

Govt. of NCT of Delhi and Ors. Vs. Union of India

Tussle Between the AAP Government and The Centre

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ABSTRACT:

This case commentary will give a critical analysis of the landmark judgment Govt. of NCT of Delhi and Ors. Vs. Union of India. The case of Govt. of NCT Delhi and Ors. Vs. Union of India is a judgment where it was held that the Lt. Governor of Delhi is bound by the aid and advice of the elected government of Delhi and cannot interfere in every matter. The dispute between the Centre and Government of Delhi primarily revolved with the demarcation of powers. This paper will talk about the facts of the case, the arguments and reasoning from the parties which include the arguments from the appellant and the respondent, and the judgment.

The facts of the case talk about how the dispute between the Govt. of Delhi and the Centre started and how it reached the Supreme Court. It is a trajectory of events. The issues deal with the primary issues on which the tussle revolved on. The arguments from the parties include the arguments from the appellant as well as the respondents. Both arguments include the constitutional provisions which are been violated, precedents which are being violated and the reasoning behind their arguments. The judgment includes the final decision by the constitutional bench and the rationale behind this decision.

I. CITATION

Civil Appeal No(s).2357/2017

II. PARTIES

- 1) Government of NCT of Delhi and Ors. (Appellant)
- 2) Union of India (Respondents)

III. JUDGES

- 1) CJI DipakMisra
- 2) Justice Kumar Sikri
- 3) Justice Ajay Manikrao Khanwilkar
- 4) Justice DY Chandrachud
- 5) Justice Ashok Bhushan

IV. FACTS OF THE CASE

In 2014, the election results were such that the Aam Aadmi Party was in minority and the Congress government was supporting it from the outside.¹ On 11th February 2014, Mr. Arvind Kejriwal held a press conference

¹V. Venkatesan, Trajectory of the tussle, Frontline, <https://www.frontline.in/cover-story/article24440227.e> (last viewed on Aug 6, 2018).

alongside Manish Sisodia the current deputy Chief Minister of Delhi. In the press conference, he said that a decisive battle against corruption is going to take place and he is going to fight for the people of this country.²

He said that a complaint has been filed in the Anti- Corruption Bureau by EAS Sharma, the former revenue secretary, TSR Subramaniam, the former cabinet secretary. Kamini Jaiswal, a senior advocate with the Supreme Court; and Admiral RH Tahiliani, the former chief of Naval staff on the grounds that the central government had conspired with Reliance Industries Limited and had created an artificial scarcity of natural gas in the Krishna Godavari basin due to which the prices of natural gas had increased. He had filed a complaint against Mukesh Ambani the chairman of Reliance Industries Limited, M. Veerappa Moily who was the Union Minister of Petroleum and Natural Gas and Murli Deora who was also the Petroleum and Natural Gas minister from 2009-2012 under the UPA government led by Prime Minister Manmohan Singh. The Anti- Corruption Bureau filed an FIR which owes its existence to a notification issued by the Centre issued in 1993.³ According to the FIR, the price of the cost of production of gas in the Krishna Godavari basin was less than \$2.34 per mmBtu. In June 2004 Reliance Industries Limited agreed that they will supply 132 trillion units of gas per annum to the National Thermal Power Cooperation (NTPC) for 17 years. Murli Deora became the Minister of Petroleum and Natural Gas succeeding Mani Shanker Aiyer in 2006. The Centre then allowed Reliance to claim the cost of production as \$8.4 per mmBtu 4 times the price agreed upon.⁴ The Centre retailed back the allegation in the Delhi High Court saying that the Anti- Corruption Bureau has no jurisdiction to investigate Union Ministers.⁵ Arvind Kejriwal later resigned as the Chief Minister of Delhi on 14th February 2014 after Najeeb Jung the then LG of Delhi send Delhi's Jan Lokpal Bill to the Law Ministry for Centre's approval.⁶ On May 2nd, 2014 Reliance Industries Limited moved to the Delhi High Court for quashing the FIR and also challenged the notification passed in 1993 which gave the ACB jurisdiction to investigate Union ministers and employees.⁷

