

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 4

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Government of National Capital Territory of Delhi v. LG: An Overview of Article 239AA

---

MINAL MISHRA<sup>1</sup>

## ABSTRACT

*Drawing the curtains on an eight-year-old legal battle between the central government and the government of the National Capital of Delhi, the supreme court resolved by ruling in favor of Delhi Chief Minister by giving control over the administrative matters of the territory. The dispute is related to the control over the services, matters concerning the land, public matters and police which revolve around Article 239AA of the Indian Constitution, giving special status upon Delhi.*

**Keywords:** National Capital Territory of Delhi, Service matters, Administrative matters, Article 239AA.

## I. INTRODUCTION

There was a notification passed by the Union Government on 21 May, 2015, the notification provided that the Lieutenant Governor of NCTD<sup>2</sup> shall exercise control “to the extent delegated to him from time to time by the President” over “services”, in addition to “public order”, “police”, and “land.” The Lieutenant Governor has the discretion to seek the Chief Minister's views in certain matters. The main purpose of the notification was to remove executive and legislative control from the Government of the National Capital Territory of Delhi (NCTD) and clarify that it does not have its own state public services. The Delhi Government challenged this notification in 2017 before the High Court of Delhi, which upheld the notification and ruled that "matters related to 'Services' are not within the jurisdiction of the Legislative Assembly of NCT of Delhi."

On appeal, a two judge bench of the Supreme Court was of the opinion that the matter involved a substantial question of law about the interpretation of Article 239AA, which deals with “Special provisions with respect to Delhi”, and hence referred the issue of interpretation of Article 239AA<sup>3</sup> to a Constitution Bench on 15 February 2017.

---

<sup>1</sup> Author is a student at School of Legal Studies, Reva University, India.

<sup>2</sup> National Capital Territory of Delhi

<sup>3</sup> “239-AA. 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

The Constitution Bench pronounced its judgment<sup>4</sup> on 4 July 2018. The judgment consisted of three separate judicial opinions. The Constitution Bench focused on the constitutional status of the National Capital Territory of Delhi (NCTD) and the modalities of its administration. This was based on the division of powers, functions, and responsibilities between the elected government of NCTD and the Lieutenant Governor, who acts as the representative of the Union

---

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 insofar 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 insofar 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 PART A 8 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 insofar 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 the 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 239-B 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 PART A 9 Union Territory of Puducherry, the Administrator and its legislature, respectively; and any reference in that Article to “clause (1) of Article 239-A” shall be deemed to be a reference to this Article or Article 239-AB, as the case may be.”

<sup>4</sup> (2018) 8 SCC 501

Government in their capacity as the President's nominee.

Regarding the interpretation of Article 239AA, the court specifically noted that the Constitution Bench's consideration was limited to the "scope of legislative and executive powers of the Centre and NCTD concerning 'Services'." In other words, the court had to determine whether the legislative and executive control over "services" belonged to the NCTD or the Union government. This decision required an interpretation of clause (3) (a) of Article 239AA to establish whether it was the Delhi government or the Union Government that held legislative and executive control over the capital's bureaucracy.

## **II. INTERPRETATION OF ARTICLE 239AA: THE 2018 CONSTITUTION BENCH JUDGMENT**

By the Constitution (Sixty-ninth Amendment), Article 239AA was inserted in the Constitution. It introduced a unique structure of governance for NCTD. By virtue of the provisions of Article 239AA, NCTD became the only Union Territory with a special status of having a constitutionally mandated legislature and Council of Ministers. This was a departure from the earlier model of governance for Union territories. Article 239AA, in contrast, constitutionally mandates a legislature and prescribes the scope of legislative and executive power for NCTD. Article 239AA creates a wide variation in structures of governance of NCTD as compared to other Union Territories, with differences even as regards the manner in which legislative powers have been bestowed upon them.

