IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.28890 of 2017
and
W.M.P.Nos.31106 and 31107 of 2017

K.Lakshminarayanan ... Petitioner

Vs

1.The Union of India represented
by the Secretary to Government,
Ministry of Home Affairs,
Government of India, New Delhi.

2.The Under Secretary to Government,
Ministry of Home Affairs,
Government of India, New Delhi.

3.The Director (ANL),
Ministry of Home Affairs,
Government of India, New Delhi.

4.The Administrator of Puducherry,
Government of Puducherry,
Puducherry.

5.The Chief Secretary to Government,
Government of Puducherry,
Puducherry.

6.Dr.Kiran Bedi,
Administrator of Puducherry,
Puducherry. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records on the file of the second respondent relating to the impugned order dated 27.01.2017 bearing Ref.No.U-11018/1/2017 – UTL and the third respondent relating to the impugned order dated 16.06.2017 bearing Ref: U-11018/2017-UTL and quash the same in as much as they vest powers on the fourth respondent in violation of the Rules of Business of the Government of Puducherry, 1963 and law.

For Petitioner : Mr.P.Chidambaram, Sr.Counsel,
Mr.V.T.Gopalan, Sr.Counsel,
for Mr.R.Saravanan

For Respondents : Mr.G.Rajagopal,
Addl.Solicitor General of India for
Mr.V.Venkatesan for R1 to R3

Mr.Sanjay Jain, Sr.Counsel
assisted by Mr.Vidur Mohan
and Ms.Sneh Suman, for
Mr.V.Chandrasekaran for R4

The Government pleader,
Puducherry for R5

No appearance for R6

O R D E R

This writ petition has been filed challenging the impugned communications dated 27.01.2017 and 16.06.2017, which are clarifications issued by the Government of India in respect of the constitutional position relating to the Union Territory of Puducherry.

2.The facts leading to the filing of this writ petition are as under:

(a)It is stated in the affidavit filed in support of this writ petition that the petitioner is the Parliamentary Secretary to the Chief Minister of Puducherry directly in-charge of the Centre-State relationship between the Union Territory and the Government of India. The petitioner belonging to Indian National Congress Party is the elected member of the Puducherry Legislative Assembly for the Raj Bhavan Constituency. There are political differences between the elected Government of Puducherry and the Central Government. Even though the Union Territory of Puducherry has to be governed as per law within the four corners of the constitutional provisions, the fourth respondent, viz., Administrator of Puducherry, believes in her individual wish and will over the collective responsibility and wisdom of the Council of Ministers and wants to impose, substitute and perpetrate her ideas, thoughts and decisions on the Union Territory, which she does in the name of (i)Review Meeting with the officials directly by-passing the elected Government; (ii)Calling for each and every file even before they are officially circulated to her in accordance with the rules and hierarchy; (iii)Inspection and visits and issuing 'on the spot' orders and thereby running a parallel and diametrically opposite Government within the Government.

(b)The petitioner has quoted many instances in respect of interference in the administration by the fourth respondent, two of which are detailed as under:

(i)The Government of India as well as the Government of Puducherry believe that the Government officers should use only the official websites and channels for their inter-communication, execution and reporting of the work. The Government of India has issued an Office Memorandum barring officials from using social media and unconnected internet mediums for official work and the Chief Minister of Puducherry has issued directions to comply with the same. But the fourth respondent herein has imposed her sole view that everybody should be on social media round the clock and has formed working groups through social media and issues directions directing the officers to report only through social media. This according to the petitioner, is in violation of the oath of secrecy.

(ii)Another instance is that when there are set of rules for sanctioning payments and disbursements, the fourth respondent instructed the Commissioner of Oulgaret Municipality to pay a sum of Rs.2 Crores without complying with the norms and the procedure of obtaining sanction from the competent authorities, thus indicating that she is the authority with whom the power vests.

(c)It is stated that the fourth respondent is interfering with the day-to-day administration of the Government of Puducherry, policies and its programmes, thus interfering in the every functioning of the elected Government and running the Government herself by calling for every file, officers at random and issuing directions to run the administration in her own way. This, according to the petitioner, openly declares that the entire elected Government, legislature and executive are all subservient to her and the same are without any powers.

(d)The interference of the fourth respondent in the day-to-day administration of the Government has led to serious problems and the governance has become a fodder for press and a matter of ridicule on account of such flagrant violation of law. In these circumstances, the impugned clarifications have been issued by the second and third respondents, clarifying that only the fourth respondent has huge powers, which according to the petitioner is ex-facie illegal even as per the existing Rules of Business and the provisions of the Government of Union Territories Act, 1963.

3.With the above background, the petitioner has come up with this writ petition to quash the impugned orders passed by the second and third respondents.

4.A counter affidavit has been filed on behalf of the respondents 1 to 3, in which the allegations made by the petitioner in the affidavit filed in support of the writ petition, have been strictly denied. It is stated that the petitioner is a private person and he has no locus standi to file this writ petition as the impugned communications are between the Government of India and the Secretary to the Lieutenant Governor, Government of Puducherry. The impugned clarifications have been issued by the second and third respondents in the light of the provisions of the Government of Union Territories Act, 1963 and the Rules of Business of the Government of Pondicherry, 1963. The Administrator is to play a role in the policy making as well as the day-to-day affairs of the Union Territory of Puducherry. Under Article 239A, the Legislative Assembly of Puducherry has been created with such powers and functions as may be specified by law. Article 239 of the Constitution provides that every Union Territory shall be administered by the President through an Administrator. In relation to Puducherry, the Administrator is the Lieutenant Governor.

5. A counter affidavit has been filed on behalf of the fourth respondent in which it is stated that the Lieutenant Governor of Puducherry is discharging the duties and responsibilities as delineated by the Parliament in its wisdom under the Government of Union

Territories Act, 1963 read with the Rules of Business of Government of Pondicherry, 1963. It is stated that the petitioner, is however attempting to equate the Union Territory of Puducherry to the status of a full-fledged State, without appreciating the distinct difference between the Union Territory that has been provided with a body to function as Legislature under the enabling provision of Article 239A of the Constitution of India.

6.It is stated in the counter affidavit filed on behalf of the fourth respondent that no confidential and sensitive information was ever communicated through social media tools and it was used only to disseminate issues for grievance redressal and actions that were part of routine nature. The submission on behalf of the petitioner that the Government of India has issued an Official Memorandum barring use of social media is far from actual truth. With regard to sanction of Rs.2 Crores to a contractor by the Lieutenant Governor, it is stated that the non-release of payment by the Department concerned to the contractor resulted in a financial crunch for the company concerned, which necessitated the Lieutenant Governor to arrange for payment and in the eventuality of non-release of payment, the work of collection of garbages would have come to a standstill. With regard to appointment of Chairpersons, as alleged by the petitioner, it is

submitted that it was proposed to be made to Corporations / Societies that were in financial distress. The statutory dues such as EPF etc. recovered from the employees had itself not been paid. Hence, in the larger public interest and to tone up the functioning of the bodies such as Societies / Corporations that were in financial distress, certain conditions were included in the terms of appointment of the Chairpersons to make the MLAs nominated to the Board responsible. With regard to the contention of the petitioner that the Lieutenant Governor made a reference to the Ministry of Home Affairs in respect of matters relating to waiver of farmers loan extended by the Co-operative Banks and the same amounted to interference of the principles of democracy, it is submitted that Section 44(2) of the Government of Union Territories Act, 1963 enables the Administrator to make a reference to the Central Government.

