" will fall under the qualified category as contemplated in Article 239AA 3(a).
>
> It is submitted that the Central Cadre derives its authority from Entry 70 in List 1. Since admittedly there is no State Public Services or State Public Services Commission insofar as the NCT of Delhi is concerned, the petitioner cannot seek to impugn the notification dated 21.05.2015 on the ground that inclusion of "services" in the said notification is *ultra vires* the Constitution of India."

155. The learned ASG has also drawn our attention to the express language of clause (3)(a) of Article 239AA which qualifies the matters enumerated in State List or in the Concurrent List "in so far as any such matter is applicable to Union Territories".

156. It is relevant to note that there are only two Services under the constitutional scheme. One is of the Union and the other is of each State. These two subjects are expressly covered by two Entries in Schedule VII, i.e. Entry 70 (Union Public Services; All India Services; Union Public Service Commission) of List I and Entry 41 (State Public Services; State Public Service Commission) of List II. There is no separate service cadre of any Union Territory. The services of all Union Territories including NCT of Delhi are services of the Union. Therefore, the services under NCT of Delhi

are necessarily the services of the Union. It is evident from the Resolution dated 27.05.2015 passed by the Legislative Assembly of NCTD (filed as Annexure P-11 to W.P.(C) No.5888/2015) that there is no "public service" for NCT of Delhi which fact also establishes that there is no separate service cadre of NCT of Delhi.

157. It is also relevant to note that Part XIV of the Constitution deals with "Services under the Union and the States". Article 309 in Part XIV provides that Acts of the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Under Part XIV, there is no separate category of services of Union Territory.

158. Hence, all services under NCT of Delhi which is a Union Territory are governed by Entry 70 of List I alone and thus fall beyond the legislative competence of Legislative Assembly of NCT of Delhi. The executive power being co-extensive with the legislative power, it goes without saying that the Government of NCT of Delhi cannot claim any executive power in relation to matters with respect to "services". Consequently, as provided under Section 41 of the NCT of Delhi Act, 1991, 'services' is a matter in respect of which the Lt. Governor is required to act in his discretion.

159. In this context we may also refer to the specific plea of Union of India in its counter affidavit that the Union Territories Cadre consisting of Indian Administrative Service and Indian Police Service personnel, which is common to Delhi, Chandigarh, Andamans and Nicobar Islands, Lakshadweep, Daman & Diu, Dadra & Nagar Haveli, Puducherry, Arunachal Pradesh, Goa and Mizoram is administered by the Central

Government through the Ministry of Home Affairs and similarly, DANICS and DANIPS are common services catering the requirements of all the Union Territories including the NCT of Delhi and the same is also administered by the Central Government through Ministry of Home Affairs has not been contradicted by the petitioner/GNCTD.

160. It may also be added that Delhi-Andaman and Nicobar Island Civil Service (DANICS) and Delhi-Andaman and Nicobar Island Police Service (DANIPS) are admittedly relatable to Entry 70 of the Union List. It is the specific case of the Union of India that GNCTD has no executive power for creation of posts and/or upgradation of the pay of the employees of the GNCTD and that the pay for the employees of GNCTD is recommended by Central Pay Commission. It is also brought to our notice that as per Rule 7 of the Government of India (Allocation of Business) Rules, 1961 made by the President in exercise of the powers conferred by clause (3) of Article 77 of the Constitution, the business in respect of the Union Territories including National Capital Territory of Delhi has been allocated to the Ministry of Home Affairs. It is also pointed out by the leaned ASG that as per Rule 7 read with Rule 2(d) of the Indian Administrative Service (Cadre) Rules, 1954 made by the Central Government under Section 3(1) of the All India Services Act, 1951, all appointments to Joint Cadre shall be made by the "Joint Cadre Authority" which has been constituted vide notification dated 25.04.1995 by the Ministry of Personnel, PG and Pensions, Government of India and that as per the All India Services (Joint Cadre) Rules, 1972, the Ministry of Home Affairs is the State with respect to the Union Territories including Delhi.

161. For the reasons stated supra, we are of the view that Entry 41 of State List providing for "State Public Services" and "State Public Service Commission" has no application to NCTD. Hence, there is no basis for the claim of the petitioner/GNCTD that the Legislative Assembly of NCTD has been conferred with the power to make laws in respect of "services" under clause (3) of Article 239AA.

162. Once it is not covered by the subjects that fall within the legislative competence of the Legislative Assembly of NCTD under clause (3) Article 239AA, we are unable to understand as to how the petitioner/GNCTD can find fault with the impugned notification dated 21.05.2015 directing the Lt.Governor, a delegatee of the President, to exercise the powers and discharge the functions of the Central Government in respect of matters connected with "services".

163. Hence, the impugned Notification dated 21.05.2015 directing that the Lt. Governor shall in respect of matters connected with 'services' exercise the powers and discharge the functions of the Central Government to the extent delegated to him from time to time by the President cannot be held to be illegal on any ground whatsoever.

Jurisdiction of ACB, GNCTD - Whether can be restricted only to the officials of GNCTD?

164. Under the impugned notifications dated 23.07.2014 and 21.05.2015, it was directed that the Anti-Corruption Branch Police Station which was earlier declared as the police station for offences under the PC Act, 1988 and the allied offences under Indian Penal Code, 1860 vide notification dated

08.11.1993 shall not take cognizance of offences against the officers and employees of the Central Government.

165. These two notifications are challenged by GNCTD/petitioner primarily on two grounds, namely, (i) since the power of ACB is traceable to Entries 1 and 2 of List III in respect of which the Legislative Assembly of NCTD has power to make laws under Article 239AA(3), the executive control remains with Government of NCT of Delhi only. Hence, the Notifications are illegal and unconstitutional; (ii) the impugned notifications which are aimed at creating a special class of offenders by providing that the jurisdiction of ACB is extended only to the officers and employees of GNCTD are arbitrary, illegal and violative of Articles 14 and 239AA of the Constitution.

166. Section 2(s) of the Code of Criminal Procedure, 1973 defines 'Police Station' as under:

> "Any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf."

167. In exercise of the powers so conferred by Section 2(s) of Cr.P.C. certain notifications were issued by the Administrator of Union Territory of Delhi from time to time even before the insertion of Article 239AA by Constitution (69th Amendment) Act, 1991 w.e.f. 01.02.1992. One such notification was Notification No.12(7)88-HP-II dated 01.08.1986 whereunder the Anti-Corruption Branch, Delhi Administration at Tis Hazari, Delhi was declared to be Police Station for (i) offences relating to illegal gratification under Sections 161, 162, 163, 164, 165 and 165-A, IPC; (ii) offences under the Prevention of Corruption Act, 1947; and (iii) attempts,

abatement and conspiracies in relation to or in connection with the aforesaid offence and any other offence committed in the course of the same transaction arising out of the same set of facts. The said notification was issued by the Administrator of the Union Territory of Delhi in pursuance of the powers delegated by the President vide notification dated 20.03.1974 in terms of Clause (1) of Article 239 of the Constitution. The said notification dated 20.03.1974 reads as under:-

"Ministry of Home Affairs
Notification
New Delhi, the 20th March, 1974

S.O.185(E) - In pursuance of clause (1) of Article 239 of the Constitution and in supersession of all previous orders on the subject, the President hereby directs that the Administrators of all Union Territories other than Arunachal Pradesh and Mizoram (whether known as Administrator, Chief Commissioner or Lieutenant Governor) shall subject to the control of the President and until further orders, exercise the powers and discharge the functions under the Code of Criminal Procedure, 1973 (2 of 1974) as mentioned in the schedule hereto annexed, subject to the condition that the Central Government may itself exercise all or any of those powers and discharge all or any of those functions, should it deem necessary to do so.

2. This notification shall have effect from 1st April, 1974."

168. The notification dated 01.08.1986 issued by the Administrator of Union Territory of Delhi may also be reproduced hereunder:-

"DELHI ADMINISTRATION, DELHI
HOME (POLICE-II) DEPARTMENT.
Dated 01.08.1986
NOTIFICATION

No.12(7)88-H.P.-II - In supersession of this Administrator's Notification No.F.3(25)/74-Home (P.II) dated 20.5.75 and in

exercise of the powers conferred by Section 2(s) of the Code of Criminal Procedure Code, 1973, (No.II of 1974) read with the Government of India, Ministry of Home Affairs Notification NO.U-11011/2/74-UTL(i) dated 20th March, 1974 the Administrator of the Union Territory of Delhi hereby declares that Anti - Corruption Branch, Delhi Administration, at Tis Hazari, Delhi to be Police Station for:-

(i) offences relating to illegal gratification under Section 161, 162, 163, 164, 165, 165-A IPC

(ii) Offences under the Prevention of Corruption Act, 1947 and

(iii) Attempts, abetment and conspiracies in relation to or in connection with the aforesaid offence and any other offence committed in the course of the same transaction arising out of the same set of facts.

and shall have jurisdiction all over the whole of the Union Territory of Delhi."

169. With effect from 09.09.1988, the Prevention of Corruption Act, 1988 has come into force thereby repealing the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952. By virtue of the said Act of 1988, Sections 161 to 165-A of IPC also stood omitted.

170. Consequent thereto, vide Notification dated 08.11.1993 issued by the Lt. Governor of NCT of Delhi in exercise of the powers conferred by Section 2(s) of the Code of Criminal Procedure, 1973, the earlier notification under Section 2(s) dated 01.08.1986 was superseded and the Anti-Corruption Branch of NCT of Delhi, Delhi Police Station was declared to be the Police Station for offences under the Prevention of Corruption Act, 1988 and that it shall have jurisdiction all over the National Capital Territory of Delhi. The notification dated 08.11.1993 reads as under:-

"NOTIFICATION

DELHI, THE 8TH NOVEMBER, 1993

No.F.1(21)/93-Home (P)/Estt./1751 - In supersession of this Govt. Notification No.F.12(7)/86-HP-II dated 1.8.86 and in

exercise of the powers conferred by Section 2(s) of the Code of Criminal Procedure Code, 1973 (No.II of 1974) read with the Government of India, Ministry of Home Affairs Notification No.-11011/2/74-UTL(i) dated 20.3.74, Lt. Governor of National Capital Territory of Delhi hereby declares that Anti-Corruption Branch of NCT of Delhi at Old Secretariat, Delhi Police Station for:-

(i) offence under the Prevention of Corruption Act (No.49), 1988 and;

(ii) Attempts, abetment and conspiracies in relation to or in connection with the above said offence and any other offence committed in the course of the same transaction arising out of the same set of facts.

It shall have jurisdiction all over the National Capital Territory of Delhi."

171. Thereafter, in pursuance of the powers conferred under Article 239(1) of the Constitution, the President has also issued another Notification dated 24.09.1998 empowering the Lt. Governor of NCTD to exercise the powers and discharge the functions of the Central Government in respect of matters connected with public order, police and services. The said Notification reads as under:

"MINISTRY OF HOME AFFAIRS
NOTIFICATION
New Delhi, the 24th September, 1998

S.O.853(E) - In pursuance of the powers conferred under clause (1) of Article 239 of the Constitution, the President hereby directs that subject to his control and until further orders, the Lieutenant Governor of the National Capital Territory of Delhi, shall in respect of matters connected with 'Public Order', 'Police' and 'Services' exercise the powers and discharge the functions of the Central Government, to the extent delegated from time to time to him by the President, in consultation with the Chief

Minister of the National Capital Territory of Delhi except in those cases where, for reasons to be recorded in writing, he does not consider it expedient to do so."

172. The above-mentioned Notification dated 08.11.1993 has been further amended by Notification dated 23.07.2014, which is one of the impugned Notifications in this petition. The said Notification dated 23.07.2014 may again be reproduced hereunder for ready reference:

"S.O.1896(E) - In pursuance of Section 21 of the General Clauses Act, 1897 (10 of 1897) read with the Government of India, Ministry of Home Affairs Notification Number S.O. 183(E), dated the 20th March, 1974 and having regard to the guidelines issued by the Central Vigilance Commission over the jurisdiction of the Central Bureau of Investigation and the Anti-Corruption Branch, Government of National Capital Territory of Delhi, the Central Government hereby declares that the notification number F.1/21/92-Home (P) Estt.1750, dated the 8th November, 1993 issued by the Lieutenant Governor of the National Capital Territory of Delhi shall be applicable to the officers and employees of that Government only and for that purpose amends the said notification, namely:-

In the said notification, after the existing paragraph, the following paragraph shall be inserted, namely:-

"2. **This notification shall apply to the officers and employees of the Government of National Capital Territory of Delhi**".