The plain reading of the article states that "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 except in the matters with respect to..."<sup>5</sup>

The basic issue which arose was due to 'subject to provision of this Constitution' under the Article as its interpretation would lead to certain restrictions. The 2018 Constitution Bench decision held that NCTD is not similar to other Union Territories. The decision elucidates the manner in which the insertion of Article 239AA accorded a "sui generis" status to NCTD setting it apart from other Union Territories. The judgment of the majority did not make a direct observation on the interpretation of the said phrase. However, the reasoning indicates that the phrase was to be considered in a broader sense. Article 239AA(3)(a) confers legislative power to NCTD. However, it does not confer legislative power to NCTD over all entries in List II.

---

<sup>5</sup> Article 239-AA(3) of the Constitution of India

Article 239AA (3) provides multiple safeguards to ensure that the interest of the Union is preserved. The article excludes certain subjects from the control of the government of Delhi, which are services, land, public matters and police.

#### **(A) Contentions of the parties**

The basic contention of the Union Government is that there are already few Union Territories which are governed by the Union, such as Puducherry. The phrase used in the Article 239AA(3)(a), 'subject to the provisions of the Constitution' indicates the narrow application in the control of the administrative matters by the Government of Delhi as there is no service exams held in the territory. It has been emphasized by the Union of India that Article 239AA not only restricts the powers of the Legislative Assembly of NCTD through the phrase "insofar as any such matter is applicable to Union Territories" but also through the restrictive phrase of "Subject to the provisions of this Constitution".

Meanwhile, the Government of National Capital of Delhi contended that the citizens of Delhi elect representatives to the Legislative Assembly of NCTD, who are responsible for representing their interests. The interpretation of Article 239AA should support the principle of representative democracy. If the phrase "insofar as any such matter is applicable to Union territories" is interpreted in a narrow manner, it would restrict the legislative power of the elected assembly members. The members of the Legislative Assembly have been chosen by the electorate to act on their behalf. Therefore, the legislative authority of NCTD should be interpreted in a way that fully respects the will of the voters. NCTD has argued that the Legislative Assembly of Delhi has passed numerous laws regarding the creation of positions and terms of service. They have referred to various state laws, such as the Delhi Fire Services Act<sup>6</sup>, Delhi Commission for Safai Karamcharis Act<sup>7</sup>, Delhi Minorities Commission Act<sup>8</sup>, Delhi Finance Commission Act<sup>9</sup>, Delhi Lokayukta and UpaLokayukta Act<sup>10</sup>, Delhi Commission for Women Act<sup>11</sup>, and Delhi Electricity Reform Act<sup>12</sup>. It has been argued that these statutes, which include the establishment of positions and salary details, were enacted within the scope of the subject referred to in Entry 41 of the State List<sup>13</sup>.

---

<sup>6</sup> 2007

<sup>7</sup> 2006

<sup>8</sup> 1999

<sup>9</sup> 1994

<sup>10</sup> 1995

<sup>11</sup> 1994

<sup>12</sup> 2001

<sup>13</sup> State public services; State Public Service Commission.

**(B) “Services” and NCTD**

This article primarily focuses on the matters related to services and who should have the power to appoint and control the service matters in the NCTD. The court has determined that the NCTD (National Capital Territory of Delhi) possesses legislative and executive authority over "services" as defined in Entry 41. However, a crucial question arises regarding the extent of control that NCTD has over these "services." This question gains significance because the three categories excluded from NCTD's legislative power, namely "public order," "police," and "land," also have some connection to "services." Therefore, it is necessary for this court to establish a distinction between the "services" to be controlled by NCTD and those controlled by the Union in relation to NCTD. This distinction should be based on the constitutional provisions regarding legislative and executive power granted to NCTD, as well as the principles of constitutional governance for NCTD outlined in the 2018 Constitution Bench judgment. Although we cannot interpret Entry 41 in the broadest possible sense, since all entries in List II, including Entry 41, must be harmonized with the limitations imposed by Article 239AA(3)(a) on NCTD's legislative and executive power, which exclude matters related to "public order," "police," and "land."