In February 2015 the AAP returned to power bagging 67 seats out of 70 and Arvind Kejriwal was appointed as the Chief Minister again.⁸ After this, there was a series of battles between the Jung and Arvind Kejriwal the

² Atul Dev, Why has Arvind Kejriwal Abandoned the Investigation He Launched against Mukesh Ambani Last Year? The Caravan (2015), <http://www.caravanmagazine.in/vantage/why-has-arvind-kejriwal-abandoned-investigation-he-launched-against-mukesh-ambani-last-year> (last viewed on Aug 6, 2018).

³ V. Venkatesan, Trajectory of the tussle, Frontline, <https://www.frontline.in/cover-story/article24440227.e> (last viewed on Aug 6, 2018).

⁴ Atul Dev, Why has Arvind Kejriwal Abandoned the Investigation He Launched against Mukesh Ambani Last Year? The Caravan (2015), <http://www.caravanmagazine.in/vantage/why-has-arvind-kejriwal-abandoned-investigation-he-launched-against-mukesh-ambani-last-year> (last viewed on Aug 6, 2018).

⁵ V. Venkatesan, Trajectory of the tussle, Frontline, <https://www.frontline.in/cover-story/article24440227.e> (last viewed on Aug 6, 2018).

⁶ Atul Dev, Why has Arvind Kejriwal Abandoned the Investigation He Launched against Mukesh Ambani Last Year? The Caravan (2015), <http://www.caravanmagazine.in/vantage/why-has-arvind-kejriwal-abandoned-investigation-he-launched-against-mukesh-ambani-last-year> (last viewed on Aug 6, 2018).

⁷ Ibid.

⁸ V. Venkatesan, Trajectory of the tussle, Frontline, <https://www.frontline.in/cover-story/article24440227.e> (last viewed on Aug 6, 2018).

latter calling the house of LG as BJP's 2nd headquarters. Arvind Kejriwal on 18th May 2015 told all bureaucrats not to follow any order from the LG whether oral or written without his approval. Jung termed this unconstitutional. Later when the NDA government came into power, the Centre issued a notification on 21st May 2015 which limited the powers of the Delhi government's Anti- Corruption Bureau to probe Central government employees⁹.

The Supreme Court refused to step into the on the grounds that the petitioners had themselves had approached the High Court and when the High Court has already heard the matter on all issues the Delhi High Court should deal with this case and give its judgment¹⁰. Jung appoints MK Meena as Joint Commissioner of Delhi Police. In retaliation, Kejriwal replaced the Home Secretary. The LG vetoed the order of replacement. In July the Delhi government appointed Swati Maliwal as Delhi Commission for Women (DCW) Chairperson. The LG was quite anguished by this and asked why his permission was not taken. During this entire tussle, the Delhi High Court on 4th August 2016 gave the judgment in favor of the LG and said that the LG was not bound by the aid and advice of the Council of Ministers and that he was the administrative head of the National Capital Territory of Delhi (NTCD). The LG's approval was compulsory now to implement the decision taken by the Council of Ministers. The Delhi government appealed to the Supreme Court. LG Najeeb Jung resigned on 22nd December 2016. Anil Baijal took over the post but the tussle still continued and the matter escalated so much that a Division Bench of Supreme Court had to recommend the matter to a Constitutional Bench comprising of 5 judges on February 15, 2017. The Supreme Court decided to hear the matter on November 2017 and reserved its judgment on December 6th, 2017. The tussle continued and on February 2018 there was an alleged assault Chief Secretary Anshu Prakash Chief Secretary by AAP leaders in the CM's residence. As a protest, IAS officers decided to skip meetings with ministers but claimed they have not stopped working. Anil Baijal asked the Chief Minister to refer the proposal to the Centre when he demanded approval from the LG for providing ration door to door. The government also demanded complete statehood to Delhi and installation of CCTV's. Arvind Kejriwal and his fellow colleagues also went on a hunger strike at Lt. Governor's office. On June 14, Arvind Kejriwal wrote to the Prime Minister to intervene and end the tussle. After a 7 months wait the Supreme Court overturned the decision of the Delhi High Court claiming that the LG was bound by the advice