7. Finally, it is submitted in the counter affidavit filed on behalf of the fourth respondent that the sole intention of the Lieutenant Governor is to serve the people of Puducherry in right earnest and it has been the endeavour of the Lieutenant Governor to reach out to the people. The lieutenant Governor has been discharging the responsibilities entrusted to her under the Statute. She has only exercised the powers vested in her under the Statute and discharged

her responsibilities, according to the counter affidavit filed on behalf of the fourth respondent.

8. A common reply affidavit has also been filed on behalf of the petitioner refuting the averments made in the counter affidavit filed on behalf of the respondents 1 to 3 and also the counter affidavit filed on behalf of the fourth respondent, ultimately stating that the functioning of the fourth respondent has all along been unconstitutional; she has violated Constitutional limitation of powers; she has completely abused her position as Administrator and running a parallel Government on her own, creating huge problems in the day-to-day administration. All other allegations have been denied as vexatious and untenable.

9. Another rejoinder affidavit has been filed on behalf of the fourth respondent denying the averments put forth in the common counter affidavit filed on behalf of the petitioner.

Contentions:

10. Mr.P.Chidambaram, learned Senior Counsel appearing for the petitioner has travelled all along from the origin of the issue taking shelter under the Government of India Act 1919. Sections 58 and 75 of the said Act defines the territories as well as the powers vested with the Administrator of Union Territories. On 02.08.1935, by virtue of amendment, powers were given to the Governors to appoint some of

the Commissioners on behalf of the Union Territories. Thereafter, constitutional amendments were made. Articles 239 and 240 of the Constitution relates to Part-C of the First Schedule of the Constitution, which classifies the States as well as the powers vested with the States and also the Union of India. Thereafter, 14th Amendment dated 28.12.1962 was brought in, which caused the amendment for Article 239A. Stating so, the learned senior counsel submitted that the Union Territory of Puducherry is governed by the Rules of Business of the Government of Pondicherry, 1963, which prescribes the powers vested with the elected members as well as the Council of Ministers. Rule 21(5) imports power only for the Council of Ministers and not the Administrator. Article 239B of the Constitution of India, as per 27th Amendment, deals with the powers of the Administrator when there is no assembly in session. Only in those circumstances, the Administrator can act upon.

11. Then, the learned senior counsel went on to the Government of Union Territories Act, 1963, stating that with effect from 30.05.1987, Section 2(h) was added to the said Act. According to the said amendment, as per Article 239 as well as Article 240, the Union Territory of Puducherry is a special and unique one. According to the learned senior counsel, as per Rule 21(5) of the Rules of Business of

the Government of Pondicherry, 1963, the Administrator has no individual powers to invoke for deciding the policy matters. By virtue of the clarifications impugned in this writ petition, the Union Territory of Puducherry has been downgraded. Though the Delhi High Court granted the relief to the Lieutenant Governor in its judgment in Government of NCT of Delhi vs. Union of India, reported in 232 (2016) DLT 196 : 2016 (158) DRJ 29 : MANU/DE/1879/2016, according to the learned senior counsel for the petitioner, Delhi and Puducherry are distinct and different entities. Once the people elected their representative to form a Government, the will and wish of the people is prime in deciding the issue relating to administration.

12. Mr.V.T.Gopalan, learned Senior Counsel also appeared for the petitioner. He submitted that the elected Government of Puducherry is aggrieved by the functioning of the sixth respondent as the fourth respondent, who directly indulges in the administration of the Union Territory of Puducherry, overruling and differing with the elected Government of the day and her actions are enabled by the impugned clarifications issued by the second and third respondents dated 27.01.2017 and 16.06.2017 respectively. The impugned communications have been challenged in as much as they vest powers on the fourth respondent in violation of the provisions of the

Constitution of India, Government of Union Territories Act and the Rules of Business of the Government of Pondicherry and the law as laid down by the Constitutional Bench of the Hon'ble Supreme Court in Government of NCT vs. Union of India and others, reported in *(2018) 8 SCC 501*. It is further submitted that the fourth respondent is making some officials in the line of hierarchy to write a different view in the file than that of the Minister and supports that view. Further, contra views are taken by the fourth respondent without even having any reference to the Chief Minister, Cabinet or Union of India. It is also contended that if the concerned Minister insists on his view, she is willfully returning the file, so as to perpetrate her opinion indiscriminately.

13.The learned senior counsel further submitted that the impugned clarifications have been passed on the basis of the judgment of the Delhi High Court in Government of NCT of Delhi vs. Union of India, reported in MANU/DE/1879/2016, when it is the fact that the said judgment has been overruled by the Hon'ble Supreme Court in the decision reported in (2018) 8 SCC 501. It is further submitted that the impugned orders permitting day-to-day administrative and consequential actions of the fourth respondent are directly contrary and diametrically opposite to the authoritative pronouncement of the Supreme Court in the decision reported in (2018) 8 SCC 501, which

judgment relates to NCT of Delhi, wherein it has been held that the Lieutenant Governor of NCT of Delhi is bound by the aid and advise of the Council of Ministers and this position holds good so long as the Lieutenant Governor does not exercise his power under the proviso 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 the Council of Ministers or he is bound to implement the decision taken by the President on a reference being made by him.

14. Mr.V.T.Gopalan, learned senior counsel has relied upon the following judgments in support of his contentions:

(a)Full Bench decision of this Court in the case of K.A.Mathialagan and others vs. Governor of Tamil Nadu and others, reported in 1973(1) MLJ 131, to state that whatever the Constitution establishes is supremacy of law and not of men however high-placed they might be and that the immunity afforded by Article 361 was personal to the Governor, but it did not place the actions of the Governor, done or purporting to be done in pursuance of his powers and duties under the Constitution beyond the scrutiny of the Courts.

(b)Judgment of the Supreme Court in the case of P.V.Narasimha Rao vs. State (CBI/SPE), reported in (1998) 4 SCC 626, in which it has

been held that the object of the immunity conferred under Article 105(2) is to ensure the independence of the individual legislators; Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution; Parliamentary democracy is a part of the basic structure of the Constitution. But, it has also been held that an interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal Court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law, would not only be repugnant to healthy functioning of parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basic structure of the Constitution.

(c)Judgment of the Supreme Court in the case of Fertilizer Corporation Kamgar Union (Regd.), Sindri and others v. Union of India and others, reported in (1981) 1 SCC 568, in which it has been held that in a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now

surrounding locus standi. This decision has been relied upon to state that the petitioner herein has got every locus standi to contest the case. The judgment of the Hon'ble Supreme Court in Bangalore Medical Trust v. B.S.Muddappa and others, reported in (1991) 4 SCC 54, has also been relied upon by the learned senior counsel, in respect of maintainability of the writ petition.