(emphasis supplied)

173. This has again been re-stated in the Notification dated 21.05.2015 as under:

"2. In the Notification number F. 1/21/92-Home (P) Estt. 1750 dated 8th November, 1993, as amended vide notification dated

23rd July, 2014 bearing No. 14036/4/2014-Delhi-I (Pt. File), for paragraph 2 the following paragraph shall be substituted, namely:—

"2. This notification shall only apply to officials and employees of the National Capital Territory of Delhi subject to the provisions contained in the article 239AA of the Constitution."

after paragraph 2 the following paragraph shall be inserted, namely:—

"3. The Anti-Corruption Branch Police Station shall not take any cognizance of offences against Officers, employees and functionaries of the Central Government".

174. As could be seen, by the impugned Notification dated 23.07.2014 there was a declaration to the effect that the earlier notification dated 08.11.1993 declaring the Anti-Corruption Branch of NCTD as Police Station for offences under the Prevention of Corruption Act, 1988 shall apply only to officers and employees of the Govt. of National Capital Territory of Delhi. By the other notification dated 21.05.2015 it was directed that the Anti-Corruption Branch Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government.

175. This has been impugned in the present petition contending *inter alia:*

(i) that the executive power of GNCTD extends to implementation of "criminal law" as provided by Entry-1, List-III of Schedule-7 and it includes all matters in IPC at the commencement of Constitution. That apart, by virtue of Entry-2 of List-III, the executive power of GNCTD includes enforcement of Criminal Procedure Code also;

(ii) that the supersession of the notification dated 24.09.1998 is violative of the basic structure of the Constitution since the devolution of powers is an irreversible process and cannot be undone whimsically or capriciously;

(iii) that even otherwise as per clause (7) of Article 239AA, the Parliament alone can make law for giving effect to the provisions of Article 239AA or for supplementing the same. Hence, the same cannot be done by a mere notification issued by the Central Government;

(iv) that since the power of ACB is traceable to Entries-1 and 2 of List-III, the impugned notification to the extent it seeks to restrict the powers of ACB by creating exclusive class of officers in respect of whom ACB is sought to be denuded of powers is *ultra vires* the Constitution;

(v) that the notification having deprived the democratically elected Government of power to assign duties and control the bureaucrats has adversely affected the Parliamentary governance as also administration;

176. On the other hand, it is contended on behalf of the Union of India that:

a) though it is true that the office of ACB has been declared as police station with jurisdiction throughout the NCT of Delhi, under the existing constitutional scheme, 'Police' is outside the purview of the Legislative Assembly of the NCTD and consequently ACB which has been designated as a Police Station is also outside the executive control of NCTD.

b) the mere fact that 'Anti-Corruption Branch' has been figured under the heading 'vigilance department' in the Allocation of Business Rules of Delhi, the same cannot be a ground to hold that the executive control remains with NCT of Delhi since the same would be contrary to the constitutional scheme.

c) It is clear from the language of Rule 3 of Allocation of Business Rules, 1993 that the allocation of departments as specified in the Schedule to the said Rules and the requirement that the Lt. Governor shall, in consultation with the Chief Minister, allocate the business of the Ministers of GNCTD is only in respect of the matters with respect to which the Council of Ministers is required under Article 239AA of the Constitution to aid and advice the Lt. Governor in the exercise of his functions.

d) Since functioning of police is specifically excluded from clause (3) of Article 239AA, mere mention of ACB under the heading 'vigilance department' in the Allocation of Business Rules, 1993 is of no consequence.

e) It is also evident from Rule 15 of the Rules and Procedure of Enquiry for the ACB, 1977 that the jurisdiction of ACB is limited to curbing corruption in various departments of the Delhi Administration and statutory bodies over which the Lt. Governor exercises control. Such power to take cognizance of offences committed within the limit of the Union Territory of Delhi under the Prevention of Corruption Act or allied offences under IPC would not expand the jurisdiction of ACB to the officials of Central Government.

f) Reliance has been placed upon Chapter - I of CBI (Crime) Manual, 2005 - Para-1.10 which has enumerated the special circumstances under which ACB may initiate complaints against Central Government employees to substantiate the contention that the jurisdiction of ACB is limited in nature.

177. As noticed above, the petitioner/GNCTD seeks to trace the executive power in respect of ACB as a corollary to the legislative competence conferred on the Legislative Assembly of NCTD under Article 239(3)(a) of the Constitution with respect to the matters enumerated in Entry II (Criminal Law) and Entry II (Criminal Procedure) of the Concurrent List. To substantiate the same, reliance has been placed upon ***A.C. Sharma vs. Delhi Administration;*** **(1973) 1 SCC 726**.

178. On the other hand, the contention on behalf of Union of India is that ACB of GNCTD having been designated as a police station is outside the legislative and executive control of NCTD since the matters relating to 'Police' covered by Entry 2 of List II are outside the purview of Legislative Assembly of NCTD under clause (3) of Article 239AA.

179. The power to declare a post or place to be a police station and to specify the local area in that behalf under Section 2(s) of Cr.PC is the executive power conferred on the State Government. Admittedly, Delhi is not a State but a Union Territory. Even after insertion of Article 239AA making special provisions with respect to Delhi and providing a Legislative Assembly to make laws for the NCTD, Delhi continues to be Union Territory. The fact that the Central Government continues to retain its primacy in administering the affairs of NCTD is evident from the opening

words of Clause (3) of Article 239-AA "subject to the provisions of the Constitution". The expression "subject to" conveys the idea of a provision yielding place to another provision to which it is made subject to. It may also mean conditional upon. Any provision subject to another provision is understood to incorporate the other provision and to exclude matters which fall under the said provision and to expand or provide for matters in addition to what is found in the said provision. Hence, a provision subject to the other provisions of any Act or law necessitates the combined reading of such provisions. This legal position with regard to administration of NCT of Delhi is also apparent from the following:

> "(a) 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 Entries 1, 2 and 18 are specifically within the domain of the Central Government in terms of Article 239AA(3)(a);
>
> (b) That Article 239AA(3)(b) provides that nothing contained in clause (3)(a) of Article 239AA shall derogate from the powers of the Parliament to make laws with respect to any matter for a Union Territory or part thereof;
>
> (c) The Legislative Assembly cannot pass any law repugnant to the provisions of a law made by the Parliament;
>
> (d) The Parliament is also empowered for enacting at any time in law with respect to the same matter, including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly; and
>
> (e) Even with respect to subjects where the Legislative Assembly is competent to legislate, in case of a difference of opinion between the LG and the Council of Ministers, the LG has to refer the same to the President of India; who, in turn, acts on the aid and advice of the Union Council of Ministers."

180. Prior to insertion of Article 239AA, the Administrators of all Union Territories including Delhi were directed to exercise the powers and discharge the functions under Criminal Procedure Code vide Notification dated 20.03.1974 issued under Article 239(1) of the Constitution. In pursuance thereof, vide Notification dated 01.08.1986, the Administrator of Union Territory of Delhi, in exercise of the powers conferred under Section 2(s) of Cr.P.C., declared ACB, Delhi Administration to be a police station for the offences under the Prevention of Corruption Act, 1947 and that it shall have jurisdiction all over the Union Territory of Delhi. The same has been reiterated vide Notification dated 08.11.1993 in view of repeal of 1947 Act and enactment of the Prevention of Corruption Act, 1988. Be it noted that the said Notification dated 08.11.1993 was issued by the Lt. Governor of NCTD after insertion of Article 239AA exercising the powers under Section 2(s) Cr.P.C. read with the Notification dated 20.03.1974 under which the Administrators of all Union Territories were empowered to exercise the functions under the Criminal Procedure Code.

181. As noticed earlier, by the impugned notifications dated 23.07.2014 and 21.05.2015, it was clarified that the said Notification dated 08.11.1993 shall apply to officers and employees of GNCTD only and that ACB of GNCTD shall not take cognizance of offences against officers and employees of the Central Government. It is pertinent to note that these two Notifications were issued by the Government of India, Ministry of Home Affairs since such power has been expressly retained by the Central Government in the Notification dated 20.03.1974 itself.

182. The specific case of the petitioner/GNCTD is that after insertion of Article 239AA providing for Legislative Assembly for NCTD, such power is

not available to the Central Government merely on the ground that NCTD is a Union Territory. It is contended that the exercise of executive control over ACB of GNCTD after insertion of Article 239AA shall be with Govt. of NCT of Delhi only as per the constitutional scheme.

183. It is contended by Shri Dayan Krishnan, the learned Senior Counsel for the petitioner/GNCTD that the power to deal with the offences under the Prevention of Corruption Act, 1988 which initially formed part of IPC (Sections 161 to 165A) is relatable to Entries 1 and 2 of List III (Concurrent List) in respect of which the Legislative Assembly of NCTD has power to make laws and consequently the executive power of GNCTD acting through ACB extends to enforce criminal law including the offences under the Prevention of Corruption Act within NCTD. Entries 1 and 2 of List III upon which the learned Senior Counsel has placed reliance read as under:

> "Entry 1. Criminal Law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
>
> Entry 2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution."

184. Contradicting the plea of the Union of India that the power to deal with ACB is traceable to Entry 2 (Police) of List II, it is contended by Shri Dayan Krishnan that an offence under the Prevention of Corruption Act has no bearing on Entry 2 (Police) of List II. It is also submitted that the investigation and prosecution of an offence under the Prevention of

Corruption Act are referable only to Entry 1 (Criminal Law) of List III. In support of his submission, he placed much reliance upon the decision of the Supreme Court in ***A.C. Sharma v. Delhi Administration*** (supra) and a judgment of this Court in Bail Application No.8 of 2015 dated 25.05.2015 titled ***Anil Kumar v. GNCT of Delhi***.

185. In ***A.C. Sharma v. Delhi Administration*** (supra), the appellant who was an employee of CPWD was convicted under Section 5(2) of the Prevention of Corruption Act. In the appeal against conviction, he questioned the validity of the investigation by the Anti-Corruption Department of Delhi Administration on the ground that the offences against a Central Government employee could be investigated by the Special Police Establishment set up under Delhi Special Police Establishment Act, 1946 only. In the said factual matrix, the following question was formulated in para 6 for consideration:

> "6. The short but important question with far-reaching effect, if the appellant's contention were to prevail, requiring our decision is, whether with the setting up of the Delhi Special Police Establishment, the Anti-Corruption Branch of the Delhi Police had been completely deprived of its power to investigate into the offences like the present or whether both the SPE and the Anti-Corruption Branch had power to investigate, it being a matter of internal administrative arrangement for the appropriate authorities to regulate the assignment of investigation of cases according to the exigencies of the situation."

186. The question was answered in para 13 as under:

> "13. …….. The scheme of this Act does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, powers and competence to

> investigate into offences under any other competent law. As a general rule, it would require clear and express language to effectively exclude as a matter of law the power of investigation of all the offences mentioned in this notification from the jurisdiction and competence of the regular police authorities conferred on them by Cr.P.C. and other laws and to vest this power exclusively in the D.S.P.E. The D.S.P.E. Act seems to be only permissive or empowering, intended merely to enable the D.S.P.E. also to investigate into the offences specified as contemplated by Section 3 without imparting any other law empowering the regular police authorities to investigate offences."

187. As could be seen, it was held in ***A.C. Sharma v. Delhi Administration*** (supra) that the provisions of Delhi Special Police Establishment Act, 1946 and the Prevention of Corruption Act, 1947 are intended to serve as supplementary provisions of law designed to function harmoniously in aid of each other and of the existing regular police investigating agencies for effectively achieving the object of successful investigation into the serious offences mentioned under Section 5A of the Prevention of Corruption Act, 1947. Thus, it was opined that the Special Police Enforcement would investigate into the offences as contemplated by Section 3 of Delhi Special Police Establishment Act, 1946 without imparting any other law empowering the regular police authorities to investigate offences.

188. The ratio laid down in ***A.C. Sharma v. Delhi Administration*** (supra), in our considered opinion, has no relevance for deciding the issues involved in the case on hand since it is not the case of the Union of India that ACB is not competent to investigate the offences against the officers/employees of the Central Government.