⁹ Manu Sebastian, Live Law (2018), <http://www.livelaw.in/aftermath-of-supreme-court-judgment-on-delhi-govt-v-lg-tussle/> <http://www.livelaw.in/aftermath-of-supreme-court-judgment-on-delhi-govt-v-lg-tussle/> (last viewed on August 6, 2018)

¹⁰ Vikash Kumar Bairagi, Who is the Boss of Govt. of NCT of Delhi? [A constitutional battle between Lt. Governor and Delhi Govt. in an asymmetric Federal Govt.: A hope for full statehood of Delhi], The SCC Online Blog (2017), <https://blog.sconline.com/post/2017/01/07/who-is-the-boss-of-govt-of-nct-of-delhi-a-constitutional-battle-between-lt-governor-delhi-govt-in-an-asymmetric-federal-govt-a-hope-for-full-statehood-of-delhi/> (Last viewed on Aug 6, 2018).

of the Council of Ministers.¹¹

V. ISSUES

The tussle between the government of Delhi and the Centre revolves around the following issues.

- Notification by the Ministry of Home Affairs dated 21st May 2015 which put “services” outside the power of the Delhi government. The notification gave the Centre the power related to “services”
- Another notification dated 21st May 2015 which restricted the Anti-Corruption Branch Police of Delhi to investigate servants of the Centre.
- Non approval of the revision of stamp duty payable on sale of agricultural land and special public prosecutors appointment by LG.
- Non approval of investigation of corruption allegation in Delhi & District Council.
- Non approval of the decision taken by the government for compensation to people for disruption in power supply.¹²

VI. ARGUMENTS FROM THE PARTIES

- *Arguments From Appellant*

The appellant before the Supreme Court was challenging the decision of the Delhi High Court. The appellant side was represented by a group of lawyers which included Senior Advocates Gopal Subramanian, P. Chidambaram, Shekhar Naphade, Indira Jaising, Rajiv Dhawan etc.¹³

P. Chidambaram argued that the LG is not a Viceroy. He is an agent of the President and his powers directly depend on the wishes of the President. He further contended that by a special majority of the people’s representatives the 69th amendment was passed because there was some deficiency in the Constitution. ⁱ The LG is making a mockery of democracy. As per the Government of National Capital Territory of Delhi Act and the Transaction of Business rule, the LG is required to act as per aid and advice of the Governor. If there any differences the President will decide and his decision would be final. ¹⁴

¹¹Shreyasi Jha, The Indian Express (2018), Delhi Chief Minister vs. L-G: A timeline of the tussle since Kejriwal took office, <https://indianexpress.com/article/cities/delhi/delhi-chief-minister-vs-lieutenant-governor-arvind-kejriwal-anil-baijal-najeeb-jung-supreme-court-timeline-5245029/> (last viewed on Aug 6, 2018).

¹²Manu Sebastian, Live Law (2018), <http://www.livelaw.in/aftermath-of-supreme-court-judgment-on-delhi-govt-v-lg-tussle/> (last viewed on August 6, 2018).

¹³Devika, LG is bound by "aid and advice" of the Council of Ministers of the Delhi Government: SC, SCC Online Blog (2018), <https://blog.sconline.com/post/2018/07/04/lg-is-bound-by-aid-and-advice-of-the-council-of-ministers-of-the-delhi-government-sc/> (last viewed on August 06, 2018).

¹⁴LG is making mockery of democracy: Delhi govt, The Hindu (2017), <https://www.thehindu.com/news/cities/Delhi/lg-making-mockery-of-democracy-delhi-govt/article20043700.ece> (last viewed on August 7, 2018).