15. Reiterating the submissions made in the counter affidavit filed on behalf of the respondents 1 to 3, the learned Additional Solicitor General of India appearing for the respondents 1 to 3 has submitted that the impugned clarifications issued by the second and third respondents are in accordance with law and hence the writ petition has to be dismissed. The learned Additional Solicitor General of India relied upon the judgment of this Court in the case of K.Lakshminarayanan v. Union of India, reported in (2018) 4 MLJ 513, to state that the Administrator has independent powers to act and is not bound to act only on the advice of the Ministers. He also referred to Section 44(5) of the Government of Union Territories Act, 1963 and submitted that if any question arises as to whether any matter is or is not within his realm of powers which the Administrator is required by

any law to exercise in any judicial or quasi-judicial functions, the decision of the Administrator thereon shall be final.

16. Reiterating the submissions made in the counter affidavit filed on behalf of the fourth respondent, Mr.Sanjay Jain, learned senior counsel appearing for the fourth respondent, has submitted that the Hon'ble Supreme Court in its judgment in the case of Kesavananda Bharati v. State of Kerala, reported in *(1973) 4 SCC 225,* after a threadbare analysis of Article 368, held that while amending the Constitution, the Parliament exercises Constituent Power and while passing laws under Article 246 of the Constitution, the Parliament exercises normal Legislative Power. In Kesavananda Bharati's case (supra), it has been categorically held that Constitutional law stands on a different and higher footing than Parliamentary law and the tools used to interpret the two are different as well. It is his further submission that the Legislative Assembly of the NCT of Delhi which was formed pursuant to the insertion of Article 239AA has been formed in exercise of the Parliament's Constituent Power, as distinct from the Legislative Assembly of Puducherry which came into existence by way of a Parliamentary enactment called the Government of Union Territories Act, 1963. Their sources of origin, are thus being different and Article 239AA stands on a different and higher footing than the

Union Territories Act. In the present case, the said argument is buttressed by the fact that Article 239AA uses the phrase "there shall be a Legislative Assembly", whereas Article 239A leaves it to the discretion of the Parliament whether or not (i) to provide for a body to function as the Legislative Assembly, which may be partly nominated, or partly elected or both; (ii) or a council of Ministers or both an Assembly and a Council of Ministers, with such powers and functions as may be specified in a law so made by the Parliament of India. A Constitutional Amendment enacted by recourse to Constituent Power under Article 368 is the basic law, contradistinguished, the normal Parliamentary Law follows the parameters prescribed by the Basic Law, according to Keshavananda Bharati's case.

17. It has been further submitted by Mr.Sanjay Jain, learned senior counsel appearing for the fourth respondent that if the powers, duties and functions of the Council of Ministers and the Legislature of Puducherry were *mutatis mutandis*, to that of the NCT of Delhi, then there was no reason or occasion for the Parliament to retain Article 239A and/or not to make the special provisions of Article 239AA applicable to the Union Territory of Puducherry. By virtue of Article 239A, which was brought in by the 14th amendment, a discretionary power was given to Parliament to enact a law which would provide for a governance model for Puducherry while retaining its original

character and status as a Union Territory. In 1963, Parliament proceeded to pass the Union Territories Act which prescribed the extent of legislative power; the degree of financial control exercised by the Council of Ministers, etc. that would apply to Puducherry, leaving the powers hitherto enjoyed by the Administrator unaltered, undiluted and uneclipsed. This is in complete consonance with the fact that Parliament by law may provide for a governance model which may not be akin to that of States or even the NCT of Delhi but it does not violate the basic tenets and the basic structure of the Constitution, especially democracy.

18. The learned senior counsel for the fourth respondent has submitted that the NCT of Delhi and Puducherry, even though are Union Territories, they belong to different species within the genus of Union Territories. He relied upon the Constitutional Bench decision of the Supreme Court in *Government of NCT of Delhi Vs. Union of India and Ors., reported in* (*2018) 8 SCC 501,* relating to the issue on hand, in which it has been categorically held that the said judgment would only apply to NCT of Delhi and not to the Union Territory of Puducherry, as Delhi is sui generis in the genus of Union Territories. The Hon'ble Apex Court also held in the said judgment, that on account of the fact that Puducherry is governed by a Parliamentary

law, enacted under Article 239A, Puducherry would stand on an inferior footing from the NCT of Delhi. The Hon'ble Supreme Court has also categorically held that though Delhi and Puducherry are both Union Territories, they are not situated alike. On account of a variety of reasons discussed in these submissions, Puducherry retains its pre-69th Amendment character and does not acquire any new attributes specially carved out in the 69th Amendment for NCT of Delhi. It has been held in so many words that NCT of Delhi enjoys a special status which cannot be compared with that of Puducherry. He further submitted that a nine-judge Bench of the Hon'ble Apex Court in the case of *NDMC v. State of Punjab,* reported in (1997) 7 SCC 339 had settled the issue of the status of NCT of Delhi as a Union Territory, wherein it was described as a Union Territory which is in a class in itself within the category of Union Territories.

19. Relying upon these two judgments of the Hon'ble Supreme Court, the learned senior counsel for the fourth respondent has submitted that it is abundantly clear that the Union territory of Puducherry and the NCT of Delhi, although of the same genus of Union Territories, have completely different species.

20. It is his further submission that in the judgment of the Supreme Court in (*2018) 8 SCC 501,* the decision made in the case of Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu,

reported in (1982) 2 SCC 222 has been referred to, stating that the said judgment has no applicability to NCT of Delhi. The natural and automatic corollary being that it continues to apply to Puducherry. In Devji Vallabhbhai Tandel's case, the Supreme Court after juxtaposing and comparing Articles 74 and 163 of the Constitution of India and Section 44 of the Government of Union Territories Act, came to the conclusion that the Lieutenant Governor can act in derogation of and is not bound by the aid and advice of the Council of Ministers. In (*2018) 8 SCC 501*, it has been held that Article 239 is the source of power of appointment of the Lieutenant Governor and it has in no way been diluted and made inapplicable to any Union Territory including Delhi and Puducherry. However, the powers to be exercised by the Lieutenant Governor of the NCT of Delhi as regards NCT of Delhi are now governed by Article 239AA, which for NCT of Delhi, has been held to be a complete code in itself.

21. It has been put forth by the learned senior counsel for the fourth respondent that in no manner have any of the basic features of the Constitution like Federalism and Democracy been subverted by the Government of Union Territories Act, 1963. The concept of federalism does not apply to the body polity of India, as it is classically understood and as it functions in some other countries such as the USA. The diluted version of federalism, as adopted by the Indian

Constitution is, for want of a better expression, described as quasi-federalism. This concept has been enunciated in the judgment of the Supreme Court in the case of S.R.Bommai v. Union of India, reported in (*1994) 3 SCC 1,* wherein it has been held that unlike the U.S.A. our founding fathers leaned in favour of establishing a strong Centre. The Centre in this regard has the responsibility of ensuring smooth functioning of the States and every power given to the Centre comes with responsibility. Furthermore, the concept of federalism is based on the distribution of powers between the Centre and the States and does not apply to the Union Territories as there is List I, II or III for Union Territories as held in the judgment of the Supreme Court in NDMC's case (stated supra).

22. The learned senior counsel for the fourth respondent referred to the decision of the Supreme Court in Kesavananda Bharati v. State of Kerala (stated supra), and submitted that the Constitution envisaged governance on the basis of consensus and not on the basis of majority votes. The same is manifested in the governance mechanism of Puducherry. The Lieutenant Governor and the Council of Ministers have to work in harmony and the Lieutenant Governor is accountable to the President, in turn the Union Council of Ministers and in turn to the Central Government. The argument put forth on behalf of the petitioner that the Lieutenant Governor acts unto herself and is not

answerable to any authority is not correct, because the Lieutenant Governor is not only accountable to the people of Puducherry but also to the people of the whole country. The hallmark of our Constitution is a system of checks and balances which is a cornerstone of democracy and the same remains uneclipsed and undiluted in any manner in the present case.