189. ***Anil Kumar v. GNCT of Delhi*** (supra) was decided by a learned Single Judge of this Court while considering the contention on behalf of the applicant in a Bail Application that ACB of GNCTD is incompetent to investigate the offence and to prosecute the applicant since he is not an employee or functionary of Government of NCT of Delhi. The applicant therein placed reliance on the Notifications dated 23.07.2014 and 21.05.2015 (notifications impugned in the petition before us). It was also contended that the investigation and prosecution of an offence under the Prevention of Corruption Act, 1947 are traceable to Entry 1 of List II, which is specifically excluded from the legislative competence of the Legislative Assembly of NCTD and as a corollary, no executive control can be exercised by the ACB of GNCTD. Rejecting the said contention the learned Single Judge held:

> "65. Thus, it appears to me, that the Union Government could not have issued the notification dated 23.07.2014 thereby seeking to restrict the executive authority of the GNCTD acting through its ACB to act on complaints under the PC Act only in respect of officers and employees of the GNCTD. By an executive fiat, the Union Government could not have exercised the executive power in respect of a matter falling within the legislative competence of the Legislative Assembly of the NCT, since the law made by Parliament, namely the GNCTD Act read with Article 239 AA put fetters on the executive authority of the President.
>
> 66. After the judgment was reserved in the present application, the Ministry of Home Affairs has issued a notification bearing No. SO 1368(E) on 21.05.2015 thereby further amending the notification dated 08.11.1993 and, inter alia, providing that "ACB police station shall not take any cognizance of the offences against officers, employees and functionaries of the

> Central Government". In my view, since the Union lacks the executive authority to act in respect of matters dealt with in Entries 1 & 2 of List III of the Seventh Schedule, the further executive fiat issued by the Union Government on 21.05.2015 is also suspect.
>
> 67. In the light of the aforesaid discussion, the submission of the applicant that the ACB of the GNCTD does not have the competence or jurisdiction to act on the complaint of the complainant is rejected. Since the applicant is a Delhi Police personnel serving the citizens in the NCTD and the functions of the Delhi Police personnel substantially and essentially relate to the affairs of the GNCTD, in my view, the ACB of the GNCTD has the jurisdiction to entertain and act on a complaint under the PC Act in respect of a Delhi Police officer or official, and to investigate and prosecute the crime. This would also be in consonance with the guidelines issued by the CVC as contained in para 1.5.2(b) set out herein above."

190. It is relevant to note that against the order in ***Anil Kumar v. GNCT of Delhi*** (supra), the Union of India preferred an appeal in the Supreme Court in which by order dated 29.05.2015, while granting leave, it was ordered as under:

> "However, insofar as observations made in para 66 are concerned, we find that they pertain to Notification bearing No.1368(E) issued on 21.5.2015 which was issued after the judgment was reserved by the High Court. Neither the Union of India was party who had issued this Notification nor was there any occasion to any hearing on the said Notification. We are also informed that this Notification has been challenged by the respondent No.1 by filing the Writ Petition in the High Court under Art. 226 of the Constitution.

> **We, therefore, clarify that the observations made therein were only tentative in nature without expressing any opinion on the validity of Notification dated 21.5.2015 and it would be open to the High Court to deal with the said petition independently without being influenced by any observations made in para 66, or for that matter in other paragraphs of the impugned order**."
>
> *(emphasis supplied)*

191. Thus, it is clear that ***Anil Kumar v. GNCT of Delhi*** (supra) cannot be treated as a precedent. At any rate, in the light of the above order it is open to this Court to examine independently as to whether the challenge to the impugned Notifications has been substantiated by the petitioner/GNCTD.

192. As already noticed, the GNCTD has executive control in terms of Article 239AA(4) in relation to those matters with respect to which the Legislative Assembly of NCTD has the power to make laws under Article 239AA(3) of Constitution.

193. It is sought to be contended by the petitioner/GNCTD that the power of ACB is traceable to Entries 1 and 2 of List III and, therefore, the impugned Notifications to the extent they seek to restrict the powers of ACB by excluding the employees and officers of the Central Government from the purview of ACB is *ultra vires* the Constitution. However, the Union of India would contend that the impugned Notifications are traceable to Entry 2 (Police) of List II which has been expressly excluded from the legislative competence of the Legislative Assembly of NCTD and consequently, no executive control can be claimed by the GNCTD.

194. We have already extracted in Para 183 what has been covered by Entry 1 and Entry 2 of List III (Criminal Law and Criminal Procedure).

195. Coming to Entry 2 of List-II i.e. "police" it reads:

> "2. Police (including railway and village police) subject to the provisions of entry 2A of List I."

196. The law is well settled that the three Lists in the Seventh Schedule to the Constitution are field of legislation and demarcate the legislative fields of the respective legislatures and do not confer legislative power as such. It has been explained in ***Welfare Association v. Ranjit P. Gohil;*** **(2003) 9 SCC 358**:

> "28. ……..The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three lists are fields of legislation. The Constitution-makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest-possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another list.
>
> 29. In every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and to find out if the

matter comes substantially within an item in the list. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power."

197. The Black's Law Dictionary defines the word 'police' as under:-

"the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime."

198. Similarly, the words 'criminal law' and 'criminal procedure' have been defined in the Black's Law Dictionary as under:-

criminal law - "the body of law defining offences against the community at large, regulating how suspects are investigated, charged and tried and establishing punishments for convicted offenders".

criminal procedure - "the rules governing the mechanisms under which crimes are investigated, prosecuted, adjudicated and punished. It includes the protection of accused person's constitutional rights".

199. The interpretation of the "Criminal Law" covered by Entry 1 of List III fell for consideration in ***Kartar Singh vs. State of Punjab;*** **(1994) 3 SCC 569**. While observing that Entry 1 of List III is couched in very wide terms, it is further explained:

"445. …….. A legislation by Union Parliament to be valid under this entry must satisfy two requirements; one, that it must relate to criminal law and the offence should not be such

as has been or could be provided against laws with respect to any of the matters specified in List II….."

200. However, having given our thoughtful consideration to the controversy involved in the present case, we are unable to hold that the impugned notifications have been issued by the Central Government in exercise of the power traceable to Entry 1 (Criminal Law) of List III.

201. Admittedly, the directions under the impugned notifications have been issued in accordance with the provisions contained in Article 239 and Article 239AA(3)(a) of the Constitution by the President. One of the directions, under challenge in this petition, is that "the Anti-Corruption Branch Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government". It is apparent that it is a direction to the Police Station but not a declaration under Section 2(s) of Cr.P.C. Both the Notifications have been issued by the Ministry of Home Affairs (MHA), Union of India and as we could see the purport of both the Notifications is a simple direction to ACB Police Station that it shall not take cognizance of offences against the officers/employees of the Central Government. The said direction having been issued to a Police Station with regard to its functioning, we find force in the submission of the learned ASG that the power to issue the same is traceable to Entry 2 (Police) of List II. Since the said entry has been expressly exempted from the legislative competence of the Legislative Assembly of NCTD under Article 239AA(3)(a) of the Constitution, MHA is well within its power to issue such direction.

202. In fact, the Rules and Procedure of Inquiry for ACB dated 17.02.1977 make it clear that the power to initiate action against officers of the Central

Government has not been conferred upon the ACB. In terms of the powers delegated under the Notification dated 20.03.1974, the Administrator of Delhi notified the said Rules dated 17.02.1977 called Rules for the Anti-Corruption Branch of Delhi Administration. The said Rules which prescribed the procedure for inquiries and investigation by the Anti-Corruption Branch, Delhi, clearly spelt out the jurisdiction of the ACB as under:

> "1. The jurisdiction of the Anti-Corruption Branch of Delhi Administration extends throughout the Union Territory of Delhi. The Anti-Corruption Branch is primarily concerned with the prevalence of Corruption and abuse of official authority amongst the officials of the various departments of Delhi Administrator as well as other statutory bodies over which the Lt. Governor (Administrator) exercises control. The function of the Anti-Corruption Branch do not take away the jurisdiction or the responsibility of the Delhi Police in this respect. However, the Anti-Corruption Branch has been placed under the Administrative Control of the Vigilance Secretary to the Delhi Administration with a view to achieve more objectively and better coordination as the work of the Anti-Corruption Branch involves employees of various departments. The Anti-Corruption Branch can however take cognizance of any offence committed within the limits of Union Territory of Delhi under the P.O.C. Act or allied offences under the IPC.
>
> 2. **The officers posted in the Anti-Corruption Branch exercise police powers and as such all the rules and regulations applicable to the Delhi Police are also applicable to the Anti-Corruption Branch.**"
>
> *(emphasis supplied)*

203. Rule 3(c) of the said Rules makes it clear that the Anti-Corruption Branch conducts inquiries and investigation into the categories of offences

specified therein and that it will not undertake to conduct departmental inquiries against employees of other Departments. Rule 15 further provides that ordinarily no inquiries should be made by ACB into the allegations relating to Central Government servants or private individuals, except for special reasons.

204. We also found force in the submission of the learned ASG, on the basis of para 1.10 and para 1.11 of CBI (Crime) Manual, 2005, that the jurisdiction of ACB to proceed against the employees/officers of the Central Government is limited in nature.

205. Thus, it is evident that the jurisdiction of ACB is limited to curbing corruption in various departments of the Delhi Administration as well as other statutory bodies over which the Lt. Governor exercises control. In other words, the officers and employees of the Central Government have not been brought within the purview of ACB, GNCTD. The mere fact that under the Notifications dated 01.08.1986 and 08.11.1993, it was declared that ACB can take cognizance of the offences committed within the limits of the NCTD does not amount to expanding the jurisdiction of ACB to proceed against the officers/employees of the Central Government.

206. For the aforesaid reasons, we are of the opinion that the impugned Notifications dated 23.07.2014 and 21.05.2015 have merely reiterated what has been provided under the Rules for the Anti-Corruption Branch of Delhi Administration dated 17.02.1977.

207. Hence, the contention that the directions issued under the Notifications are in relation to or traceable to the exercise of powers under Entry 1 (Criminal Law) of List III is untenable. According to us, the argument of encroachment upon the legislative competence can be sustained

when the legislation in question deals with the same matter and not with distinct and separate matter though of a cognate and allied character. In the facts and circumstances of the case on hand, we are clear in our mind that the directions under the impugned Notifications are only relatable to the power traceable to 'Police' covered by Entry 2 of List II in respect of which the Legislative Assembly of NCTD has no power to make laws and as a corollary GNCTD cannot exercise executive control.

208. Accordingly, we hold that the direction in the impugned Notifications that ACB Police Station shall not take cognizance of offences against the officers and employees of the Central Government is neither illegal nor unconstitutional.

W.P.(C) No.7887/2015 (Rajendar Prashad Vs. Govt. of NCT of Delhi)

W.P.(C) No.8382/2015 (M.A.Usmani Vs. Union of India & Ors.)

W.P.(C) No.8867/2015 (Union of India & Anr. Vs. Govt. of NCT of Delhi & Anr.)

209. Notification No.F.5/DUV/Tpt./4/7/2015/9386-9393 dated 11.08.2015 issued by the Directorate of Vigilance, GNCTD is under challenge in all these writ petitions. Hence, we proceed to consider all the three petitions together.

210. The impugned Notification has been issued by the Government of NCT of Delhi in exercise of the powers conferred by Section 3 of the Commission of Inquiry Act, 1952 thereby appointing the Commission of Inquiry consisting of Justice S.N. Aggarwal, retired Judge of High Court for inquiring into all aspects of the award of work related to grant of CNG

Fitness Certificates in the Transport Department, GNCTD and subsequent investigations and developments in the case.

211. The petitioner in W.P.(C) No.7887/2015, Mr.Rajendar Prashad, claims to have worked in the Transport Department of Government of NCTD. Similarly, the petitioner in W.P.(C) No.8382/2015, Mr.M.A.Usmani, claims to be an erstwhile officer of DANICS cadre who had worked as Deputy Commissioner, Transport during 2007 and retired from service on 31.12.2009.

212. W.P.(C) No.8867/2015 has been filed by the Union of India, Ministry of Home Affairs which claims to be the "appropriate Government" under Section 2(a) of the Commission of Inquiry Act, 1952. Apart from the notification dated 11.08.2015 the consequential orders passed by GNCTD dated 22.08.2015 and 24.08.2015 have also been challenged in W.P.(C) No.8867/2015.