Indira Jaising argued that to prevent constitutional anarchy Article 239-AA should be interpreted and the executive power of the Delhi government is coextensive with its legislative power. The Delhi legislative assembly is given legislative powers on all subjects except three subjects in the state list and all subjects in the concurrent list according to Article 239 AA(3). It was further specified in Article 239 AA (4) that the legislative assembly has executive powers on those subjects whom the Council of ministers has powers to make laws on. There has to be a separation of powers between the Centre and the Delhi government so that the Delhi government can function smoothly without interference from the Centre. This is essential in the fields of in the field of social welfare subjects like women's welfare, employment, education, sanitation, and health care. Indira Jaising also contended that if this kind of exercise of power is allowed, the Centre can tomorrow shift the capital as Delhi is not specified as capital in the Constitution.¹⁵

Gopal Subramaniam argued that it is the right of the people of Delhi to elect their own legislature and government to make laws under the entries of the state list and execute these laws. He further said that Article 239 AA draws a line between executive and legislature which is the essence of representative democracy. Thus the legislature should have full power to execute laws and this essential function should not be interfered with by any other authority. The interference by the Governor caused delay and paralyzed governance. He wants his opinion on every file; he overrules the decisions taken by the government without even referring to the government. The Lt Governor of Delhi should be a titular head and not a real head.¹⁶

Advocate Rajeev Dhawan argued that Delhi has a responsible government and not a representative government like Puducherry. The LG has no role running the affairs of Delhi. This power is only given to the council of ministers. The LG can interfere in the matters of Delhi in only two cases which is if Delhi is under some kind of threat, or crosses powers. If there is any conflict between the LG and the Council of minister then it should be resolved through negotiations and if still no resolution has been reached then it should be referred to the President. The stand of the government is not limited as they are elected by the people. There was huge chaos, law and order issue when the Jat agitation took place. In these cases, the LG can intervene.¹⁷

It was further argued by the appellant that because of the insertion of Article 239AA and 239 AB and Government of National Territory Act 1991 the NTCD occupies a very unique position in the Constitution of India. It has enabled Delhi to enjoy special characteristics which are attributed solely to full-fledged states

¹⁵Devika, LG is bound by “aid and advice” of the Council of Ministers of the Delhi Government: SC, SCC Online Blog (2018), <https://blog.scconline.com/post/tag/article-239aa/> (last viewed on August 7, 2018).

¹⁶Mehal Jain, Live Law (2017), Centrevs. Delhi:GopalSubramaniam Explains Why Aid and Advice of Council of Ministers Is Binding on LG <http://www.livelaw.in/centre-vs-delhi-gopal-subramaniam-explains-aid-advice-council-ministers-binding-lg/> (last visited on August 7, 2018).

¹⁷Delhi Govt Vs. LG Tussle: What Kejriwal Lawyers Argued So Far Before SC Constitution Bench, Live Law (2017), <http://www.livelaw.in/delhi-govt-vs-lg-tusslewhat-kejriwals-lawyers-argued-far-sc-constitution-bench/> (last viewed on August 7, 2018).

under the constitution. After the amendment, the appellant argued that after the amendment and enactment of the National Territory of Delhi Act 1991, Delhi has strong administrative powers compared to other union territories¹⁸

The appellant referred to *Municipal Corporation v. State of Punjab (1997) 7 SCC 339* to contend that the Union Territory of Delhi forms a class by itself. It is different from all the other Union Territories. The bench has no occasion to decide in which state and form the NTCD is different compared to other Union Territories. The appellant further said that the aim of the 69th Amendment and the 1991 Act was to give citizens recognition and a voice in the governance of Delhi.¹⁹

