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History of Delhi govt vs LG tussle: After see-saw battle in various courts, final word from SC



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Centre reverses Supreme Court order, gives Delhi Lieutenant Governor final say on bureaucrats

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The Union government on Friday brought an ordinance designating the Lieutenant Governor (L-G) as the administrator of Delhi who will have the final say on the postings and transfer of all bureaucrats serving the Delhi government.

The **Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023**, is seen as a **bid to nullify** last week's ruling by a Constitution bench of the Supreme Court that handed over the reins of "services" to the Delhi Government.



The ordinance, promulgated by President Droupadi Murmu, seeks to **amend the Government of National Capital Territory (NCT) of Delhi Act, 1991** and **effectively negates the May 11 Supreme Court judgment** that gave the Arvind Kejriwal-led Aam Aadmi Party (AAP) government the power to make laws and wield control over bureaucrats deputed to the Delhi government.

Creation of the National Capital Civil Service Authority (NCCSA)



The Ordinance creates a **new statutory authority – the National Capital Civil Service Authority (NCCSA)** – which will be headed by the elected Chief Minister of Delhi in addition to the Chief Secretary and the Principal Secretary of the Home department.

The NCCSA will make “recommendations” to the LG regarding “**transfer posting, vigilance and other incidental matters.**”

L-G's decision final



Notably, **all matters required to be decided by the body** shall be decided by “majority of votes of the members present and voting.”

This means, that in effect, the **decision of the elected chief minister of Delhi can be overruled by the two senior bureaucrats.**

Furthermore, in case the LG differs with the recommendation made, they would be empowered to “return the recommendation to the Authority for reconsideration” and, in case of continuing difference of opinion, “**the decision of the Lieutenant Governor shall be final.**”

This **effectively reverses the verdict delivered by the Supreme Court**, which vested the Delhi government with final authority over the matter.



The ordinance gave more teeth to the L-G not only in terms of the transfer and posting of officials and vigilance matters related to them, but also in terms of governance in Delhi designating the individual occupying the post as “administrator” acting “in his sole discretion” in matters beyond the purview of the Delhi Assembly.

The ordinance also gives sweeping powers to the Secretary of the Department to the Council of Ministers:

“In case the Secretary to the Council of Ministers is of the opinion that the proposal considered and decided by the Council of Ministers is not in accordance with the provisions of the law... it shall be the duty of the Secretary to the Council of Ministers to bring it to the notice of Lieutenant Governor for taking a decision thereon.”

WHAT HAS HAPPENED SO FAR

File photo



In 2015, a Union Home Ministry notification said that the **Lieutenant Governor of Delhi shall exercise control over “services”**.



The Delhi government challenged this before the Delhi High Court, which in **2017 upheld the notification**.

On appeal, a two-judge Bench of the Supreme Court referred the issue to a larger constitution Bench.

May 21, 2015 | Union home ministry issues gazette notification, saying the LG will have jurisdiction over matters connected with services apart from land, public order and police. This means power to transfer officers within Delhi government to vest with LG who may consult the chief minister whenever he thinks its necessary on issues of services using his own 'discretion'



May 28, 2015 | Delhi government moves HC against Centre's notification on LG's powers. Centre moves SC against HC's May 25 order terming its notification as 'suspect'



Jun 10, 2015 | HC refuses to grant interim stay on MHA notification on powers related to Anti-Corruption Bureau (ACB)

Jul 8, 2016 | SC refuses to entertain Delhi government plea to first decide the preliminary issue as to whether Delhi HC has the jurisdiction over disputes between the Centre and the state or is it 'exclusively' triable by the apex court

Aug 4, 2016 | HC rules that LG is the administrative head of National Capital Territory and not bound by advice of council of ministers/cabinet



Feb 15, 2017 | On Delhi government's appeal, SC refers the matter to the Constitution bench

Jul 4, 2018 | Constitution bench rules that LG does not have independent decision-making powers, and is bound to act on the aid and advice of the Council of Ministers. It lists before the regular bench to decide specific issues

arising out of its verdict on Article 239AA

Feb 14, 2019 | A two-judge bench delivers a split verdict on the issue of control of services in the capital. Matter goes to a three-judge bench

May 6, 2022 | Centre says services left out of judgment so three-judge bench refers the issue of control of services in Delhi to a five-judge Constitution bench


Nov 9, 2022 | Five-judge Constitution bench commences hearing in the matter

May 11, 2023 | SC rules that Delhi government has legislative and executive powers over administration and control of services except for public order, police and land. Includes power of transfer postings. SC makes it clear LG is bound by aid and advice of the cabinet





In 2018, a five-judge Constitution Bench, headed by then CJI Dipak Misra, in a **unanimous verdict laid down the law that governs the relationship** between Delhi and the Centre. **The ruling was in favour of the Delhi government.**



In 2019, two judges, (who were also part of the larger 5-judge Bench in 2018), Justices Ashok Bhushan and AK Sikri, delivered a **split verdict on the specific issue of “services.”**



The split verdict then went to a three-judge Bench and eventually a five-judge Constitution Bench, which has now delivered its verdict.



What was the specific bone of contention?

“The limited issue for the consideration of this Constitution Bench only relates to the scope of **legislative and executive powers** of the **Centre and NCTD with respect to the term services**,” the court noted.

Simply put, the court had to decide if it was the **Delhi government or the Union government that had legislative and executive control over the capital’s bureaucracy.**

The court had to interpret **clause (3)(a) of Article 239AA** (Special provisions with respect to Delhi) of the Constitution.

It reads: “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....”

What was the Centre's argument?



The Centre's argument was that in the 2018 ruling, the court did not analyse two crucial phrases in Article 239AA(3)(a).

- ❖ First was “ **insofar as any such matter is applicable to union territories**” and
- ❖ the second was “**subject to the provisions of this Constitution.**”

The Centre argued that since **no Union Territory has power over services**, Delhi too could not exercise such power.

Essentially, **Delhi could only legislate on issues that other Union Territories are explicitly allowed to legislate upon.**



What did the court decide?

First, the court concluded that **Delhi under the constitutional scheme is a Sui Generis (or unique) model**, and is not similar to any other Union Territory.

It said **Delhi presents a special constitutional status under article 239AA**.

It quoted from the 2018 judgement, where Justice Chandrachud had said that “having regard to the history in background, it would be fundamentally inappropriate to assign to the NCT status similar to other union territories.”

What is the extent of Delhi's powers as per the SC verdict?



Article 239AA specifically excludes land, police and public order from the purview of the legislative powers of the Delhi government.

The court acknowledged that these three issues can also have some overlap with “services”.

However, legislative and executive power over such services such as Indian administrative services, or joint card of services, which are relevant for the implementation of policies and vision of NCT of Delhi in terms of day to day administration of the region, shall live with Delhi



Ordinance making power of the President

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