213. The impugned notification dated 11.08.2015 reads as under:

> " No.F.5/DOV/Tpt./4/7/2015/9386-9393 Dated:11/08/2015
>
> NOTIFICATION
>
> Whereas, the Government of NCT of Delhi has decided to constitute an Independent Commission of Inquiry under the Commissions of Inquiry Act, 1952 for inquiring into all aspects of the award of work related to CNG Fitness Certificate(s) in the Transport Department, Govt. of NCT of Delhi and subsequent investigations and developments in the case.
>
> Now, therefore, in exercise of the powers conferred by Section-3 of the Commissions of Inquiry Act, 1952, the Government of NCT of Delhi hereby appoints the Commission of Inquiry consisting of Justice S.N.Aggarwal, Retired Judge, Delhi and Madhya Pradesh High Court.

The terms of reference of the Commission shall be as under:-

i) To look into all aspects of the award of contract by the Transport Department, Govt. of NCT of Delhi for inspection and certification of commercial vehicles for fitness to M/s ESP India Pvt. Ltd. and to point out irregularities, if any.

ii) To identify the persons responsible for the irregularities identified.

iii) To look into the circumstances surrounding denial of prosecution sanction against persons responsible for the irregularities, if it is now found that the case for prosecution is actually made out against them.

iv) To recommend action against the persons responsible for these irregularities, if any, and to suggest future course of action in this case.

v) To suggest remedial action at institutional level to avoid such irregularities, if any, in future.

vi) To suggest measures for recovery of amount illegally accrued by the vendor by way of this contract, if any.

vii) Any other matter that may be referred to the Commission.

Having regard to the nature of inquiry to be made by the Commission and other circumstances of the case, all the provisions of sub-section-2, sub-section-3, sub-section-4, sub-section-5 and sub-section-5A of section-5 of the said Commissions of Inquiry Act, 1952 shall be applicable to the Commission, and the Govt. of NCT of Delhi in exercise of the powers conferred under sub-section-1 of section-5 of the Commissions of Inquiry Act, 1952 hereby directs that all provisions of sub-sections-2,3,4,5 and 5A of that section shall apply to the Commission.

The Commission shall submit its report as soon as possible but not later than three months from the date of its first sitting.

Sd/-
K.S.Meena
Dy.Secretary, Vigilance"

214. The contention in all the three writ petitions is that the impugned notification passed by the GNCTD through Directorate of Vigilance without seeking approval of the Lt. Governor of NCTD is without jurisdiction, arbitrary and unconstitutional.

215. The material available on record shows that FIR No.21/2012 dated 17.12.2012 was registered by the Anti-Corruption Branch, GNCTD under Section 13 of the Prevention of Corruption Act, 1988 read with Sections 409, 420, 120B and 34 of Indian Penal Code, 1860 alleging cheating, criminal breach of trust, fraud, embezzlement of government funds, corruption etc. in allotment of contract of I&C test for commercial vehicles for grant of fitness certificate and related issues. Apart from the company to which the contract was granted, some of the officials of the Transport Department, GNCTD were also named as accused. The petitioner in W.P.(C) No.8867/2015 is a person named in the said FIR and he was arrested and was in custody for 58 days. After investigation, it was concluded by the ACB that there was evidence against the officials of the Transport Department and sanction was sought for prosecution of the erring officials named therein. Permission was also sought to examine the Chief Secretaries at the relevant point of time. However, sanction was declined by the Lt. Governor holding that no case was made out against any of the officers. Similarly, the permission to examine the Chief Secretaries was also rejected.

216. On 07.01.2014, PE-03(A)/2014/CBI/ACB/DLI was registered with CBI against unknown officials of GNCTD on the basis of source information alleging that the sanction for prosecution sought by ACB, GNCTD in a criminal case through Directorate of Vigilance of GNCTD was

declined on the basis of certain fake and fabricated documents purportedly sent by one of the accused directly to the Directorate of Vigilance without knowledge of the investigating agency of GNCTD. After due inquiry, CBI found that there were certain lapses/irregularities on the part of the then Chief Secretary/CVO, Director (Vigilance) and Additional Secretary (Vigilance) and accordingly, a Note was sent to the Ministry of Home Affairs, Government of India for taking appropriate action against the three officials. That apart, by letter dated 06.09.2014, the Director (Vigilance) was also requested to direct the ACB of GNCTD to look into the issue as to any offence punishable under Section 218 of Indian Penal Code, 1860 had also been made out.

217. While the issue was pending before the Ministry of Home Affairs, Central Government a resolution was passed by the Cabinet of Government of NCT of Delhi on 11.08.2015 to appoint a Commission of Inquiry to inquire into all aspects of award of work related to CNG fitness certificates in the Transport Department, GNCTD. A Notification to that effect was issued on 11.08.2015 itself. However, admittedly the decision of the Cabinet was not communicated to the Lt. Governor and his views/concurrence was not obtained before issuing the impugned notification.

218. The contention of the petitioners is that having regard to the fact that the Lt. Governor had earlier refused sanction for prosecuting the officials named in the report of ACB, the issue cannot be re-opened and the Commission of Inquiry cannot be appointed without placing the decision of the Cabinet before the Lt. Governor and without seeking his views/concurrence. Thus, it is contended that the impugned Notification is

without jurisdiction, apart from being in violation of the provisions of clause (4) of Article 239AA of the Constitution.

219. The petitions are contested by the GNCTD/respondent contending that the prior approval of Lt. Governor is not required since the appointment of Commission of Inquiry does not fall within the ambit of the three reserved subjects under Article 239AA(3)(a) nor within the scope of the matters in respect of which Lt. Governor has been given discretion under Section 41 of the GNCTD Act, 1991.

220. It is also contended by GNCTD that as per Rule 23 of the Transaction of Business Rules, 1993 made by the President of India in exercise of the powers conferred under Section 44 of GNCTD Act, 1991, the approval of Lt. Governor is required only in respect of the matters specified therein. 'Constitution of a Commission of Inquiry' is not one of such matters and that Rules 7 and 8 of the Transaction of Business of Government of NCT of Delhi Rules, 1993 read with Item No.13 of the Schedule to the said Rules make it clear that no prior consent of the Lt. Governor is required.

221. It is pleaded by the Union of India that the Commission of Inquiry may be appointed under Section 3 of the Commission of Inquiry Act, 1952 by the 'appropriate Government' as defined under Section 2(a). Since the terms 'the Central Government', 'State Government' as appearing in Section 2(a) of the Commission of Inquiry Act have not been defined under the said Act, the definitions provided in Section 3(8) and Section 3(60) of the General Clauses Act, 1897 have to be applied in which event, in relation to administration of NCTD, the 'appropriate Government' shall be the Central Government or the Lt.Governor who is the delegatee of the President vide Notification dated 20.08.1966.

222. We have heard Shri Sanjay Jain, the learned ASG who appeared for the petitioner/Union of India in W.P.(C) No.8867/2015 and Shri Siddharth Luthra, the learned Senior Advocate who appeared for the petitioner in W.P.(C) No.8382/2015 and Shri Abhik Kumar and Shri Vivek Singh, the learned counsels for the petitioner in W.P.(C) No.7887/2015. We have also heard Ms. Indira Jaising, Shri Rajiv Dutta and Shri H.S. Phoolka, the learned Senior Advocates who appeared on behalf of the GNCTD/respondent in W.P.(C) Nos.8867/2015, 8382/2015 and 7887/2015 respectively.

223. Drawing our attention to the definition of "appropriate Government" under Section 2(a) of the Commission of Inquiry Act read with the definitions of "Central Government" and "State Government" under Section 3(8) and Section 3(60) respectively of the General Clauses Act, 1897 and Notification dated 20.08.1966 whereunder the powers have been delegated to the Administrator of every Union Territory to exercise the powers of a State Government under the Commission of Enquiry Act within a Union Territory, it is submitted by the learned ASG that the appointment of a Commission of Enquiry in relation to administration of Delhi, which continues to be a Union Territory, has to be made by the Lt.Governor alone but not by GNCTD.

224. Placing reliance upon ***State v. Navjot Sandhu;*** **(2005) 11 SCC 600**, it is further submitted by the learned ASG that the notifications issued by the Union of India delegating powers to the Lt.Governor would continue to remain valid and operative notwithstanding the enactment of GNCTD Act, 1991.

225. On the other hand, it is contended by Ms.Indira Jaising, the learned Senior Counsel appearing for GNCTD that GNCTD alone has the power to

appoint a Commission of Inquiry and not the Lt. Governor since the subject of inquiry falls under Entry 45 of Concurrent List read with Entries 6, 25 and 26 of State List and Entries 1, 17, 17A, 17B and 35 of List III. It is pointed out by the learned Senior Counsel that Entry 45 of the Concurrent List deals with "Inquiries and Statistics for the purposes of any of the matters specified in List II or List III and List II includes Entry 6 (public health and sanitation and dispensaries), Entry 25 (Gas and Gas works) and Entry 26 (Trade and Commerce within the State), whereas List-III includes Entry 1 (Criminal Law), Entry 7 (Contracts including Partnership Agency), Entry 17A (Forest), Entry 17B (Protection of Wild Animals and Birds) and Entry 35 (Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied). The learned Senior Counsel submitted that the power to make laws in respect of all the said matters lies with the Legislative Assembly of NCTD under clause (3)(a) of Article 239AA and consequently GNCTD alone is competent to appoint the Commission of Inquiry in exercise of executive functions under clause (4) of Article 239AA.

226. In support of the contention that Entry 45 of the Concurrent List confers the legislative power to constitute a Commission of Inquiry, the learned Senior Counsel placed reliance upon ***State of Karnataka v. Union of India***; **(1977) 4 SCC 608** and ***State of Karnataka v. Ranganatha Reddy***; **(1977) 4 SCC 471** wherein it was held that the Central Government had the legislative power to constitute a Commission of Inquiry under Entry 45 of List-III. The learned Senior Counsel has also placed much reliance upon ***State of Maharashtra v. Bharat Shanti Lal Shah;*** **(2008) 13 SCC 5** and ***Union of India v. Shah Goverdhan L. Kabra Teachers' College;*** **(2002) 8**

SCC 228 to substantiate the plea that "Entries" in the Lists of Seventh Schedule must receive a broad interpretation.

227. Even as per the provisions of the Commission of Inquiry Act, 1952, according to the learned Senior Counsel, the power to appoint a Commission of Inquiry lies with GNCTD only since the term "appropriate Government" under Section 3 must be read as "Government of NCT of Delhi" as defined under Rule 2(g) of the Transaction of Business Rules framed by the President in exercise of the powers conferred by Section 44 of the GNCTD Act, 1991. It is also contended that the powers conferred under Article 239AA of the Constitution and the GNCTD Act, 1991 cannot be taken away by virtue of the definition of "appropriate Government" under the Commission of Inquiry Act.

228. Referring to the opening words of Section 2 of Commission of Inquiry Act "unless the context otherwise requires", it is sought to be contended by the learned Senior Counsel that the term "State Government" employed in Section 2(a)(ii) has to be read along with Section 3 (58) of General Clauses Act, 1897 which provides that the term "State" includes Union Territories and consequently, "State Government" must be read to mean Government of NCT of Delhi in the context of the present case.

229. It is also vehemently contended by the learned Senior Counsel that Article 239AA of the Constitution is a self-contained code and the same shall prevail over the general provisions with reference to the powers of an Administrator of a Union Territory. According to the learned Senior Counsel, by virtue of the special provisions of Article 239AA, the powers of the Lt.Governor are circumscribed by the provisions of GNCTD Act made by the Parliament and the Transaction of Business Rules and Allocation of

Business Rules made by President and the same cannot be ignored while interpreting the provisions of Commission of Inquiry Act.

230. Section 3 of the Commission of Inquiry Act, 1952 which provides for appointment of a Commission reads as under:

> "3. Appointment of Commission. (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State by notification in the official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:
>
> Provided that where any such Commission has been appointed to inquire into any matter-
>
> (a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;
>
> (b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States."