The appellant also referred to more cases such as the *R.C. Cooper v. U.O.I (AIR 1970 SC 564)* and *Maneka Gandhi v. U.O.I (AIR 1978 SC 597)*; after these cases constitutional law had undergone a lot of changes in the Indian context. The appellant also submitted that a more purposive and organic method of interpretation should be adopted by the court which was adopted in *Justice K.S. Puttaswamy (Retd.) and Anr. v. U.O.I. and Ors ((2017) 10 SCC 1)*. It was further argued that the words "assist and advice" was purposely not included and the words "aid and advice" were included. This thus removed the requirement of the Lt Governor's approval in every matter. The appellant also referred to cases such as *Rai Sahib Ram Jawaya Kapur and Ors. v. State of Punjab (AIR 1955 SC 549)* and *Shamsher Singh v. State of Punjab (1974 SC 2192)* which even though was in context of State of Punjab, decided that since the constitution has adopted the Westminster style cabinet system of government, The Governor has to function according to the aid and advice of the Council of Ministers.²⁰ It was further submitted by the appellant that there is a need for an there is necessity for interpretation of the phrase 'aid and advice' used in different articles of the Constitution such as Article 74, Article 163 and Article 239AA in the context of the functions of the President, the Governor and the Lieutenant Governor respectively which is consistent and uniform.²¹

- ***Arguments From The Respondent***

Maninder Singh, who is the Additional Solicitor General of India, appeared on behalf of the Respondents along with other group of lawyers which included Sr. Adv. V. Mohana, PrateekJalan Sr. Adv., Sidharth Luthra etc. The Respondent argued that despite the insertion of Article 239 AA the President still remains the Executive head. The President acts through the Lt. Governor and the power of the Parliament is in no way diminished

¹⁸Govt of NCT of Delhi vs Union of India, Manupatra (2018), MANU/SC/0680/2018 (last visited on August 7, 2018).

¹⁹Ibid.

²⁰Govt of NCT of Delhi vs Union of India, Manupatra (2018), MANU/SC/0680/2018 (last visited on August 7, 2018).

²¹Govt of NCT of Delhi vs. Union of India, Manupatra (2018), MANU/SC/0680/2018 (last visited on August 7, 2018).

with the insertion of Article 239 AA.²²

Maninder Singh argued that the Delhi government's role is only one of municipal governance. Acts such as the Delhi Fire Services Act and DANICS are pieces of central legislation. The LG has the authority to override the Council of Ministers and it is not limited to public order, police, and land. Delhi is a union territory and that means that the President is the head acting through the LG.²³ The appellant had contended that the Delhi legislative assembly is an elected government. The Union of India is also an elected government. They are elected by the nation and thus Union of India is superior. Though Delhi has got special status it is not a state. It is still a union territory and thus is under the President regardless of the fact it has a legislative assembly. Delhi is not in the list of states and it would not be democratic to say that both Union of India and the Legislative assembly of Delhi have the same powers. He also contended that Article 239 AA is not a proper code as well. The legislative has the power to take care of daily utilities but the administrative power is with Centre and the President.²⁴

Maninder Singh also argued that in the last 3 years out of 650 files received there arose was conflict in only 3. One cannot break the tiers of the government with respect to division of powers between the Centre and a city government over the governance of the national capital²⁵. The appellants were accepting that they are not a state but claiming powers of a state which is unconstitutional.

The respondents submit that the constitutional scheme for union territories has been dealt in Delhi Municipal Corporation case. The court had established 3 categories of Union Territories and Delhi even though it is the National Capital Territory is still a Union Territory. The respondent contended that the court should interpret the true interpretation of the Balakrishnan report in Article 239 AA and the GNTCD Act 1991. The respondents argue that Article 239 is an integral part of the Constitution and of Part VIII. It was said that Article 239 should be read with Article 239 AA. Article 239 provided that the administrative powers should be with Delhi. The respondent directed the attention of the Court to Articles 53 and 73 read with Article 246(4) of the Constitution. The respondent argued that nowhere in Article 239 and 239 AA it has been stipulated that the council of ministers should have the right to exercise executive powers. The respondent also contended that the phrase "Lieutenant Governor and his Ministers" in article 239 (4) in no way refer to " LG and Council of Ministers". This shows the LG is responsible for the administration. The respondent argue that in the judgment of Ram Jawaya Kapur the principle laid down says that there is existence of legislative power co-extensive with

