

The Lieutenant Governor of Delhi; Powers and Problems

HIMANSHI

Bhagwant University, Sikar Road, Ajmer (Rajasthan) India

ABSTRACT

Governor is supposed to be the caretaker of constitution and law in the state and his powers are analogous to the powers of the President at the Central level along with his discretionary powers and the power to appoint the Chief Minister vide article 163 of the Indian Constitution. The role of Governor in the parliamentary system has been a matter of much heated debate ever since inception because of the mode of appointment and the ease of removal. Since the Governor is seen to be an agent of the central government, at multiple instances, in the not so long history of Indian democracy the post of Governor has been seen as a factor crippling federal structure of the state that our constitution envisages. The case becomes all the more complicated in the case of the two union territories *i.e.* Delhi and Puducherry, that were conferred a pseudo-statehood in the form of a legislature and council of Ministers much later vide article 239. Even among these two Union territories, the case of Delhi stands unique as the Police, Public Order and Land; entries 1, 2 and 18 of the state list come under the purview of the central government vide Article 239AA, clause 3(A) of the Indian Constitution. As an acting agent of the Union Government this increases the power of Lieutenant Governor of Delhi manifold. There have been several confrontations between the office of Lieutenant Governor and government of Delhi in the past few years and subsequently the matter was taken to Courts. Through this paper the author tries to find the points of contention that have led to confrontation between the office of Governor and elected Government, with special reference to Delhi and the constitutional provisions that have led to this. Further he tries to find ways that can bring to an end to these confrontations.

Key Words : Lieutenant-Governor, Power, Government, Delhi, Dispute, Court

INTRODUCTION

The Post of Governor is created vide Article 153 of the Indian Constitution, that mandates that there shall be a Governor for each state and article 154 vests all executive powers of the state in the Governor. These powers along with the Governor's powers to suspend/remit/commute sentences vide article 161 of the Indian Constitution make the post of governor of states analogous to the post of president at the Central level. Only more powerful, as the Governor enjoys discretionary powers in inviting parties to form governments and registering oath of Chief Minister. Time and again, Courts have spoken against Governors who seem to be acting as an all-pervading super-constitutional authority.¹ This power

of Governors makes the post controversial as more often than not governors have identified themselves as members of political parties at Centre. What further complicates the situation is the mode of appointment and removal of Governors vide articles 155 and 156 of Indian Constitution. As has been pointed out in a consultation paper by the National Commission to Review the Working of Constitution "While the President is elected by the representatives of the people, namely Members of Parliament and the Members of the State Legislatures, the Governor is merrily appointed by the president which really means, by the Union Council of Ministers. In as much as the Governor holds office during the pleasure of the president, there is no security of his tenure. He

1. Governor's Discretion, The Hindu, 24 September 2018

can be removed by the president at any time.”² It is these provisions of the constitution that have reduced the post of Governor to being political agents of the ruling party at Centre. Often these powers of the Governor and mode of his appointment and removal have led to confrontations with elected state governments and the post of Governor has been criticised as a tool of crippling the federal structure of the country that the constitution envisages. What further makes it worse for the elected governments is the fact that Governors have been given the freedom to decide whether a subject falls under his discretionary power by himself vide article 165 of the Indian Constitution.

Article 239 allows the President to appoint administrators that can be called as specified, in the Union Territories that act as his agents. Vide Article 239AA the President is allowed to appoint an administrator in Delhi, referred to as Lieutenant-Governor to act on his behalf. But vide the same article, also known as the National Capital Territory (NCT) Act, the legislature has been formed in the NCT of Delhi. The Lieutenant Governor of Delhi enjoys all the powers of a Governor along with additional powers conferred upon him vide article 239AA, that keeps entries 1, 2 and 18 *i.e.* public order, police and land out of the ambit of elected Delhi Government. In the past few years we have come across several instances of confrontations where Governors and elected Governments/members have come face to face and tried to dictate their terms. These Confrontations grew so large in Delhi that the matter had to be dragged into courts at times.

The office of Governor: The one to uphold Constitutions and Law

“I, A. B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of(name of the State)”³ is the oath the Governor affirms to upon entering the office and if that was to be followed in letter and in spirit, we would not be debating the things we are debating right

now. But Governors have acted as agents of Centre partly because they identify themselves as members/sympathisers of different political parties and mostly because of the fact that their tenure depends on the pleasure of the President, which *de facto* means the council of Ministers.