231. The expression "appropriate Government" defined under Section 2(a) of the Commission of Inquiry Act, 1952 reads as under:

"(a) "appropriate Government" means-

(i) the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution ; and

(ii) the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution……"

232. The definitions of 'Central Government' and 'State Government' under the General Clauses Act, 1897 relied upon by the learned ASG to substantiate the plea that the 'appropriate government' in respect of the Union Territories shall be the Central Government may be reproduced hereunder for ready reference:

"**Section 3(8)** - "Central Government shall, -

a) In relation to anything done before the commencement of the Constitution, mean the Governor General or the Governor General in Council, as the case may be, and shall include,-

i. in relation to functions entrusted under sub-section (1) of Section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section, and

ii. in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act, and

b) **in relation to anything done or to be done after the commencement of the Constitution**, mean the President, and shall include-

i. in relation to functions entrusted under clause (1) of article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause,

ii. in relation to the administration of a Part C State (before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be, and

iii. **in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution.**"

"**Section 3(60)** - "State Government", -

(a) As respects anything done before the commencement of the Constitution, shall mean, in Part A State, the Provincial Government of the corresponding Province, in Part B State, the authority or person authorised at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government;

(b) As respects anything done (after the commencement of the Constitution and before the commencement of the Constitution Seventh Amendment) Act, 1956, shall

mean, in a Part A State, the Governor, in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;

(c) As respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, **and in a Union territory, the Central Government**. And shall, in relation to functions entrusted under article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article."

(emphasis supplied)

233. Thus, it is contended on behalf of the writ petitioners that the 'appropriate government' within the meaning of Section 2(a) of the Commission of Inquiry Act can only be the Lt. Governor of NCT of Delhi for the purpose of appointment of a Commission of Inquiry into any matter in relation to administration of Delhi.

234. Having given our thoughtful consideration to the rival submissions made on behalf of both the parties, it appears to us that the contention of GNCTD that on a combined reading of Section 2(a)(ii) of the Commission of Inquiry Act and Section 3(58) of the General Clauses Act, the expression "appropriate Government" under Section 3 of the Commission of Inquiry Act shall be read as the Union Territory, is far fetching. In the light of the clear and unambiguous definitions of the Central Government and State Government under Section 3(8) and Section 3(60) respectively of the General Clauses Act, 1897, we are of the view that the expression "appropriate Government" in respect of Union Territories shall be the Central Government only.

235. Therefore, we agree with the submission of the learned ASG that the Lt. Governor acting through the Central Government alone is competent to appoint a Commission of Inquiry in relation to administration of Delhi which continues to be a Union Territory even after insertion of Article 239AA to the Constitution.

236. Even assuming that the GNCTD is justified in claiming that GNCTD shall be the "appropriate Government" within the definition of Section 2(a)(ii) of Commission of Inquiry Act and that by virtue of Entry 45 of List III (Concurrent List) the power to make laws in respect of the said subject has been conferred on the Legislative Assembly of NCTD and as a corollary the Government of NCT of Delhi has the executive control over all the matters relating to the said Entry, we are of the view that the impugned Notification dated 11.08.2015 under which the GNCTD through Directorate of Vigilance appointed the Commission of Inquiry cannot be sustained since the said order had been admittedly passed without seeking the views/concurrence of the Lt. Governor.

237. After considering in detail the purport of Article 239AA of the Constitution and the provisions of GNCTD Act, 1991 and the Rules made thereunder, we have concluded in Para 116 (supra) that every decision taken by the Council of Ministers shall be communicated to the Lt. Governor for his views and that the orders in terms of the decision of the Council of Ministers can be issued only where no reference to the Central Government is required as provided in Chapter V of the Transaction of Business Rules. We have also held that it is mandatory under the constitutional scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws have

been conferred on the Legislative Assembly of NCTD under clause (3)(a) of Article 239AA of the Constitution and an order thereon can be issued only where the Lt. Governor does not take a different view.

238. It is not disputed before us that the decision of the Council of Ministers to appoint the Commission of Inquiry was not communicated at all to the Lt. Governor and that the impugned Notification dated 11.08.2015 was issued merely on the basis of the Cabinet decision.

239. In view of our conclusion in Paras 107, 108, 116 and 117 (supra), the procedure followed by the GNCTD in issuing the impugned notification is *ex facie* illegal being in violation of the constitutional scheme. Hence, the impugned Notification dated 11.08.2015 shall stand set aside and W.P.(C) Nos.7887/2015, 8382/2015 and 8867/2015 are allowed.

W.P.(C) No.8190/2015 (Sandeep Tiwari Vs. Govt. of NCT of Delhi & Ors.)

240. This petition by way of Public Interest Litigation has been filed with a prayer to quash the letter dated 18.06.2015 issued by the Deputy Secretary, Department of Power, GNCTD and to declare the appointment of nominee Directors made thereunder for DISCOMs, namely, Tata Power Delhi Distribution Ltd., BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. as illegal, null and void. The letter dated 18.06.2015 reads as under:

"**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI**
(DEPARTMENT OF POWER)
DELHI SECRETARIAT, 8TH LEVEL, B-WING,
NEW DELHI - 110002

No.F.11(129)/2002/Power/Vol.II/1900 Dated: June 18,2015

To,
The Company Secretary,
Delhi Power Company Limited,
Shakti Sadan, Kotla Road,
New Delhi - 110002

Sub.: Nomination of Directors on Board of Distribution Companies.

Sir,

With reference to above mentioned subject, I am directed to convey the approval of Hon'ble the Chief Minister of Delhi for appointment of the following as Nominee Directors of Govt. of NCT of Delhi on Board of BSES Rajdhani Power Limited, BSES Yamuna Power Limited, Tata Power Delhi Distribution Limited as under:-

Sl. No.	**DISCOM**	**Name of existing DPCL Nominees as Directors of DISCOMS**
1.	Tata Power Delhi Distribution Limited	1. Sh.Sanjeev Singh, MD, DTL
		2. Sh.Anjani Kumar Sharma,
		3. Sh.Sudhir Verma
		4. Sh.Prem Prakash, GM (Tech.) DTL
		5. Sh.Arun Kumar Garg, CA
2.	BSES Rajdhani Power Limite	1. Sh.Sanjeev Singh, MD, DTL
		2. Sh.Anjani Kumar Sharma,
		3. Sh.Sudhir Verma
		4. Sh.Prem Prakash, GM (Tech.) DTL
3.	BSES Yamuna Power Limited	1. Sh.Sanjeev Singh, MD, DTL
		2. Sh.Anjani Kumar Sharma,
		3. Sh.Sudhir Verma
		4. Sh.Prem Prakash, GM (Tech.) DTL

You are requested to convey the approval to the concerned Distribution companies for further necessary action.

Yours Faithfully,

Sd/-
Dy.Secretary (Power)"

241. The following are the averments in the writ petition:

(i) Delhi Vidyut Board (DVB) has been wound up on enactment of Delhi Electricity Reforms Act, 2000 which came into force on 03.11.2000. In terms of Section 15 of the said Act, all properties, rights and liabilities of DVB stood vested in Delhi Government. Delhi Government was further empowered to transfer the properties so vested in it to joint venture companies formed under Section 14 in accordance with a transfer scheme prepared therefor. Accordingly, separate companies were incorporated for generation, transmission and distribution of electricity. For the purpose of distribution and supply of electricity, Delhi was trifurcated in three sectors and, therefore, three distribution companies (DISCOMs) were incorporated for each of the sectors and further, a holding company, namely, Delhi Power Company Ltd. (DPCL) was incorporated which held the entire share capital of the three DISCOMs. In terms of the provisions of Delhi Electricity Reform (Transfer Scheme) Rules, 2001, the DISCOMs were converted into joint venture companies by a process of disinvestment by virtue of which GNCTD holds 49% shareholding in each of the DISCOMs through Delhi Power Company Ltd. whereas Reliance Energy and Tata Power acquired the balance 51% shareholding. By virtue of 49% shares held by the Delhi Government through DPCL, Delhi Government is entitled to appoint 4 out of 9 Directors on the Board of Directors of the three DISCOMs.

(ii) As per Article 239AA(3) of the Constitution, the Legislative Assembly of NCT of Delhi is prohibited from making laws in relation to the matters specified in Entries 1, 2 and 18 of List II, i.e. 'public order', 'police' and 'land' and the said matters exclusively fall within the domain of Government of India.

(iii) However, Lt. Governor has been conferred with a wide discretion by virtue of Section 41 of GNCTD Act, 1991 even with regard to the matters which fall outside the purview of the powers conferred on the Legislative Assembly of GNCTD. In the light of the said discretionary power, the appointment of the Government nominees on the Board of Directors of the DISCOMs can be made only with the prior approval/consent of the Lt. Governor.

(iv) Since the appointment of nominee Directors has been made without such prior approval of the Lt. Governor, the appointment is liable to be set aside.

242. While seeking to justify the impugned order, it is submitted by the learned Senior Counsel appearing for GNCTD/respondent, Sh.Gurukrishna Kumar that the appointment of the Directors on the Boards of DISCOMs is made on the basis of the nomination by DPCL and not pursuant to the recommendations of GNCTD. It is also submitted that while making the recommendations to DPCL, the GNCTD was merely exercising its right as the 100% shareholder of DPCL and in turn DPCL was exercising its rights under the shareholding agreement with the DISCOMs. It is contended that the writ petitioner who is neither a shareholder nor a creditor of DPCL has no right to challenge the decision of DPCL under the provisions of the Companies Act, 2013 much less by way of writ petition under Article 226 of

the Constitution. For the said purpose, the learned Senior Counsel placed reliance upon ***Life Insurance Corporation of India v. Escorts Ltd. & Ors;*** **(1986) 1 SCC 264**.

243. On merits, it is contended that under the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, DISCOMs became wholly owned subsidiaries of DPCL. As per the Terms and Conditions of Shareholder Agreements between the DPCL and DISCOMs, GNCTD has been enabled to recommend to the Board of DPCL for nomination of Directors which the Board of DPCL may either accept or reject. The power to make recommendations is neither a substantive right nor an administrative function but the GNCTD had merely exercised the liberty being 100% shareholder of DPCL. Even assuming that such liberty to make recommendations is substantive, the same does not pertain to a reserved subject under Article 239AA. Therefore, Lt. Governor has no role to play since Lt. Governor holds no share in DPCL. Hence, GNCTD is not under an obligation to seek the approval of Lt. Governor as sought to be contended by the petitioner.

244. Placing reliance upon Rule 7 to 10 of Transaction of Business Rules, 1993, it is further contended that the Chief Minister and the Council of Ministers have the prerogative to take all decisions and such decision is only required to be communicated to the Lt. Governor for the purpose of publication and, in turn, to ensure compliance with the requirement of publication under Section 44(3) of the GNCTD Act and Rule 4(2) of the Transaction of Business Rules, 1993. Reliance has also been placed upon Rule 14 to substantiate the contention that a decision taken by the Council of Ministers in respect of all proposals shall only be communicated to the

Lt. Governor and shall be implemented solely by the Minister pursuant to such communication.

245. According to the learned Senior Counsel, the role of the Lt. Governor comes into play only in two circumstances, i.e., (i) where it pertains to his exclusive executive functions under Rule 45 of the Transaction of Business Rules, i.e., in relation to public order, police and land in respect of which also the Lt. Governor has to exercise the powers in consultation with the Chief Minister, and (ii) where it is a subject covered under Rule 23 of the Transaction of Business Rules, 1993 which provides the matters where the file has to be necessarily sent to the Lt. Governor. Thus, according to the learned Senior Counsel, a reference needs to be made to the Lt. Governor under Rule 45 only in respect of the matters relating to public order, police and land and the view of the Lt. Governor is required to be sought only in those matters. So far as the matters which are not covered under Rule 23 are concerned, it is contended that the Council of Ministers are required only to inform the Lt. Governor.

246. Thus, it is sought to be contended that even assuming the writ petition is maintainable, the relief as prayed for cannot be granted since 'electricity' is not a reserved subject under Clause (3)(a) of Article 239AA of the Constitution and consequently, GNCTD is not obligated to seek approval or opinion of the Lt. Governor.

247. Having analysed the Constitutional Scheme with respect to Delhi, in particular, Clauses (3) and (4) of Article 239AA of the Constitution read with the provisions of GNCTD Act, 1991 and the Transaction of Business Rules, we have already held in Paras 107, 108, 116 and 117 (supra) that it is mandatory under the Constitutional Scheme to communicate the decision of

the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCTD and an order thereon can be issued only where the Lt. Governor does not take a different view.