²² Krishnadas Rajagopal, Key arguments in Delhi govt vs. L-G case, The Hindu (2018), <https://www.thehindu.com/news/national/key-arguments-in-delhi-govt-vs-l-g-case/article24327768.ece> (last viewed on August 7, 2018).

²³ Ibid.

²⁴ <http://www.livelaw.in/delhi-govt-vs-lg-gist-centres-arguments-sc-constitution-bench-far/>

²⁵ Ibid.

executive power, which is with respect to only the Union and the States and is not applicable to Union Territories.²⁶

The respondent argued that there is a distinction between Article 239 AB and Article 356. According to Article 356, the President in case the constitutional machinery fail shall obtain all the powers of the state government and the powers of the Governor. In the case of union territories, this clause is not applicable as the executive power is vested in the President. Article 239 AA does not provide any assumption of power rather it is suspension of operation of Article 239 AA in case the President feels that is necessary. The respondents also argue that clause 4 of Article AA is similar to Section 44 in the Union Territories Act, 1963. In terms of Section 3(60) of the General Clauses Act, the State government with respect to union territories would mean the "Central Government". Thus it is said that the court should interpret Article 239 AA like Section of 44 of the Union Territories Act 1963. It should not be restricted just because Delhi has some kind of special status. The respondent have referred to many important provisions of the Balakrishnan report and important provisions of the Constitution of India and the 1991 act.²⁷ The respondent also claimed that Delhi is a union territory and by giving full executive powers to the government of Delhi we are stating it as a state something which the framers of the constitution did not want.²⁸

The respondent further gave a combined reading of Article 239 AA and 41(2) of the 1991 Act it is mentioned that if there is a matter where the LG has the liberty to act in his discretion then his discretion is final. The respondent has also referred to *TejKiran Jain and Ors. v. N. Sanjiva Reddy and Ors. (1970) 2 SCC 272*. In this case the phrase "any matter" should be interpreted as "every matter" and the word "anything" refers to "everything".²⁹ The national capital belongs to the people of India and not only to those living in Delhi.³⁰

VII. JUDGMENT

After reserving its judgment for almost 7 months the Supreme Court on July 4th, 2018 gave a historical judgment and declared that the Lt. Governor of Delhi is bound by the aid and advice of the Council of Ministers except in matters of land, police and public order. There were three and separate and concurring judgments in which CJI DipakMisra wrote for himself and Justice A.K Sikri and Justice Khanwilkar. Justice DY Chandrachud and Justice Ashok Bhushan gave separate judgments but shared the same opinion.

²⁶Govt of NCT of Delhi vs Union of India, Manupatra (2018), MANU/SC/0680/2018 (last visited on August 7, 2018).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ AAP govt vs. Centre: Delhi can't have exclusive executive powers, Supreme Court told, DNA (2017), <http://www.dnaindia.com/india/report-arvind-kejriwal-vs-centre-delhi-can-t-have-exclusive-executive-powers-supreme-court-told-2563174> (last viewed on August 07, 2018).