The Case of Delhi:

The Lieutenant Governor of Delhi appointed under the warrant and seal of the President is actually much more powerful than other governor in the country as he has discretionary powers over a much larger spectrum of issues as Public order, Police and Land are out of the ambit of the state Government and under the direct control of the President on whose behalf, the Lieutenant-Governor exercises his/her powers. Further through MHA notification dated 21 May 2015, Services; that include all public services, has been brought out of the elected Government’s ambit and under the discretion of the Lieutenant-Governor (LG). “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.”⁴ Reads the MHA order. This notification came at a time when the LG and Delhi Government locked horns on matters of appointment of Bureaucrats in the NCT, more specifically, the appointment for the Post of Principal Secretary, the top bureaucratic post in the NCT of Delhi. The confrontation that started with the Then LG’s comment that he didn’t need to consult the Government on subjects regarding Land, Public order and Police and continued when the Delhi Government Deputy CM Manish Sisodia, announced that the Government intended to increase circle rates on agricultural land, a thought severely opposed by the LG. The government asserted

2. National Commission to Review the working of Constitution, A consultation Paper on The institution of Governor Under the Constitution. May 11, 2001.
3. <http://constitution.org/cons/india/p06159.html>
4. The Gazette of India, Extraordinary, Part ii, Section 3, Sub-section (2), published on 21 May 2015

that the LG was bound to work on the aid of the council of ministers/Government and not at his own discretion. Further the Delhi government ordered the formation of a commission of enquiry to investigate the CNG fitness scam. The LG opposed the move of formation of such a commission by the legislature, which he asserted fell under his domain and referred the matter to MHA. The MHA backed the LG and ruled that the Government of NCT was not the competent authority to frame such a commission. The formation of one-member commission to enquire an alleged scam in Delhi and District Cricket Association led to a similar confrontation and the matter was taken to Delhi high court. A bench of two judges comprising of Chief justice of Delhi high Court G. Rohini and Justice Jayant Nath ruled that the LG had complete control of all Matters regarding NCT of Delhi. "The contention of the Delhi government that the Lt. Governor is bound to act only on the aid and advice of the council of ministers in relation to matters in respect of which the power to make laws has been conferred to the legislative assembly of NCT of Delhi under Article 239AA, is without substance and cannot be accepted," the 194-page judgement stated.⁵ The court also said that all the commissions thus formed were illegal and must be dissolved. Further the court ruled that the MHA notification in this regard was completely legal.

The then Delhi Government was not satisfied with these orders. In February 2018, Delhi's Principal Secretary and IAS officer Anshu Prakash, appointed by the LG was allegedly assaulted by some members of the Delhi Legislative Assembly (MLA) from the Aam Aadmi Party (AAP). The AAP alleged that the aforesaid officer said that he was answerable only to the LG and not them. Contention on the issue of appointment of bureaucrats further escalated the confrontations and ultimately the issue was taken to the honourable Supreme Court.

Under these circumstances the case was taken to Supreme Court where a 5 member bench of which the then Chief Justice of India (CJI) Deepak Mishra was a

part ruled that the LG must act on the aid and advice of council of Ministers. "Chief Justice of India (CJI) Dipak Misra, who wrote the opinion for himself, and Justices A.K. Sikri and A.M. Khanwilkar held that except for issues of public order, police and land, the Lieutenant Governor is bound by the "aid and advice of the Kejriwal government, which has the public mandate."⁶ Read a newspaper report. Further the Court ruled that the LG can reserve a bill for consideration of President but herein any matter doesn't imply every matter. Further the court said that there has to be collective responsibility and it must not be lost in drama. There is no place for absolutism and cooperation is necessary. The premier court observed that a freeze on government decisions by the LG negates the very concept of "collective responsibility." The governance of the National Capital demands a "meaningful orchestration of democracy" and a "collaborative federal architecture."⁷ The court also ruled that LG is not equitable with Governor but only an administrator in a limited sense. "In the light of the nine-judge bench in New Delhi Municipal Corporation (Supra), it is clear as a noon day that by no stretch of imagination, NCT of Delhi can be accorded the status of a State under our present constitutional scheme. The status of NCT of Delhi is sui generis, a class apart, and the status of the Lieutenant Governor of Delhi is not that of a Governor of a state, rather he remains an administrator, in a limited sense, working with the designation of Lieutenant Governor."⁸ Further the bench went on to define what aid and advice meant. The bench ruled that "The meaning of 'aid and advise' employed in Article 239AA(4) has to be construed to mean that the Lieutenant Governor of NCT of Delhi is bound by the aid and advice of the Council of Ministers and this position holds true so long as the Lieutenant Governor does not exercise his power under the provision to clause (4) of Article 239AA. The Lieutenant Governor has not been entrusted with any independent decision-making power. He has to either act on the 'aid and advice' of Council of Ministers or he is bound to implement the decision taken by the President