23. It is the further submission of Mr.Sanjay Jain, learned senior counsel for the fourth respondent that the fact that the Lieutenant Governor does not have any immunity under Article 361 of the Indian Constitution is also indicative of the fact that the Lieutenant Governor is not a mere titular head but exercises independent executive functions which are entrusted to him/her by the President which includes the power to differ from the aid and advice tendered by the Council of Ministers.

24. Another point which has been greatly emphasised by the learned senior counsel for the fourth respondent is that under the Transaction of Business Rules, much greater powers have been given to the Administrator of Puducherry, than the one given to the Lieutenant Governor of Delhi, specifically related to legislative, financial and discretionary powers. It is imperative to impress upon the stark difference that exists between the National Capital Territory of

Delhi and the Union Territory of Puducherry which spans wider than just a difference in prefixed nomenclature. Although both territories are under the aegis of administrators appointed under Article 239 of the Constitution of India, the Transaction of Business Rules when juxtaposed, reveal the differences in responsibilities, powers and functions of the two administrators. The Lieutenant Governor of Puducherry plays a more predominant role, for she is to be informed about the policy issues. She has a say in plan evaluation and administration evaluation reports, and is solely responsible for the financial health of the Union Territory, most importantly that she has a special responsibility towards the Union Territory of Puducherry. The Supreme Court, in NDMC's case, has categorically held that though Delhi and Puducherry are both Union Territories with legislatures, they both stand on a different footing and there is greater degree of autonomy given to the Delhi Executive and Legislative Assembly as compared to the Puducherry Executive Government and the Legislative Assembly of Puducherry. The NCT of Delhi, being the Capital, special provisions have been inserted for it in the Constitution, whereas, the same has not been done for the Union Territory of Puducherry, since it was never the intention of the Parliament that the same be treated similarly even though both are Union Territories.

25. It is his further submission that the primacy given to the office of the Administrator and the pivotal role played by the Administrator is clear from the Delegation of Financial rules, 1978. On the aspect of Financial Powers, the enabling provision in Government of Union Territories Act, 1963 is Section 47, which is *parimateria* to Section 46 of the Government of National Capital Territory of Delhi Act ('GNCTD Act' in short). For Delhi, Rule 5(1) of the Transaction of Business Rules, framed under exercise of powers under Section 44 of the GNCTD Act, enables the Lieutenant Governor to frame rules for exercise of Financial Powers, pursuant to which the rules have been framed, empowering the Council of Ministers to exercise Financial Powers in relation to the non-transferred subjects. Rule 5(1) is comparable to Rule 7(1) of the Rules of Business of the Government of Pondicherry, 1963, whereunder, no similar rule-making power has been contemplated. As a result, the financial powers are traceable to Delegation of Financial Power Rules, 1978 which in turn were delegated to the administrator in exercise of executive powers of the Union, under Article 73 of the Constitution. On a closer scrutiny of Section 44 of the Government of Union Territories Act along with the corresponding provision of the Government of National Capital Territory of Delhi Act, ie., Section 41, which provides for a Council of

Ministers for the Union Territory of Puducherry and NCT of Delhi respectively, it is evident that the Administrator of Union Territory of Puducherry has been vested with far greater autonomy in exercising her discretion. Under Section 41 of the GNCTD Act, the scope of discretion vested with the Lieutenant Governor of Delhi has been deliberately narrowed by the legislature. Under Section 41 of the GNCTD Act, the Lieutenant Governor of Delhi can only act in his discretion in those subjects over which the legislative Assembly of NCT of Delhi does not have power to enact law, whereas no such fetter or restriction has been placed upon the discretionary power of the Lieutenant Governor of Puducherry. The learned senior counsel submitted that on analysing the scheme of the two Acts read with the Transaction of Business Rules, it can be concluded that while providing legislature and Council of Ministers for both the Union Territory of Puducherry and the NCT of Delhi, the Parliament specifically empowered the Administrator of Puducherry to act as head of the Executive and not just a titular head.

26. The learned senior counsel for the fourth respondent, further, went on to the subject of financial powers vested in the Administrator and the corresponding special responsibilities. He submitted that besides the overwhelming difference in administrative powers and legislative oversight, there also exists a significant difference between

the degree of financial powers and the control afforded to the two Administrators. Unlike Delhi, the financial powers for the Union Territory of Puducherry vests with the Administrator of the Union Territory as the delegatee of the President of India, and it is the discretion of the Administrator to divest these powers to other authority within the administrative structure of the Union Territory, in accordance with the appropriate rules. The Administrator of Delhi is not vested with any special responsibility, comparable to the Administrator of Puducherry. The provision of Special Responsibility for the Administrator of Puducherry makes the position of the latter unique, in as much as in order to discharge such special responsibilities, the Administrator has to remain engaged in ensuring the execution and compliance of the same and notwithstanding the delegation, if any, the Administrator has to bear the ultimate responsibility and hence, would need to remain directly involved. In the case of Puducherry, the power of delegation emanates from Rule 13 of Delegation of Financial Power Rules, 1978, which provides a structured mechanism for the exercise of such powers by the Administrator. Rules 13(1) and 13(2) specifically delegate the financial powers, subject to the ceilings specified from time to time in relation to creation of permanent posts, creation of temporary posts,

appropriation and re-appropriation, incurring of contingent expenditure, incurring of miscellaneous expenditure, and write off of losses. Rule 13(3) provides for re-delegation of financial powers, according to which the Administrator shall continue to be responsible for the correctness, regularity and propriety of the decisions taken by the officers in relation to the above.

27. The learned senior counsel for the fourth respondent has relied upon the decision of this Court in The Union of India and Others v. K.Venu and Others, reported in MANU/TN/0591/1983, in support of his contention that the Lieutenant Governor is the highest authority of the State having executive powers.

28. Replying to the arguments, it is submitted on behalf of the petitioner that it is not correct to state that since the Legislature in respect of Delhi is constituted under Article 239AA of the Constitution of India and the Legislature in respect of Puducherry is constituted under the Government of Union Territories Act, 1963, there are differences between the two and hence the decision of the Delhi High Court in Government of NCT of Delhi vs. Union of India, reported in MANU/DE/1879/2016, is applicable to the case on hand. It is also submitted that the Legislature of Puducherry is in respect of all subjects, while the important subjects of 1, 2 and 18 in List-2 are not

granted to the National Capital Territory of Delhi. Thus, it has been submitted that the powers available to the administrator is the same for New Delhi and Puducherry, irrespective of the difference in the nature and status of the territories.