CJI Misra while reading his judgment said that by in no stretch of the imagination can NCT of Delhi can be accorded the status of a state under the present constitutional scheme and this is clear as noon.³¹ There is no room for ‘absolutism’ or ‘anarchy’ in the Constitution. Concepts of pragmatic federalism and federal balance are to prevail by giving the NCT of Delhi some degree of necessary independence. This is totally based on the limitations imposed by the Constitution.³² CJI Misra said that the relationship between the Council of Ministers and the LG should be a reflection of the philosophy of affirmative constructionism and profound sagacity and judiciousness³³

Justice Chandrachud said that the LG has to know that the Council of Ministers which provides aid and advice is elected to serve the people and represents both the responsibilities and aspirations of democracy.³⁴ Justice Chandrachud said that in case there is a dispute between the Council of Ministers and the LG it must be resolved through dialogue and discussion. Justice Chandrachud also referred to the Balakrishnan Committee report.³⁵

Justice Chandrachud also said that the LG cannot act as an obstructionist just because he is the administrative head of Delhi. Real power and substantive accountability are vested in elected representatives in democratic government. Article 239(4) must be construed in such a way that “any matter” is not “every trivial matter”.³⁶ Justice Chandrachud also added in his 175-page concurring judgment that it is the Council of Ministers which takes substantive decisions.³⁷ Justice Chandrachud further added that pertaining to the administration of affairs of Delhi and the LG must be made aware of all matters under the Transaction of Business of the Government of NCT of Delhi Rules, 1993; the LG must be kept duly apprised on all matters pertaining to the administration of affairs of the NCT. The Lt. Governor should be made aware of every proposal, agenda, and decisions taken by the Delhi government according to the rules.³⁸

³¹ Abhishek Anshu, Manohar Lal and Sanjeev Kumar, Delhi can’t be a state; LG has no independent power: SC, PTI (2018), http://www.ptinews.com/news/9852531_Delhi-can-t-be-a-state--LG-has-no-independent-power--SC.html (last viewed on August 7, 2018).

³² Ibid.

³³ L-G bound by the Delhi Govt advice: SC, The Tribune (2018), <https://www.tribuneindia.com/news/nation/l-g-bound-by-delhi-govt-advice-sc/615486.html> (last viewed on August 7, 2018).

³⁴ Real power, accountability vests with elected representatives, not LG: SC, PTI (2018), http://www.ptinews.com/news/9853012_Real-power--accountability-vests-with-elected-representatives--not-LG--SC (last viewed on August 7, 2018).

³⁵ Ibid.

³⁶ LG Is Bound by Advice of Elected Delhi Government, Says SC on AAP vs. Centre Case, The Wire (2018), <https://thewire.in/law/lg-is-bound-by-advice-of-elected-delhi-government-says-sc-on-aap-centre-case> (last viewed on August 7, 2018).

³⁷ Abhishek Anshu, Manohar Lal and Sanjeev Kumar, Delhi can’t be a state; LG has no independent power: SC, PTI (2018), http://www.ptinews.com/news/9852531_Delhi-can-t-be-a-state--LG-has-no-independent-power--SC.html (last viewed on August 7, 2018).

³⁸ Real power, accountability vests with elected representatives, not LG: SC, PTI (2018), http://www.ptinews.com/news/9853012_Real-power--accountability-vests-with-elected-representatives--not-LG--SC (last viewed on August 7, 2018).

Justice Bhushan said that the interpretation of the constitutional provisions should be based on the needs of the time. He said that the LG's powers under Article 239 AA "should be exercised on matters of constitutional relevance".³⁹

The bench also held that without due application of mind the LG should not act in a "mechanical manner" so as to refer every decision of the Council of Ministers to the President. Justice Ashok Bhushan further wrote in his 123 page judgement that the Delhi Legislative Assembly represents the elected representatives "their decision and opinion must be respected in all possible way"⁴⁰

The 3 justices concluded that in a democratic republic the will of the collective is reflected by the elected representatives. The collective is supreme. Constitutional morality invalidates power held in the hands of the few. Constitutional governance has two major principles which are fiduciary nature of public power and the system of checks and balances. There should be a harmonious coexistence between Union and the state governments and there should be interdependence to prevent constitutional discord. There should be a collaborative federal architecture. The status of Delhi is sui generis and is a class apart. The status of Lt. Governor is not that of a Governor of a state. He still remains the Administrator. The parliament has the power to make laws for the NCTD with all matters given in the state list and the concurrent list. This is possible by the insertion of Article 239 AA(3). The Delhi Legislative Assembly has the powers to make laws on those subjects which are in the concurrent list and the state list excluding police, land and law and order in the state list.⁴¹