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5. <https://www.livemint.com/Politics/eA9Esr4u88TfpJ5SWh1UcI/LG-vs-AAP-govt-HC-ruling-today-on-power-tussle-between-Cen.html>
 6. Lieutenant Governor Bound by 'aid and advice' of elected Delhi govt., rules Supreme Court, The Hindu, 04 July 2018.
 7. Lieutenant Governor Bound by 'aid and advice' of elected Delhi govt., rules Supreme Court, The Hindu, 04 July 2018.
 8. In Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal no. 2357 of 2017, Government of NCT of Delhi vs Union of India & Another . The Conclusion in Seriatim, page 228

on a reference being made by him.”⁹

The judgement was a landmark and came after an intensified tussle for power, of over 3 years between the LG of Delhi and the elected Delhi Government. The ruling party in Delhi *i.e.* AAP, hailed it as a victory of democracy. Other political parties also welcomed the decision but all of them had different interpretations of the judgement.

The Supreme Court delivered a split verdict with 4 out of the six points of contention ruled in the favour of central government that include Control of Anti-Corruption Bureau and the ruling that Delhi ACB can't investigate Central government employees. The Delhi Government govt. got an upper hand on revenue and electricity issues only. Further the power to appoint prosecutors was ruled in the favour of Delhi government.

A major point of contention that remained was the 'services'; powers for which has been vested in the LG by the MHA notification issued on 21 May 2015. The two judges' bench differed on this issue and hence has requested for a larger bench. “The bench of two judges — Justices AK Sikri and Ashok Bhushan — didn't agree on the contentious point on who can transfer officers posted in Delhi and referred the issue to a three-judge bench for a definitive ruling.”¹⁰ In a hearing the Delhi Govt. Counsel said that depriving the Delhi government control over the Services is like hiring an artisan and chopping off his limbs.¹¹ Later in an interview he said that services are not just delegates of the government but officers serve as an extension of the government. The matter is still sub-judice and the Central govt. has not represented itself in the court as of yet.

METHODOLOGY

For the purpose of this paper, I shall use News Paper reports, published articles, chapters of books/reports, Court Orders and reports from several Government Commissions constituted to examine the role of governor in Indian Context. I intend to use both primary and secondary resources to strengthen my paper and

enhance the context of this paper.

RESULTS

The fact that Supreme Court ruled that Delhi is not a state and the prevailing conditions don't allow it reduces the post of lieutenant Governor of Delhi to a mere administrator acting on the behalf of the President, establishes that he is not to be equated with the governor of states. He must act on the 'aid and advice' of the Council of Ministers and only refer to the President matters that he feels are of extreme importance. Further a sense of collective responsibility must be adhered to and LG should not act as a political agent to further his/centre's agenda/power. It is only possible through deep cooperation between elected governments and appointed administrator.

Services in the NCT of Delhi is more likely to remain with the Centre and the power to appoint and transfer vested in the President, and to be exercised by the LG. It would be only rational that this remains with the President as NCT of Delhi is so unlike all other states and the need of administration is very different.

Conclusion:

On the basis of case we studied above and arguments presented it can be said that the post of Lieutenant Governor is much more powerful and he/she exercises a lot more powers compared to other governors and LGs of Union Territories. But in the meantime sense of collective responsibility has to be generated and bred. The use of the post of Governor as apolitical tool must be stopped by political parties. Perhaps the tenure of Governor can be fixed at five years against the prevailing system where his/her tenure depends on the Pleasure of President; *i.e.* de facto the pleasure of the Council of Ministers. Political parties must absolve from using the Governor to further their agendas and constitutional responsibilities levied upon him must be respected.

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9. In Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal no. 2357 of 2017, Government of NCT of Delhi vs Union of India & Another . The Conclusion in Seriatim, page 231-232
 10. Delhi Government vs Centre: SC bench split on services, refers it to larger bench; gives ACB power to LG, The Economic Times, 14 February 2019.
 11. Delhi Services Control: it's like hiring an artisan and chopping off his wings, says Counsel in SC. The Hindu, 29 January 2020.