29. It is further replied by the petitioner that the argument that Devji Vallabhbhai Tandel vs. Administrator of Goa, Daman and Diu (1982 2 SCC 222) case holds the field and therefore the impugned orders can be justified, is erroneous as nowhere in the said judgment, it is mentioned that the administrator is empowered to carry on the day-to-day affairs and business and the power to differ would be and can be used in every case so as to negate the democracy and democratically elected Government. The argument that the petitioner has no locus standi to file this writ petition and hence the writ petition is not maintainable, is not correct, since, as a Parliamentary Secretary and Member of Legislative Assembly, he is directly aggrieved by the impugned orders. Rule 6(2) of the Rules of Business of the Government of Pondicherry and Section 45(3) of the Government of Union Territories Act, 1963 have to be read together, which would clearly demonstrate that powers cannot be exercised by persons who are not responsible to the voters and Legislative.

30. Heard Mr.P.Chidambaram and Mr.V.T.Gopalan, learned senior counsels appearing for the petitioner, Mr.G.Rajagopal, Additional Solicitor General of India appearing for the respondents 1 to 3, Mr.V.Sanjay Jain, learned senior counsel appearing for the fourth respondent and perused the materials available on record carefully and meticulously.

Discussion and Findings:

31. According to the petitioner, the elected Government of Puducherry is aggrieved by the functioning of the sixth respondent as the fourth respondent, who directly indulges in the administration of the Union Territory of Puducherry, overruling and differing with the elected Government of the day and her actions are enabled by the impugned clarifications issued by the second and third respondents on 27.01.2017 and 16.06.2017 respectively. The case of the petitioner is that the fourth respondent is making some officials in the line of hierarchy to write a different view in the file than that of the Minister and supports that view. Further, contra views are taken by the fourth respondent without even having any reference to the Chief Minister, Cabinet or Union of India. It is also contended that if the concerned Minister insists on his view, she is willfully returning the file, so as to perpetrate her opinion indiscriminately. Thus, according to the petitioner, the fourth respondent is interfering in the day-to-day

administration of the Government of Puducherry, and running a parallel Government. Further the impugned clarifications, according to the petitioner, have fortified the actions that are being done by the fourth respondent, which are not in accordance with law.

32. According to the learned Additional Solicitor General appearing for the respondents 1 to 3, the petitioner is a private person and he has no locus standi to file this writ petition as the impugned communications are between the Government of India and the Secretary to the Lieutenant Governor, Government of Puducherry. The impugned clarifications have been issued by the second and third respondents in the light of the provisions of the Government of Union Territories Act, 1963 and the Rules of Business of the Government of Pondicherry, 1963. The Administrator is to play a role in the policy making as well as the day-to-day affairs of the Union Territory of Puducherry. Under Article 239A, the Legislative Assembly has been created with such power and functions as may be specified by law. Article 239 of the Constitution provides that every Union Territory shall be administered by the President through an Administrator. In relation to Puducherry, the Administrator is the Lieutenant Governor. Thus, according to the learned Additional Solicitor General, the actions that are being performed by the Lieutenant Governor are as per the

provisions of the relevant Acts and Rules and hence the same cannot be questioned.

33. According to the fourth respondent, she is discharging the duties and responsibilities as delineated by the Parliament in its wisdom under the Government of Union Territories Act, 1963 read with the Rules of Business of the Government of Pondicherry, 1963, but however the petitioner is attempting to equate the Union Territory of Puducherry to the status of full-fledged State, without appreciating the distinct difference between the Union Territory that has been provided with a body to function as Legislature under the enabling provision of Article 239A of the Constitution of India. According to the fourth respondent, her sole intention is to serve the people of Puducherry in right earnest and it has been the endeavour of the Lieutenant Governor to reach out to the people.

34. Considering the submissions made on either side, this Court is of the considered view that it cannot be stated that the petitioner has no locus standi to file this writ petition, since as a Parliamentary Secretary and Member of Legislative Assembly, the petitioner is directly aggrieved by the impugned orders. It is the case of the petitioner that the functions of the Government have been paralysed and as an elected member, the object of serving the public as an

elected representative is unable to be achieved. It has to be borne in mind that rights guaranteed by the Constitution is Supreme. The immunity afforded by Article 361 was personal to the Governor. It did not place the actions of the Governor, done or purporting to be done in pursuance of his powers and duties under the Constitution beyond the scrutiny of the Courts. The legality of the actions of the Governor/Administrator is amenable to judicial review. This is the law laid down in the Full Bench decision of this Court in the case of K.A.Mathialagan and others vs. Governor of Tamil Nadu and others, reported in 1973(1) MLJ 131. In the judgment relied upon by the learned Senior Counsel for the petitioner in Fertilizer Corporation Kamgar Union (Regd.), Sindri and others v. Union of India and others, reported in (1981) 1 SCC 568, the Hon'ble Apex Court has held that on the technicality of locus standi, the challenge to sustain the freedom when it suffers from atrophy ought not to be defeated. Also in the judgment in Bangalore Medical Trust v. B.S.Muddappa and others, reported in (1991) 4 SCC 54, it has held as under:

> "Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted

meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interlopers. [*S.P. Gupta* v. *Union of India*, 1981 Supp SCC 87 : (1982) 2 SCR 365 : AIR 1982 SC 149; *Akhil Bharatiya Soshit Karamchari Sangh (Rly.)* v. *Union of India*, (1981) 1 SCC 246 : 1981

SCC (L&S) 50 : AIR 1981 SC 298; *Fertilizer Corporation Kamgar Union* v. *Union of India*, (1981) 1 SCC 568 : AIR 1981 SC 344] Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations. In the judgment reported in 2006 (2) SCC 1, the Apex Court has held that though as per Article 361, the President and the Governor have been granted immunity, their official actions including mala fides can be reviewed by the Court. Therefore, this court, in the light of the above is of the view that the petitioner has locus and that the writ petition is maintainable."

Hence, this Court of the view that the writ petition is maintainable at the instance of the petitioner who is the elected member of the Legislative Assembly.

35. Now, to proceed with other issues, it is seen that the impugned clarifications have been passed on the basis of the judgment of the Delhi High Court in Government of NCT of Delhi vs. Union of

India (stated supra). But the fact remains that the said judgment has been overruled conceptually by the Hon'ble Supreme Court in the decision reported in (2018) 8 SCC 501 after considering the various judgments relied on the side of the respondents. By the impugned clarifications, the actions of the fourth respondent involving in the day-to-day administration of the Government of Puducherry have been held to be correct. In the decision reported in (2018) 8 SCC 501, which judgment relates to NCT of Delhi, it has been held that the Lieutenant Governor of NCT of Delhi is bound by the aid and advise of the Council of Ministers and this position holds good so long as the Lieutenant Governor does not exercise his power under the proviso to Clause (4) of Article 239AA. It has been held by the Hon'ble Supreme Court that the Lieutenant Governor has not been entrusted with any independent decision making power; he/she has to either act on the 'aid and advice' of the Council of Ministers or is bound to implement the decision taken by the President on a reference being made by the Lieutenant Governor.

36.But this position has been opposed by the learned counsel for the fourth respondent, by saying that under the Transaction of Business Rules, much greater and special powers have been given to the Administrator of Puducherry, than the one given to the Lieutenant Governor of Delhi, specifically relating to legislative, financial and

discretionary powers. It was also opposed stating that although both Union Territories are under the aegis of administrators appointed under Article 239 of the Constitution of India, the Transaction of Business Rules when juxtaposed, reveal the differences in responsibilities, powers and functions of the two administrators and hence, the Lieutenant Governor/Administrator of Puducherry plays a more predominant role, for she is to be informed about the policy issues and she is solely responsible for the financial health of the Union Territory and she has a special responsibility towards the Union Territory of Puducherry. It was also stated that NCT of Delhi, being the Capital, special provisions have been inserted for it in the Constitution, whereas, the same has not been done for the Union Territory of Puducherry, since it was never the intention of the Parliament that the same be treated similarly even though both are Union Territories.