But if the Parliament does make laws on subjects who fall in the State list or Concurrent List then the State must conform with the law made by the Parliament. Thus the Parliament has the power to override. The executive power of the Government of NCTD is coextensive with the with the legislative power of the Delhi Legislative Assembly when there was a conjoint reading of clauses 3(a) and 4 of Article 239 AA.⁴²

Requiring prior concurrence of the Lt. Governor would destroy the ideals of representative governance and democracy conceived for the NCT of Delhi by Article 239 AA of the Constitution. It was said by the bench that

³⁹ LG Is Bound by Advice of Elected Delhi Government, Says SC on AAP vs. Centre Case, The Wire (2018), <https://thewire.in/law/lg-is-bound-by-advice-of-elected-delhi-government-says-sc-on-aap-centre-case> (last viewed on August 7, 2018).

⁴⁰ Abhishek Anshu, Manohar Lal and Sanjeev Kumar, Delhi can't be a state; LG has no independent power: SC, PTI (2018), http://www.ptinews.com/news/9852531_Delhi-can-t-be-a-state--LG-has-no-independent-power--SC.html (last viewed on August 7, 2018).

⁴¹ Ibid.

⁴²Manu Sebastian, Govt of Delhi vs. Lt. Governor: Supreme Court Judgement, Live Law (2018), <http://www.livelaw.in/govt-of-delhi-vs-lt-governor-summary-of-supreme-court-judgment/> (last viewed on August 7, 2018).

the Lt Governor should not have any hostile attitude towards the Council of Ministers. He should act as a facilitator.⁴³

The bench also said that respect needs to be given to the government and the constitutional functionaries and the authority in power must realize that they are working for the benefit and the welfare of the people. Either the state or the LG should feel they are being lionized and must realize they are performing constitutional duty.⁴⁴

VIII. CONCLUSION

The Supreme Court judgment will lead to more litigation. Put such kind of faith in the constitutional functionaries involved in the administration of Delhi appears misplaced. It now depends on the parties' wisdom how they interpret Article 239 AA (4) in the administration of Delhi.⁴⁵ The judgment only focuses on principles of constitutionality. It does not talk about how it will be applied practically which would lead to more litigation.⁴⁶ So yes the judgment even though has been given but there is still a lot of tension between the Delhi government and the LG.

⁴³Ananthkrishnan G and Kaunain Sheriff M, Delhi Govt vs. Lieutenant Governor Power struggle: Supreme Court reins in Delhi L-G, The Indian Express (2018), <https://indianexpress.com/article/india/delhi-govt-vs-lieutenant-governor-power-struggle-supreme-court-kejriwal-baijal-5246301/> (last viewed on August 7, 2018).

⁴⁴ LG can't be an 'obstructionist': What court said in AAP vs. Centre case, Hindustan Times (2018), <https://www.hindustantimes.com/delhi-news/l-g-shouldn-t-be-obstructionist-what-court-said-in-aap-vs-centre-case/story-xCHbg1KHafzcikZZcoybNN.html> (last viewed on August 7, 2018).

⁴⁵Shweta Hingorani, Why the Supreme Court ruling on Delhi government's power will trigger more litigation, CNBCTV18 (2018), <https://www.cnbctv18.com/legal/why-the-supreme-court-ruling-on-delhi-governments-powers-will-only-trigger-more-litigation-301571.htm> (last viewed on August 7, 2018).

⁴⁶ Apar Gupta, SC order on Delhi will lead to further litigations, Hindustan Times (2018), <https://www.hindustantimes.com/analysis/the-sc-order-on-delhi-will-lead-to-further-litigations/story-G2UdDrLv0lhMblwOevtUXL.html> (last viewed on August 7, 2018).