248. Therefore, we are unable to accept the contention of Sh. Gurukrishna Kumar, the learned Senior Counsel that GNCTD is not obligated to seek approval or opinion of the Lt. Governor and that the appointment of the Nominee Directors of GNCTD on Board of DISCOMs was rightly made with the approval of the Chief Minister of Delhi.

249. We do not find substance even in the contention that the power to make recommendations having been exercised by the Government of NCT of Delhi in the capacity of 100% shareholder of DPCL, there is no need to seek the views/concurrence of the Lt. Governor. In our considered opinion, the recommendation of names to DPCL for nomination of Directors is an executive function and the same has to be exercised in terms of Clause (4) of Article 239AA of the Constitution. The contention that the Lt. Governor holds no share in DPCL and that GNCTD is the 100% shareholder is unfounded and misconceived. Admittedly, the exercise of the said executive function is traceable to the subject 'electricity' which is a Concurrent List subject vide Entry 38 of List III. Though it is not an exempted matter under Clause (3)(a) of Article 239AA and thus the Legislative Assembly of NCTD is competent to make laws and as a sequel the Government of NCT of Delhi can exercise the executive control, as expressed above, the decision of the Council of Ministers can be enforceable only after communicating the same to the Lt. Governor and only where the Lt. Governor does not opt for

referring the matter to the Central Government in terms of provisions of Chapter V of the Transaction of Business Rules.

250. Since no such procedure was followed before recommending the Nominee Directors, the appointment of the Nominee Directors to DISCOMs which has been impugned in the present writ petition is illegal and without jurisdiction.

251. In the result, the impugned appointment is hereby declared as illegal and the writ petition shall stand allowed.

W.P.(C) No.9164/2015 (Sandeep Tiwari Vs. Govt. of NCT of Delhi & Ors.)

252. This petition by way of Public Interest Litigation has been filed with a prayer to quash the order dated 12.06.2015 passed by GNCTD through the Department of Power directing *inter alia* the Delhi Electricity Regulatory Commission to compensate to the consumers in case of unscheduled power cuts. The said order may be reproduced hereunder:

"**DEPARTMENT OF POWER**
GOVT. OF NCT OF DELHI

No.F.11(58)/2010/Power/1856 Dated 12.06.2015

Mr.P.D.Sudhkar,
Chairman,
Delhi Electricity Regulatory Commission,
Viniyamak Bhavan, C-Block,
Shivalik, Malviya Nagar,
New Delhi - 110 017

Sub: Directions under Section 108 of the Electricity Act, 2003 regarding disruption in electricity supply to consumers and compensation payable in respect thereof.

Sir,

Considering the very large number of complaints and public outcry against power outages, the Government issues

following policy directions to DERC under the Provisions of Section 108 of the Electricity Act, 2003

1. DERC shall put the schedule of power cuts in different parts of Delhi in advance for next 15 days on its website and shall update it daily.
2. In case of an unscheduled power cut (whose details does not exists on website) except in force majeure conditions, the supply shall be restored within one hour, if it is affecting large area say more than 50 connections. Failure to do so, shall result in a penalty of Rs.50/- per hour per consumer for first 2 hours followed by Rs.100/- per hour per consumer after 2 hours for each hour of default beyond the specified one hour and shall be payable separately to each of the consumers affected by the disruption in supply.
3. In case of disruption of power of an individual consumer the supply shall be restored within 3 hours of complaint. Failure to do shall result in a penalty of Rs.100/- per hour.
4. All payments of compensation shall be made suo-moto by the DISCOMS by way of adjustment against current and/or further bills of supply of electricity but not later than 90 days.
5. DERC shall keep a record of all unscheduled power cuts in Delhi and the extent of consumers affected by each power cut on the basis of complaints received from public or the government or on its own. If the compensation is not paid suo-moto by the DISCOMS and if any affected consumer approaches the DERC/CGRF etc. for claiming the compensation, the amount of compensation in such cases shall be Rs.5,000/- or five times the compensation payable on suo-moto basis, whichever is higher. If any consumer approaches DERC after 90 days with a complaint that he has not received his compensation, DERC shall order & ensure payment to all consumers affected by that power cut.

The compensation amount paid by a DISCOM shall not be a pass through in the Annual Revenue Requirement (ARR) of the DISCOMS.

This issues with the approval of the competent authority.

Yours Sincerely,

(ALKA SHARMA)
DY.SECRETARY (POWER)"

253. Admittedly, the said order has been issued by way of policy directions in exercise of the powers conferred under Section 108 of the Electricity Act, 2003 which reads as under:-

"**108**. **Directions by State Government**.-

(1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."

254. Clause (d) of Section 2(1) of the Delhi Electricity Reforms Act, 2000 defines 'government' as under:-

""Government" means the Lieutenant Governor referred to in article 239AA, of the Constitution;"

255. It is contended by the petitioner that in the light of the provisions of the Electricity Act, 2003 and the Delhi Electricity Reforms Act, 2000 read with the notification dated 20.02.2004, the 'Government' means the Lieutenant Governor only and, therefore, the directions to DERC cannot be issued by GNCTD under the impugned order.

256. It is pleaded in the writ petition that in pursuance of Article 239(1) of the Constitution vide notification dated 20.02.2004, it was directed by the President that the Lieutenant Governor of NCTD shall subject to the control of the President and until further orders, also exercise the powers and discharge the functions of the State Government under the provisions of the Electricity Act, 2003 within the National Capital Territory of Delhi.

257. It is therefore contended by the petitioner that Government of NCT of Delhi is not competent to issue the impugned directions.

258. It is also contended that the power under Section 108 of Electricity Act, 2003 can be exercised only for issuance of policy directions but not preemptory directions as sought to be done under the impugned order. The petitioner has placed reliance upon ***West Bengal Electricity Regulatory Commission v. CESC Ltd;*** **(2002) 8 SCC 715** for the said purpose.

259. Per contra, it is argued by Shri Raju Ramachandran, the learned Senior Counsel for GNCTD that Entry 38 of the Concurrent List which deals with 'electricity' is not a reserved subject and, therefore, the Lt. Governor has no role to play. It is also contended that the notification dated 20.02.2004 has no application in the light of the special provisions with respect to Delhi under Article 239AA read with the Government of NCTD Act, 1991 and the Rules made thereunder.

260. On merits, it is contended that the Council of Ministers in terms of Article 239AA read with the provisions of the GNCTD Act and the Transaction of Business Rules can take a decision for and on behalf of the Lt. Governor in respect of the subject in relation to which the Legislative Assembly of Delhi has been empowered to make laws under Clause (3)(a) of Article 239AA.

261. The further contention is that since the Lt. Governor is bound by the aid and advice of the Council of Ministers as held in ***Rajender Singh Verma v. Lieutenant Governor*** (supra)***, O.P.Pahwa v. State of Delhi*** (supra) and ***United RWAs Joint Action v. Union of India*** (supra), GNCTD is competent to issue directions to DERC without seeking approval of the Lt. Governor.

262. We do not find substance in any of the contentions advanced on behalf of GNCTD.

263. As noticed above, Section 108 of the Delhi Electricity Reforms Act, 2000 empowers the State Government to issue policy directions. The expression 'Government' has been defined under Section 2(1)(d) as the Lt. Governor referred to in Article 239AA. Admittedly, 'electricity' is covered by Entry 38 of List III in respect of which the Legislative Assembly of NCTD has power to make laws. However, coming to executive functions, the same shall be in terms of Clause (4) of Article 239AA read with the Government of NCT of Delhi Act, 1991 and the Rules made thereunder. Having analyzed the Constitutional Scheme with respect to Delhi, in particular, Clauses (3) and (4) of Article 239AA of the Constitution read with the provisions of GNCTD Act, 1991 and the Transaction of Business Rules, we have already held in Paras 107, 108, 116 and 117 (supra) that it is mandatory under the Constitutional Scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCTD and an order thereon can be issued only where the Lt. Governor does not take a different view. Therefore, the impugned decision being contrary to the Constitutional Scheme cannot be sustained.

264. It is no doubt true that normally the courts would decline to exercise the power of judicial review in relation to policy matters. However, having regard to the fact that the policy directions impugned in the case on hand are *ex facie* illegal and unconstitutional, the same are liable to be set aside.

265. Accordingly, the impugned order dated 12.06.2015 is hereby quashed and the writ petition shall stand allowed.

W.P.(C) No.7934/2015 (Naresh Kumar Vs. Govt. of NCT of Delhi & Ors.)

266. This petition has been filed by way of Public Interest Litigation with a prayer to declare the Notification dated 04.08.2015 issued by GNCTD as null and void on the ground that it is without power or authority. The impugned Notification reads as under:

> "**GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI,**
>
> **REVENUE DEPARTMENT, S.SHAM NATH MARG, DELHI.**
>
> No.F.1(1953)/Regn.Br./Div.Com/HQ/2014/191
>
> dated 4th August, 2015
>
> No.F.1(1953)/Regn.Br./Div.Com/HQ/2014 - In exercise of the powers conferred by sub-section(3) of Section 27 the Indian Stamp Act, 1899 (2 of 1899) and rule 4 of the Delhi Stamp (Prevention of Under - Valuation of Instruments) Rules, 2007 read with the Ministry of Home Affairs, Govt. of India Notification No.S.O.1726 (No.F.215/61-Judl.-II) dated the 22nd July, 1961 and in supersession of this Department's notification No.F.1(177)/Regn.Br./Div.Com./07/254-279 dated 14.03.2008; the Lt. Governor of the National Capital Territory of Delhi, hereby revises and notifies the minimum rates for the purposes of chargeablility of stamp duty on the instruments related to sale/transfer of agriculture land under the provisions of the said Act, as per details given below:-

Srl.No.	District	Rates for agricultural land (Rs. per acre)	Rates for the agricultural land falling in villages where land pooling policy is applicable (Rs. per acre)
1.	East	1 crore	2.25 crore
2.	North - East	1 crore	2.25 crore
3.	Shahdra	1 crore	2.25 crore
4.	North	1.25 crore	3.0 crore
5.	North West	1.25 crore	3.0 crore
6.	West	1.25 crore	3.0 crore
7.	South West	1.50 crore	3.5 crore
8.	South	1.50 crore	3.5 crore
9.	South East	1.50 crore	3.5 crore
10.	New Delhi	1.50 crore	3.5 crore
11.	Central	1.25 crore	3.0 crore

These revised rates shall come into force with immediate effect.

By order and in the name of
the Lt.Governor of the National Capital Territory of Delhi,

Sd/-
(Sanjay Kumar)
IAS
Spl.Inspector General (Registration) "

267. By the said Notification, the minimum rates of stamp duty on the instruments related to sale/transfer of agricultural land under the provisions of the Indian Stamp Act, 1899 read with Rule 4 of Delhi Stamp (Prevention of Undervaluation of Instruments) Rules, 2007 have been revised purportedly in exercise of the powers conferred by Section 27(3) of the Indian Stamp Act, 1899 and Rule 4 of the above-said Rules.

268. It is alleged by the petitioner that though the Notification has been issued in the name of the Lt. Governor, the prior approval of the Lt. Governor as required under the constitutional scheme was not obtained. The contention is that Lt. Governor being the competent authority to take a decision in that behalf, the Govt. of NCTD should not have issued the impugned notification without his prior approval.

269. It is sought to be explained by Shri Neeraj Gupta, the learned counsel appearing for the petitioner as under:

Circle rates for agricultural land are the minimum rates at which agricultural land can be transferred or alienated and the subject of the stamp duty is an incidental outcome of the exercise of fixation of circle rates under Article 239AA(3)(a) of the Constitution. Hence, fixation of circle rate is directly relatable to Entry 18 of List II which lies within the exclusive domain of the Parliament. Executive power being co-extensive with the legislative power, the Govt. of NCT of Delhi cannot exercise any executive power in respect of 'transfer and alienation of agricultural land' and anything incidental thereto.

270. Contesting the writ petition, it is vehemently contended by Ms.Indira Jaising, the learned Senior Counsel appearing for the GNCTD that the subject of revision of circle rates is traceable to Entry 63 of List II, which deals with 'rates of stamp duty' and, therefore, GNCTD is empowered to exercise legislative power as well as executive control in terms of clauses (3) and (4) of Article 239AA of the Constitution.