37.At this juncture, it is relevant to consider the provisions concerning the issue on hand. Article 239 of the Constitution is extracted 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."

38.The Article lucidly indicates that the administration of the Union Territories shall be by the President through an Administrator except in cases, where the Parliament has made law with respect to the administration of the Union Territories.

39.The Parliament amended the Constitution by inserting Article 239A with effect from 28.12.1962 paving way for a separate and independent administration of the Union Territory through an elected administrative body, thereby reducing the authority of the President or the Administrator over such Union Territory which has a legislative body.

40.Article 239A of the Constitution deals with creation of an executive for the Union Territory of Puducherry, which reads as under:

239A.(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.

41.Article 239AA of the Constitution of India deals with Union Territory of Delhi, which reads as under:

239AA.(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.

42.Of course, it is clear that there is a distinction between Articles 239AA and 239A. It is true that the Legislative Assembly of the NCT of Delhi which was formed pursuant to the insertion of Article 239AA in exercise of the Parliament's Constituent Power, is distinct from the Legislative Assembly of Puducherry, which came into existence by way of a Parliamentary enactment, providing a body to function as Legislature under the enabling provision of Article 239A of the Constitution of India. Unlike 239AA, 239A does not deal with the powers of the Administrator or that of the Legislative Assembly. Also, another major difference in the extent of authority between NCT and Union Territory of Puducherry is evident from 239AA(3), wherein the NCT of Delhi is prevented from enacting laws with respect to items in Entries 1, 2 and 18 of the State List and Entries 44, 65 and 66 of that

List in so far as they relate to the said Entries 1, 2 and 18. However no such restriction is found in Article 239A, dealing with the Union Territory of Puducherry. Another significant difference is the absence of provisions similar to Proviso to Article 239AA(4) in Article 239B or the Union Territories Act, 1963.

43.Article 239B giving legislative powers to the Administrator and Article 240 dealing with the powers of the President, are extracted hereunder:

> **Article 239B. Power of administrator to promulgate Ordinances during recess of Legislature**:
>
> (1)If at any time, except when the Legislature of the Union territory of Pondicherry is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require: Provided that no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf: Provided further that whenever the said legislature is dissolved, or its functioning from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of Article 239A, the administrator shall not promulgate

any Ordinance during the period of such dissolution or suspension

(2)An Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the Union territory which has been duly enacted after complying with the provisions in that behalf contained in any such law as is referred to in clause(1) of Article 239A, but every such Ordinance

(a)shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the legislature or if, before the expiration of that period, a resolution disapproving it is passed by the Legislature, upon the passing of the resolution; and

(b) may be withdrawn at any time by the administrator after obtaining instructions from the President in that behalf

(3)If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in clause (1) of Article 239A, it shall be void.

Article 240. Power of President to make regulations for certain Union territories.

(1)The President may make regulations for the peace, progress and good government of the Union territory of

(a)the Andaman and Nicobar Islands;

(b)Lakshadweep;

(c)Dadra and Nagar Haveli;

(d)Daman and Diu;

(e)Pondicherry;

Provided that when any body is created under Article 239A to function as a Legislature for the Union territory of Puducherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature:

Provided further that whenever the body functioning as a Legislature for the Union territory of Pondicherry is dissolved, or the functioning of that body as such Legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of Article 239A, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good government of that Union territory.

(2) Any regulation so made may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory.

44.Article 239B of the Constitution, grants power to the Administrator to promulgate Ordinances during recess of Legislature, if at any time, except when the Legislature of the Union territory of Pondicherry is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require. However, no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf and provided further that whenever the said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such law as is referred to in Clause(1) of Article 239A, the administrator shall not promulgate any Ordinance during the period of such dissolution or suspension. Thus, it is clear that the President should be satisfied as to whether any Ordinance is to be promulgated to that effect, and only then, it will be given effect to.

45.Even in case of dissolution of the Legislature, the administrator does not have power to promulgate any ordinance. It is pertinent to mention here that when the Legislature is in force, the administrator shall not have the power to promulgate any ordinance and any ordinance promulgated during recess shall be valid only for a period of six weeks from the date of reassembly of the legislature and it will also cease to be valid if it is disapproved by the Legislative Assembly. Similarly, the Administrator cannot make any ordinance having the effect of an Act, if the legislature is not competent to enact any law on the subject. The above Article symbolises the supremacy of the Legislature above the Administrator in case of the Union Territory of Puducherry unlike Article 239AA, where restrictions are imposed with respect to NCT of Delhi.

46.Similarly, as per Article 240, even the President has powers to issue ordinance only till the date of the first meeting of the legislature, when a Legislative Body is created under Article 239A and the President is also empowered to make resolution only when the Legislative Body is either dissolved or when the functioning of the body has remained suspended. Therefore the President or the Administrator cannot step into the shoes of the Legislature and the discretion to issue ordinance is also subject to constitutional limitations with regard

to Union Territory of Puducherry. Pertinent it is to mention here that the Union Territory of Puducherry and the National Capital Territory of Delhi are treated differently under the Constitution on comparison with other Union Territories. This Court in the light of the above provisions hold that in view of the Constitutional Scheme, the role of the administrator, namely the 4th respondent is only limited.

47. Now, this Court will deal with other provisions applicable to the Union Territory of Puducherry.

48.The Government of Union Territories Act, 1963 was enacted by the Parliament, laying down the norms for governance of Union Territories. It deals with the powers of the Administrator and also as that of the Legislative Body in detail. The Act also empowers the President and the Administrator to make rules regarding conduct of business as well as financial administration in the Union Territory. It is to be borne in mind that the rules made so, shall not be contrary to the intent of the Constitution in paving way for independent administration of the Union Territories, under the control of the Union.

49.Section 18 of the Government of Union Territories Act, 1963 deals with the extent of legislative power, which reads as follows:

> "18.Extent of legislative power. (1) Subject to the provisions of this Act, the Legislative Assembly of the Union Territory may make laws for the whole or any part of

the Union Territory with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution in so far as any such matter is applicable in relation to Union Territories.

(2)Nothing in sub-section(1) shall derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for the Union Territory or any part thereof."

50.Generally, the Legislative Body will have power to enact any laws but such law shall not have the effect of abridging or deviating the power of the Parliament to make laws. It is needless to point out that if any such law is made in conflict with the law made by the Parliament, the latter shall prevail. Irrespective of the power of the Legislative Body of the Union Territory, the Parliament still has the powers to enact any law. The supremacy of the Parliament in the field of legislative functions cannot be disputed. The section empowers the legislative assembly to enact laws on any subject enumerated in the State List or the Concurrent List.

51.Section 22 of the Government of Union Territories Act, 1963 reads as follows:

"22.Sanction of the administrator required for certain legislative proposals.-No Bill or amendment shall be introduced into, or moved in, the Legislative Assembly of

> the Union territory without the previous sanction of the Administrator, if such Bill or Amendment makes provision with respect to any of the following matters, namely:- (a) constitution and organisation of the court of the Judicial Commissioner; (b) jurisdiction and powers of the court of the Judicial Commissioner with respect to any of the matters in the State List or the Concurrent List in the Seventh Schedule to the Constitution."