According to the court's decision, NCTD's legislative and executive power over Entry 41 does not extend to services connected to "public order," "police," and "land." However, NCTD does possess legislative and executive power over services such as the Indian Administrative Services or Joint Cadre services, which are relevant for implementing NCTD's policies and vision in terms of day-to-day administration of the region. Officers serving under these services may be working in NCTD even if they were not recruited by NCTD. In this context, it is important to consider certain rules that clearly delineate the control of All India or Joint-Cadre services between the Union and the States. NCTD, like other states, represents a representative form of government, and the involvement of the Union of India in NCTD's administration is limited by constitutional provisions. Expanding this involvement further would be contrary to the constitutional scheme of governance.

For example, let's examine the Indian Administrative Service (Cadre) Rules<sup>14</sup>, which govern the posting of IAS Officers. These rules define various terms and establish the authority responsible for the allocation of cadre officers. The rules specify that appointments to cadre posts shall be made based on recommendations from the Civil Services Board and by the respective State Government or the State Government concerned in the case of a joint cadre.

---

<sup>14</sup> 1954

The "Government of that State," meaning the duly elected government, including the Government of NCTD in our case, has the power to make postings within the State Cadre and Joint Cadre of a Constituent State.

Therefore, it is affirmed that references to the "State Government" in relevant rules concerning All India Services or Joint Cadre Services, of which NCTD is a part or that are relevant to NCTD, shall pertain to the Government of NCTD. In accordance with Article 239AA and the 2018 Constitution Bench judgment, the Lieutenant Governor is bound by the aid and advice of the Council of Ministers of NCTD regarding matters within the legislative scope of NCTD. Considering that NCTD has legislative power over "services" (excluding "public order," "police," and "land") under Entry 41 in List II, the Lieutenant Governor must adhere to the decisions made by GNCTD<sup>15</sup> concerning services, as explained above. To clarify, any mention of the "Lieutenant Governor" regarding services (excluding those related to "public order," "police," and "land") in relevant rules shall refer to the Lieutenant Governor acting on behalf of GNCTD. It is essential to uphold the division of administrative powers between the Union and NCTD, as elucidated in this section.

### **III. CONCLUSION**

The following conclusions can be drawn after the judgment of the hon'ble Supreme Court;

- a. There is no uniform category of Union Territories with identical governance structures.
- b. NCTD (National Capital Territory of Delhi) differs from other Union Territories. Article 239AA grants NCTD a unique and distinct status.
- c. The Legislative Assembly of NCTD has jurisdiction over entries in List II and List III, except for the entries explicitly excluded in List II. While Parliament retains legislative authority over List I matters, it also has legislative competence over all List II and List III matters related to NCTD, including those excluded from NCTD's legislative domain by virtue of Article 239AA(3)(a).
- d. The executive power of NCTD aligns with its legislative power, extending to all matters within its legislative jurisdiction.
- e. The Union of India has executive power exclusively over the three entries in List II where NCTD lacks legislative competence.

---

<sup>15</sup> Government of National Capital Territory of Delhi

- f. The executive power of NCTD concerning entries in List II and List III is subject to the executive power explicitly conferred upon the Union by the Constitution or legislation enacted by Parliament.
- g. The phrase "insofar as any such matter is applicable to Union Territories" in Article 239AA (3) should not be interpreted to further restrict NCTD's legislative power over entries in the State List or Concurrent List beyond the explicitly excluded subjects.
- h. Regarding the phrase "Subject to the provisions of this Constitution" in Article 239AA (3), the legislative power of NCTD should be guided by the broader principles and provisions of the Constitution, not merely limited by them.
- i. NCTD possesses legislative and executive power over "Services," as defined in Entry 41 of List II of the Seventh Schedule, because:

(I) the definition of "State" under Section 3(58) of the General Clauses Act 1897 applies to the term "State" in Part XIV of the Constitution, making Part XIV applicable to Union territories.

(II) The exercise of rule-making power under the proviso to Article 309 does not negate the legislative authority of the appropriate governing body to enact laws pertaining to Entry 41 of the State List.

\*\*\*\*\*