271. While pointing out that the expression 'market value' in Section 27(2) and (3) of the Indian Stamp Act, 1899 has been inserted by the Indian Stamp

(Delhi 2nd Amendment) Act, 2001 passed by the Legislative Assembly of NCTD, it is submitted by the learned Senior Counsel that as a corollary, the executive control also lies with the Govt. of NCT of Delhi. Thus, it is contended that the impugned notification under sub-Section (3) of Section 27 of the Indian Stamp Act, 1899 read with Rule 4 of the Delhi Stamp (Prevention of Under Valuation of Instruments) Rules, 2007 was rightly issued by GNCTD.

272. It is further submitted by the learned Senior Counsel that the plea of the petitioner that Entry 18 of List II, i.e., 'land' is attracted is absolutely wrong since stamp duty is levied on an instrument, i.e., document evidencing the transfer of agriculture land but not duty on land itself. Placing reliance upon ***State of Maharashtra v. Bharat Shanti Lal Shah***; **(2008) 13 SCC 5**, ***The Calcutta Gas Company Ltd. v. State of West Bengal;*** **AIR 1962 SC 1044** and ***State of Rajasthan v. G. Chawla;*** **AIR 1959 SC 544**, it is submitted by the learned Senior Counsel that liberal interpretation shall be adopted while interpreting the legislative entries by ascertaining the pith and substance of the enactment.

273. Section 27 of the Indian Stamp Act, 1899 which empowers the Government to notify minimum rates for valuation of land in relation to instruments, to the extent it is relevant for the purpose of the present petition, reads as under:-

> "27. **Facts affecting duty to be set forth in instrument**
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx

3. In the case of instruments relating to land, chargeable with valorem duty, the Government may notify minimum rates for valuation of land."

274. It is submitted by Ms.Indira Jaising, the learned Senior Counsel that the term 'Government' under Section 27(3) must be read to mean "Government of NCT of Delhi" as defined in Rule 2(g) of the Transaction of Business Rules. The learned Senior Counsel has also relied upon Section 3(58) of the General Clauses Act under which 'State' has been defined as under:-

"**(58) "State"**, -

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State, or a Part C State; and

(b) as respects any period after such commencement, shall mean a State specified in the Schedule I to the Constitution **and shall include a Union territory**; "

(emphasis supplied)

275. Therefore, according to the learned Senior Counsel the Government of NCT of Delhi shall be deemed to be a State/Government and it is competent to notify the circle rates under Section 27(3) of the Indian Stamp Act, 1899.

276. Supporting the contention of the petitioner, Shri Sanjay Jain, the learned ASG appearing for the Union of India submitted that the fixation of circle rates is directly relatable to Entry 18 of List II. It is also submitted that Entry 18 which refers to land in general and 'transfer and alienation of agriculture land' in particular makes it clear that the power to fixation of circle rates is directly relatable to Entry 18 which is an exempted subject

under Clause (3) of Article 239AA. It is also submitted that the contention of GNCTD that the power is traceable to Entry 63 of List II is untenable since in terms of the said Entry 63, the stamp duty can be fixed for those documents which do not form part of List I. It is contended that being an exempted subject under Clause (3)(a) of Article 239AA, Entry 18 shall be treated as a part of List-I and, therefore, the Legislative Assembly of NCTD has no power to legislate with regard to the rates of stamp duty. The further contention is that though the term 'government' has not been defined in the Indian Stamp Act, 1899 it has to be read in consonance with the term 'government' used in Clause (B) of Section 9(2) of the said Act which would mean 'the State Government' as defined under Section 3(60) of the General Clauses Act. It is also pointed out that vide Notification No.S.O.1726 dated 22.07.1961 read with Notification No.S.O.2709 dated 07.09.1966 issued by the Ministry of Home Affairs, Government of India, the powers of the State Government under the Indian Stamp Act, 1899 have been delegated by the President to the Lt. Governor. It is also submitted that all revisions of rates of agricultural land that were made in the past were with the prior approval of the Lt. Governor and the impugned notification issued without such approval is unsustainable.

277. We have given our thoughtful consideration to the submissions made by both the parties. Entry 18 of List II upon which the writ petitioner and the Union of India have relied upon reads as under:-

> "18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agriculture loans; colonization."

278. Entry 63 of List II to which the power is sought to be traced by the Government of NCT of Delhi may also be reproduced hereunder:-

> "63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."

279. It is relevant to note that Entry 91 of List I deals with 'rates of stamp duty in respect of wills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts'.

280. On a careful analysis of Entry 63 of List II and Entry 91 of List I, it is clear that the power to impose/levy stamp duty has been divided between the Union and the State. While Union is empowered to levy stamp duty for the instruments specified in Entry 91 of List I, the States are empowered to levy stamp duty for the instruments specified in Entry 63 of List II. The law is well settled that the Entries mentioned in the three lists of the Seventh Schedule to the Constitution are fields of legislation which merely demarcate legislative fields between Parliament and State Legislatures whereas the source of legislative power is Article 246 of the Constitution.

281. Regarding the subject with which we are concerned in the present writ petition, as rightly submitted on behalf of the Government of NCT of Delhi, stamp duty is not a duty upon instrument but it is in reality a duty on transfer of property. In other words, the occasion for levy of stamp duty is the document which is executed as distinguished from the transaction which is embodied in the document.

282. For the aforesaid reasons, we agree with the submissions of Ms.Indira Jaising, the learned Senior Counsel that the power to revise the

circle rates is traceable to Entry 63 of List II but not to Entry 18 as sought to be contended by the writ petitioner and Union of India. Entry 63 of List II not being an exempted matter under Clause (3)(a) of Article 239AA of the Constitution, the Legislative Assembly of NCT of Delhi has power to make laws in respect of the same and consequently the executive control also lies with the Government of NCT of Delhi. To that extent, we find force in the submission of Ms.Indira Jaising, the learned Senior Counsel appearing for Government of NCT of Delhi.

283. However, the fact remains that the impugned notification dated 04.08.2015 came to be issued only on the decision of the Council of Ministers without seeking the views/concurrence of the Lt. Governor. As expressed in Paras 107, 108, 116 and 117 (supra), such procedure is contrary to the constitutional scheme. Therefore, though the power to revise the circle rates lies with the Government of NCT of Delhi, no order as such can be passed unless the decision of the Council of Ministers is communicated to the Lt. Governor and no reference is required to the Central Government as provided in Chapter V of the Transaction of Business Rules.

284. Since no such procedure was followed, the impugned notification is illegal and liable to be quashed.

W.P.(C) No.348/2016 (Ramakant Kumar Vs. Govt. of NCT of Delhi)

285. The petitioner who claims to be a practicing Advocate filed this writ petition as a Public Interest Litigation with a prayer to quash the Notification dated 22.12.2015 issued by the Directorate of Vigilance, Government of NCT of Delhi under Section 3 of the Commission of Inquiry Act, 1952 thereby appointing the Commission of Inquiry to inquire into the allegations

regarding irregularities in the functioning of Delhi and District Cricket Association.

286. The impugned notification dated 22.12.2015 reads as under:-

"**DIRECTORATE OF VIGILANCE**

NOTIFICATION

Delhi, the 22nd December, 2015

No.F.01/66/2015/DOV/15274-15281 - Whereas, over the past few months, the Govt. of National Capital Territory of Delhi received several complaints by retired Indian Cricketers, that included among them a few legends of the game, about a series of alleged malpractices and financial irregularities in the functioning of Delhi & District Cricket Association (DDCA) and maladministration of the game of cricket in Delhi. In July, 2015, the Government also received a letter from the Ministry of Youth Affairs and Sports, Govt. of India, requesting to take appropriate action into matters of irregularities committed by Delhi & District Cricket Association.

And whereas, pursuant to these complaints and Govt. of India communication, the Govt. of NCT of Delhi set up a three member committee to enquire into the matter. The Committee made several recommendations with regard to cleaning up the affairs of DDCA. One of the recommendations was to consider appointing a Commission of Inquiry under the Commissions of Inquiry Act, 1952 to probe various wrong doings/allegations among other issues pertaining to DDCA.

And whereas the matter was placed before the Council of Ministers for consideration. After deliberations, the Council of Ministers resolved vide Cabinet decision No.2274 dated 21/12/2015 to constitute a Commission of Inquiry under the Commissions of Inquiry Act, 1952.

And whereas the following Resolution was adopted by the Delhi Legislative Assembly on 22/12/2015:-

"That having noted with grave concern the serious allegations regarding irregularities in the functioning of the DDCA, this House resolves that:

> Pursuant to Section 3 of the Commission of Inquiry Act, 1952, a Commission of Inquiry be constituted by the Government of the National Capital Territory of Delhi to inquire into these allegations.

This House further resolves that:

> "The Government may prescribe appropriate terms of reference for the Commission, as it deems fit."

Now, therefore, in exercise of the powers conferred by Section 3 of the Commission of Inquiry Act, 1952, the Govt. of NCT of Delhi hereby appoints the Commission of Inquiry consisting of Sh.Gopal Subramanium, Senior Lawyer (Supreme Court) and former Solicitor General of India. The terms of reference of the Commission shall be to conduct inquiry into the:-

(a) working, management and administration (including alleged financial irregularities) of DDCA;
(b) whether such practices have been conducive to the game of cricket;
(c) recommendations to make DDCA an institution compatible with international standards;
(d) identify any acts of omission and commission by DDCA and its office bearers during the period between January 1, 1992 and November 30, 2015 and fix responsibility
(e) and whether such acts of omission need to be pursued and if so, in what manner;
(f) recommendations to make DDCA an effective and transparent body so that it could promote the glorious game of cricket and identify and nurture talent.

Sh.Gopal Subramanium shall be paid Rs.One for this assignment.

The Commission shall submit its report as soon as possible but not later than three months from the date of its first sitting.

Having regard to the nature of inquiry to be made by the Commission and other circumstances of the case, all the provisions of sub-section-2, sub-section-4, sub-section-5 and sub-section-5A of Section-5 of the said Commission of Inquiry Act, 1952 shall be applicable to the Commission, and the Govt. of NCT of Delhi in exercise of the powers conferred under sub-section-1 of Section-5 of the Commissions of Inquiry Act, 1952 hereby directs that all provisions of the sub-sections-2,3,4 and 5A of that section shall apply to the Commission.

RAJESH TIWARI, Dy.Secy.(Vig.)"

287. As is evident from the impugned Notification itself, the Commission of Inquiry has been appointed on the basis of the resolution adopted by the Legislative Assembly of NCTD dated 22.12.2015. The fact that the said appointment was made without placing the matter before the Lt. Governor of NCTD seeking his views/concurrence is not in dispute.

288. The question whether GNCTD can be treated as "appropriate Government" within the meaning of Section 2(a) of the Commission of Inquiry Act, 1952 has been considered in detail in W.P.(C) Nos.7887/2015, 8382/2015 and 8867/2015 and at Paras 234 and 235 (supra), we have concluded that "appropriate Government" to appoint a Commission of Inquiry under Section 3 shall be the Lt. Governor of NCT of Delhi only. Therefore, the appointment of the Commission of Inquiry merely on the basis of the Cabinet decision without approval of the Lt. Governor is without jurisdiction.

289. In the light of the conclusion we have already reached, the impugned notification dated 22.12.2015 under which the Commission of Inquiry has

been appointed on the basis of the resolution adopted by the Legislative Assembly of NCTD without seeking the views/concurrence of the Lieutenant Governor is without jurisdiction and illegal.

W.P.(Crl.) No.2099/2015 (Govt. of NCT of Delhi Vs. Nitin Manavat & Ors.)

290. The Government of NCT of Delhi filed this petition challenging the judicial order passed by the Special Judge-07 (PC Act Cases of ACB, GNCTD) in FIR No.21/2012 titled State v. Nitin Manavat and seeking a direction to the Special Judge not to permit anyone other than the Special Public Prosecutor notified under Section 24(8) Cr.P.C. by the Government of NCT of Delhi to act as Special Public Prosecutor in the said proceedings.

291. The facts in brief are as under.

292. On the basis of information received from one Vivek Garg, Advocate with respect to allotment of work relating to CNG Fitness Certificates in the Transport Department, GNCTD, FIR No.21/2012 was registered on 17.12.2012 by the ACB, GNCTD for the offences punishable under Sections 409, 420, 120B and 34 of IPC read with Section 13 of the Prevention of Corruption Act.