It states that the sanction of the Administrator is required for certain legislative proposals, ie., when no bill or amendment shall be introduced into or moved in, the Legislative Assembly of the Union Territory without the previous sanction of the Administrator if such bill or amendment makes provision with respect to the matters, viz. Constitution and organisation of the Court of the Judicial Commissioner and Jurisdiction and powers of the Court of the Judicial Commissioner with respect to any of the matters in the State List or the Concurrent list in the Seventh Schedule to the Constitution. It basically relates to matters regarding establishment of Courts and posts of Judicial Officer and their powers, which is usually done in consonance with the decision taken by the Madras High Court.

52.Section 23 of the Government of Union Territories Act, 1963 reads as follows:

"23.Special provisions as to financial Bills.-(*1*) A Bill or amendment shall not be introduced into, or moved in, the Legislative Assembly of the Union territory except on the recommendation of the Administrator, if such Bill or Amendment makes provision for any of the following matters, namely:-

(*a*) the imposition, abolition, remission, alteration or regulation of any tax;

(*b*) the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of the Union territory;

(*c*) the appropriation of moneys out of the Consolidated Fund of the Union territory;

(*d*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the Union territory or the increasing of the amount of any such expenditure;

(*e*) the receipt of money on account of the Consolidated Fund of the Union territory or the public account of the Union territory or the custody or issue of such money or the audit of the account of the Union territory:

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(*2*)A Bill or Amendment shall not be deemed to make provision for any of the matters aforesaid by reason only

that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(*3*)A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the Union territory shall not be passed by the Legislative Assembly of the Union territory unless the Administrator has recommended to that Assembly the consideration of the Bill."

Section 23 paves way for introduction of Bill regarding budget after the recommendation of the Administrator. The proviso makes it clear that no recommendation is necessary in case of moving an amendment making provision for the reduction or abolition of any tax. Also, sub clause (2) makes it clear that the recommendation is not necessary in cases where a law on is made for imposition of tax or penalty or fees including licence fee by a local authority or body. The role of the Administrator in presenting the Annual Financial Statement containing the estimate of expenditure and its allocation from the Consolidated Fund of the Union Territory and Revenue Account and the procedure to be followed in the Assembly, are provided in Sections 27

and 28. It is to be done with the previous approval of the President. Section 27 talks about the expenditure regarding the Special Responsibility in Sub-Clause 3. Sub-Clauses 2 and 3 of Section 27 talk about how the estimate is to be prepared and what are all the expenditure that are to be charged on each Union Territory. The provision does not say that the estimate is to be prepared by the Administrator. As the scheme of the Act remains, the Administrator cannot withhold the Bill and that the recommendation is only procedural, which is evident from Section 26 of the Act.

53.Section 25 of the Government of Union Territories Act, 1963 reads as follows:

> **"25. Assent to Bills**.-When a Bill has been passed by the Legislative Assembly of the Union territory, it shall be presented to the Administrator and the Administrator shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:
>
> Provided that the Administrator may, as soon as possible after the presentation of the Bill to him for assent, return the Bill if it is not a Money Bill together with a message requesting that the Assembly will reconsider the Bill or any specified provisions thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so

returned, the Assembly will reconsider the Bill accordingly, and if the Bill is passed again with or without amendment and presented to the Administrator for assent, the Administrator shall declare either that he assents to the Bill or that he reserves the Bill for the consideration of the President:

Provided further that the Administrator shall not assent to, but shall reserve for the consideration of the President, any Bill which,-

(*a*) in the opinion of the Administrator would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is, by the Constitution, designed to fill; or

(*b*) relates to any of the matters specified in clause (1) of article 31A; or

(*c*) the President may, by order, direct to be reserved for his consideration; or

(*d*) relates to matters referred to in sub-section (*5*) or section 7 or section 17 or section 34 or sub-section (*6*) of section 45 or in entry 1 or entry 2 of the State List in the Seventh Schedule to the Constitution:

Provided also that without prejudice to the provisions of the second proviso, the Administrator shall not assent to,

but shall reserve for the consideration of the President, any Bill which has been passed by the Legislative Assembly of the Union territory of Mizoram and which relates to any area comprised in any autonomous district in that Union territory under the Sixth Schedule to the Constitution.

Explanation.-For the purposes of this section and section 25A, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the matters specified in sub-section (*1*) of section 23 or any matter incidental to any of those matters and, in either case, there is endorsed thereon the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

Section 25 deals with Assent to Bills, in which it is stated that when a bill has been passed by the Legislative Assembly of the Union Territory, it shall be presented to the Administrator who shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President. The Administrator cannot perpetually hold the Bill. In case of non-money Bills, he has to return the Bill to the Legislative Assembly suggesting for modification and amendment. If the suggestion is not accepted and the Bill is passed as such, the Administrator has to declare the assent or reserve the same for the consideration of the President. The

provisos make it clear that the Administrator has no independent authority and he cannot exercise any discretion.

54.Section 25A deals with the power of the President when the Bill is referred to him, which is extracted hereunder:

> "25A.Bills reserved for consideration.-When a Bill is reserved by an Administrator for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:
>
> Provided that where the Bill is not a Money Bill, the President may direct the Administrator to return the Bill to the Legislative Assembly together with such a message as is mentioned in the first proviso to section 25 and, when a Bill is so returned, the Assembly shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the Assembly with or without amendment, it shall be presented again to the President for his consideration."

Section 25A also makes it clear that the President can either accept the Bill irrespective of the decision of the Administrator or return with some suggestion and the Assembly has to reconsider it within 6 months. Thus, the legislature is not bound to mechanically accept the suggestion of the President. In case, the legislature decides not to

make any modification, may pass the same but the ultimate process of culmination of the Bill into an Act can take place only when the President gives his assent. If the President fails to give his assent, the Bill will lapse.

55.It is relevant to refer to Section 50 of the Government of Union Territories Act, 1963 which states that the Administrator and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President.

56.Sections 25 and 25A make it clear that the Union Territory cannot be ruled by ordinances. It is to be borne in mind the very basic principle of democracy is that the Government is run for the public and all decisions are to be taken in public interest.

57.In this context, it would be worthwhile to refer to a Division Bench decision of this Court reported in 2005 (3) LW 101 (N.Priyadarshini vs. the Secretary to Government, Education Department, Fort St.George, Chennai-9 and another). Para 27 of the said decision is relevant for our purpose, which reads as under:-

> ".....27. In this connection, it may be mentioned that according to theory of the eminent jurist Kelsen (the pure theory of law) in every country there is a hierarchy of laws and the general principle is that a law in a higher layer of

this hierarchy will prevail over the law in a lower layer of the hierarchy (see Kelsen's "The General Theory of Law and State") In our country this hierarchy is as follows:-

(i) The Constitution of India

(ii) Statutory law (which may be either Parliamentary law or law made by the State legislature).

(iii) Delegated Legislation (which may be in the form of rules made under the statute, regulations made under the statute, etc)

(iv) Purely administrative or executive orders."