293. By order dated 03.09.2015 passed by the Home (Police-II) Department, GNCTD, Mr. B.S. Joon, Advocate was appointed as Special Public Prosecutor to conduct the cases relating to CNG Fitness Scam on behalf of Vigilance Department, GNCTD in the trial court.

294. However, on a request made by the Joint Commissioner of Police, ACB, the Lt. Governor on 04.09.2015 accorded approval for appointment of Mr. Sanjay Kumar Gupta, Advocate as Special Public Prosecutor to conduct the prosecution in FIR No.21/2012 dated 17.12.2012.

295. By Notification dated 07.09.2015 issued by the Home (Police-II) Department, GNCTD, in exercise of the powers conferred under Section 24(8) of Cr.P.C., Mr. B.S. Joon has been appointed as Special Public Prosecutor to conduct the case in FIR No.21/2012. Subsequently, Mr. B.S. Joon filed an application before the Special Judge-07 (PC Act Cases of ACB) seeking a direction to the Investigating Officer to hand over the police file to him as he has been appointed as Special Public Prosecutor by GNCTD vide Notification dated 07.09.2015. However, the Investigating Officer had placed on record the intimation regarding the appointment of Shri Sanjay Kumar Gupta as Special Public Prosecutor by the Lt. Governor vide order dated 04.09.2015.

296. The learned Special Judge by order dated 07.09.2015 dismissed the application filed by Mr. B.S. Joon holding that in view of Article 239AA of the Constitution, the Lt. Governor is the competent authority to appoint a Public Prosecutor.

297. Aggrieved by the same, this writ petition has been filed by the Government of NCT of Delhi under Article 226 and 227 of the Constitution read with Section 482 of Cr.P.C. to quash the order of the Special Judge dated 07.09.2015. It is contended by the petitioner/Government of NCT of Delhi that the learned Special Judge erred in holding that under Article 239AA of the Constitution, the Lt. Governor is competent to appoint a public prosecutor. It is also contended that the appointment of Mr. Sanjay Kumar Gupta with the purported "approval" of the Lt. Governor was illegal since the said appointment was made unilaterally by the Lt. Governor without reference to the GNCTD. The further contention is that it is the elected Government that is empowered in terms of Entries 1 and 2 of List III

of Seventh Schedule to the Constitution to enforce and deal with 'criminal law' and 'criminal procedure' in GNCTD.

298. Shri P.P. Rao, the learned Senior Advocate who appeared on behalf of the Government of NCTD/writ petitioner submitted -

(i) The "approval" accorded by the Lt. Governor vide letter dated 04.09.2015 for the appointment of Mr. Sanjay Kumar Gupta as Special Public Prosecutor is without authority of law since the Minister-in-charge alone is competent to make such appointment in terms of Section 44 of the GNCTD Act, 1991 read with Rule 2 of GNCTD (Allocation of Business) Rules, 1993 and Item 10(6) of the Schedule annexed thereto.

(ii) Even as per Rule 15 of the Transaction of Business of the Government of NCT of Delhi Rules, 1993, disposal of such matters is permissible by or under the authority of the Minister-in-charge i.e. Home Minister and the Lt. Governor has no role to play.

(iii) Since the appointment of Special Public Prosecutor is not relatable to Entries 1, 2 or 18 of List II of Seventh Schedule to the Constitution which are exempted matters under Clause (3) of Article 239AA, Clause (4) of Article 239AA is not at all attracted. On the other hand, the appointment of Public Prosecutor is expressly relatable to Entry 2 (Criminal Procedure) List-III (Concurrent List) in respect of which the power to make laws has been expressly conferred upon the Legislative Assembly of NCTD. Consequently, the executive power in relation to the said matters also vests with GNCTD.

(iv) Placing reliance upon ***R. Sarala v. T.S. Velu;*** **(2000) 4 SCC 459** and ***State of U.P. & Anr. v. Johri Mal;*** **(2004) 4 SCC 714,** it is contended that the appointment of Public Prosecutor under Section 24 of Cr.P.C. is independent of Police or any other executive wing of the State.

299. Section 24 of the Criminal Procedure Code, 1973 which provides for appointment of Public Prosecutors, to the extent it is relevant for the purpose of the present case, reads as under:

> "**24. Public Prosecutors. -** (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.
>
> xxxx xxxx xxxx xxxx
>
> **(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.**
>
> xxxx xxxx xxxx xxxx"
>
> *(emphasis supplied)*

300. As could be seen, Section 24(8) of Cr.P.C. empowers the State Government for appointing a Special Public Prosecutor for the purposes of any case or class of cases. Admittedly, NCT of Delhi is a Union Territory and not a State. As per Sections 3(8), 3(58) and 3(60) of the General Clauses Act, 1897, the expression 'State Government' for the purpose of a Union Territory means the President and includes the Administrator in terms

of Article 239 of the Constitution read with the Notification dated 20.03.1974 {See Para 167 (supra)} under which the Administrators of all the Union Territories were empowered to exercise the powers of the State Government under Cr.P.C. So far as NCT of Delhi is concerned, the 'State Government' thus means the Lt. Governor for the purpose of Section 24(8) of Cr.P.C. However, the power to appoint a Public Prosecutor is relatable to Entries 1 and 2 of List III in respect of which the Government of NCT of Delhi has legislative competence under Article 239AA of the Constitution. As a corollary, the exercise of the functions relating to the said subject by the Lt. Governor under Article 239AA(4) of the Constitution shall be on the aid and advice of the Council of Ministers with the Chief Minister at the head.

301. Hence, we are unable to accept the contention of the Union of India that the Council of Ministers have no role to play in exercise of the powers under Section 24(8) of Cr.P.C. In our considered opinion, the Lt. Governor under Section 24(8) of Cr.P.C. does not act *eo-nominee* but exercises the executive functions of the State. Hence, the said power has to be exercised on the aid and advice of the Council of Ministers in terms of Clause (4) of Article 239AA of the Constitution.

302. For the above reasons, we are of the view that it is not open to the Lt. Governor to appoint the Special Public Prosecutor on his own without seeking aid and advice of the Council of Ministers.

303. In the circumstances, the impugned order dated 07.09.2015 passed by the Special Judge-07 in FIR No.21/2012 is hereby set aside and there shall be a direction to the Special Judge to pass an appropriate order afresh in accordance with law.

Conclusions:-

304. The conclusions in this batch of petitions may be summarized as under:-

(i) On a reading of Article 239 and Article 239AA of the Constitution together with the provisions of the Government of National Capital Territory of Delhi Act, 1991 and the Transaction of Business of the Government of NCT of Delhi Rules, 1993, it becomes manifest that Delhi continues to be a Union Territory even after the Constitution (69th Amendment) Act, 1991 inserting Article 239AA making special provisions with respect to Delhi.

(ii) Article 239 of the Constitution continues to be applicable to NCT of Delhi and insertion of Article 239AA has not diluted the application of Article 239 in any manner.

(iii) The contention of the Government of NCT of Delhi that the Lt. Governor of NCT of Delhi is bound to act only on the aid and advice of the Council of Ministers in relation to the matters in respect of which the power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under clause (3)(a) of Article 239AA of the Constitution is without substance and cannot be accepted.

(iv) It is mandatory under the constitutional scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under

clause (3)(a) of Article 239AA of the Constitution and an order thereon can be issued only where the Lt. Governor does not take a different view and no reference to the Central Government is required in terms of the proviso to clause (4) of Article 239AA of the Constitution read with Chapter V of the Transaction of Business of the Government of NCT of Delhi Rules, 1993.

(v) The matters connected with 'Services' fall outside the purview of the Legislative Assembly of NCT of Delhi. Therefore, the direction in the impugned Notification S.O.1368(E) dated 21.05.2015 that the Lt. Governor of the NCT of Delhi shall in respect of matters connected with 'Services' exercise the powers and discharge the functions of the Central Government to the extent delegated to him from time to time by the President is neither illegal nor unconstitutional.

(vi) The direction in the impugned Notification S.O.1896(E) dated 23.07.2014 as reiterated in the Notification S.O.1368(E) dated 21.05.2015 that the Anti-Corruption Branch Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government is in accordance with the constitutional scheme and warrants no interference since the power is traceable to Entry 2 (Police) of List II of the Seventh Schedule to the Constitution in respect of which the Legislative Assembly of NCTD has no power to make laws.

(vii) Notification No.F.5/DUV/Tpt./4/7/2015/9386-9393 dated 11.08.2015 issued by the Directorate of Vigilance, Government of NCT of Delhi under Section 3 of the Commission of Inquiry Act, 1952 appointing the Commission of Inquiry for inquiring into all aspects of the award of work related to grant of CNG Fitness Certificates in the Transport Department, Government of NCT of Delhi is illegal since the same was issued without seeking the views/concurrence of the Lt. Governor as provided under Rule 10 and Rule 23 read with Chapter V of Transaction of Business Rules, 1993.

(viii) For the same reasons, the Notification No.F.01/66/2015/DOV/15274-15281 dated 22.12.2015 issued by the Directorate of Vigilance, Government of NCT of Delhi under Section 3 of the Commission of Inquiry Act, 1952 appointing the Commission of Inquiry to inquire into the allegations regarding irregularities in the functioning of Delhi and District Cricket Association is also declared as illegal.

(ix) The appointment of Nominee Directors of Government of NCT of Delhi on Board of BSES Rajdhani Power Limited, BSES Yamuna Power Limited and Tata Power Delhi Distribution Limited by the Delhi Power Company Limited on the basis of the recommendations of the Chief Minister of Delhi without communicating the decision of the Chief Minister to the Lt. Governor of NCT of Delhi for his views is illegal.

(x) The proceedings of the Government of NCT of Delhi, Department of Power No.F.11(58)/2010/Power/1856 dated 12.06.2015 issuing policy

directions to the Delhi Electricity Regulatory Commission regarding disruption in electricity supply to consumers and compensation payable in respect thereof are illegal and unconstitutional since such policy directions cannot be issued without communicating to the Lt. Governor of NCT of Delhi for his views.

(xi) The Notification No.F.1(1953)/Regn.Br./Div.Com/HQ/2014/191 dated 04.08.2015 issued by the Government of NCT of Delhi, Revenue Department in exercise of the powers conferred by sub-section(3) of Section 27 the Indian Stamp Act, 1899 (2 of 1899) and Rule 4 of the Delhi Stamp (Prevention of Under - Valuation of Instruments) Rules, 2007 revising the minimum rates for the purpose of chargeability of stamp duty on the instruments related to sale/transfer of agriculture land is illegal since the said notification was issued without seeking the views/concurrence of the Lt. Governor of NCT of Delhi as required under the constitutional scheme.

(xii) Though the Lt. Governor of NCT of Delhi is competent to appoint the Special Public Prosecutor under Section 24(8) of Cr.P.C., such power has to be exercised on the aid and advice of the Council of Ministers in terms of Clause (4) of Article 239AA of the Constitution.

305. In result, W.P.(C) No.5888/2015 is dismissed, W.P.(C) Nos.7887/2015, 7934/2015, 8190/2015, 8382/2015, 8867/2015, 9164/2015 and 348/2016 are allowed and W.P.(Crl.) No.2099/2015 is disposed of with directions.

306. C.M. Nos. 5182/2016 is disposed of permitting intervention of the applicant/Reliance Industries Ltd. in W.P.(C) No.5888/2015. The other application being C.M.No.5183/2016 is dismissed.

307. C.M. No.16088/2016 in W.P.(C) No.5888/2015, C.M. Nos.12753/16 & 16063/2016 in W.P.(C) No.7934/2016, C.M. Nos.12673/2016 & 20304/2016 in W.P.(C) No.8867/2015, C.M.No.12674/2016 in W.P.(C) No.8382/2015, C.M.No.12754/2016 in W.P.(C)No.9164/2015, C.M.No.13616/2016 in W.P.(C) No.7887/2015, C.M.No.12752/2016 in W.P.(C) No.8190/2015, C.M.No.13619/2016 in W.P.(C) No.348/2016 and Crl.M.A.No.4864/2016 in W.P.(Crl.) No.2099/2015 are dismissed.

308. No order as to costs.

CHIEF JUSTICE

JAYANT NATH, J.

AUGUST 04, 2016
kks/pmc/anb