58.Therefore, if the powers of an authority are either circumscribed or enabled by the Constitution, even a Parliamentary law or the law of the State either in the form of Act, Rules, Regulations or Standing Orders running contrary to the powers or authority conferred by the Constitution, shall be void. Any law made by the legislative assembly or the rules and or ordinances framed by the Administrator shall be in conformity with the constitutional provisions.

59.Section 44 of the Government of Union Territories Act, 1963 which deals with Council of Ministers, is as follows:

"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:

1 * * * * *

2 * * * * *

(3) If and in so far as any special responsibility of the Administrator is involved under this Act, he shall, in the exercise of his functions, act in his discretion.

(4) If any question arises as to whether any matter is or is not a matter as respects which the Administrator is by or under this Act required to act in his discretion, the decision of the Administrator thereon shall be final.

(5) If any question arises as to whether any matter is or is not a matter as respects which the Administrator is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Administrator thereon shall be final.

(6) The question whether any, and if so what, advice was tendered by Ministers to the Administrator shall not be inquired into in any court."

It is clear from the above Section that there will 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 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. It is also stated that in so far as any special responsibility of the Administrator is involved under this Act, he shall, in the exercise of his functions, act in his discretion. The act per se does not specify any special responsibilities. It is to be noted that as per Section 44, the discretion can be exercised only in matters of special responsibilities. This Court has already discussed the power and the scope of discretion exercisable by the Administrator, which is subject to the ultimate decision of the President. However, it is the bounden duty of the Administrator and the Council of Ministers to

avoid logjam and facilitate the smooth functioning of the Government in public interest, leaving the political differences apart.

60.At this juncture it is relevant to point out that Article 239AA(4) is similar to Section 44. This Court is consciously desisting from calling the provisions "pari materia" for three reasons viz (1)One is a Constitutional Enactment and the other is a Parliament made law, (2)the restriction on the legislature or the authority of the Administrator should be traceable to a Constitutional provision i.e. Section 239B and (3) the object, scope and authority conveyed in both the provisions are evidently different. It is relevant to refer to the hierarchy of laws referred above, which is a well settled legal principle. In Article 239AA, the Constitution permits the Lieutenant Governor to give such directions or to take immediate action as he deems necessary. The said power has been held to include the power to issue ordinances. Though similar, the authority of the Administrator under Section 44 is circumscribed by Article 239B. As discussed and held, Article 239B enumerates that the ordinance making power of the Administrator is traceable only when either the Assembly is not in session or suspended but not otherwise. Even then, the concurrence of the President is mandatory and such ordinance has to receive the assent of the assembly.

61.Much emphasis has been laid by both the counsels on either side on the judgment of the Dehli High Court in Government of NCT of Delhi vs. Union of India and on the judgment of the Constitutional Bench of the Apex Court in the same matter reported in 2018 (8) SCC 501. This Court is refraining from going into the findings of the Delhi High Court in view of the decision of the Constitutional Bench referred to above, where in all the other judgments relied upon by the counsel for the first and fourth respondents have been considered. The relevant passages of the judgment are extracted hereunder:

> **M. *Purposive interpretation***
>
> **"149.**Having stated the principles relating to constitutional interpretation we, as presently advised, think it apt to devote some space to purposive interpretation in the context, for we shall refer to the said facet for understanding the core controversy. It needs no special emphasis that the reference to some precedents has to be in juxtaposition with other concepts and principles. As it can be gathered from the discussion as well as the authorities cited above, the literal rule is not to be the primary guiding factor in interpreting a constitutional provision, especially if the resultant outcome would not serve the fructification of the rights and values expressed in the Constitution. In this scenario, the theory of purposive interpretation has gained importance where the courts shall interpret the Constitution in a purposive manner so as to give effect to its true intention. The Judicial Committee in

Attorney General of Trinidad and Tobago v. *Whiteman* [*Attorney General of Trinidad and Tobago* v. *Whiteman*, (1991) 2 AC 240 : (1991) 2 WLR 1200 (PC)] has observed: (AC p. 247)

"The language of a Constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively, so as to give effect to its spirit…"

....

"152. We have duly noted in the earlier part of the judgment that the judiciary must interpret the Constitution having regard to the spirit and further by adopting a method of purposive interpretation. That is the obligation cast on the Judges.

....

177. The said Article was brought into existence by the Constitution (Seventh Amendment) Act, 1956. Clause (1) of Article 239, by employing the word "shall", makes it abundantly clear that every Union Territory is mandatorily to be administered by the President through an Administrator unless otherwise provided by Parliament in the form of a law. Further, clause (1) of Article 239 also stipulates that the said Administrator shall be appointed by the President with such designation as he may specify.

....

182. The aforesaid Article was brought into force by the Constitution (Fourteenth Amendment) Act, 1962. Prior to

the year 1971, under Article 239-A, Parliament had the power to create by law legislatures and/or Council of Ministers for the then Union Territories of Himachal Pradesh, Tripura, Manipur, Goa and Daman and Diu. Thereafter, on 25-1-1971, Himachal Pradesh acquired Statehood and consequently, Himachal Pradesh was omitted from Article 239-A. Subsequently, on 21-1-1972, Tripura and Manipur were granted Statehood as a consequence of which both Manipur and Tripura were omitted from Article 239-A.

....

184. As a natural corollary, the Union Territory of Puducherry stands on a different footing from other UTs of Andaman and Nicobar Islands, Daman and Diu, Dadra and Nagar Haveli, Lakshadweep and Chandigarh. However, we may hasten to add that Puducherry cannot be compared with the NCT of Delhi as it is solely governed by the provisions of Article 239-A.

....

193. In this context, we may refer with profit to the authority in *Devji Vallabhbhai Tandel* v. *Administrator of Goa, Daman & Diu* [*Devji Vallabhbhai Tandel* v. *Administrator of Goa, Daman & Diu*, (1982) 2 SCC 222 : 1982 SCC (Cri) 403] . In the said case, the issue that arose for consideration was whether the role and functions of the Administrator stipulated under the Union Territories Act, 1963 is similar to those of a Governor of a State and as such, whether the Administrator has to act on the "aid and

advice" of the Council of Ministers. The Court considered the relevant provisions and after comparing the language of Articles 74 and 163 of the Constitution with the language of Section 44 of the Union Territories Act, 1963, it observed that 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 functions, is not bound to act according to the advice of the Council of Ministers and the same is manifest from the proviso to Section 44(1). The Court went on to say: (SCC pp. 229-30, paras 14-15)

"*14*. … 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* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] *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*."

(emphasis supplied)

....

196. Thus, *NDMC* [*NDMC* v. *State of Punjab*, (1997) 7 SCC 339] makes it clear as crystal that all Union Territories under our constitutional scheme are not on the same pedestal and as far as NCT of Delhi is concerned, it is not a

State within the meaning of Article 246 or Part VI of the Constitution. Though NCT of Delhi partakes a unique position after the Sixty-ninth Amendment, yet in sum and substance, it remains a Union Territory which is governed by Article 246(4) of the Constitution and to which Parliament, in the exercise of its constituent power, has given the appellation of the "National Capital Territory of Delhi".

....

205. The legislative power conferred upon the Delhi Legislative Assembly is to give effect to legislative enactments as per the needs and requirements of Delhi whereas the executive power is conferred on the executive to implement certain policy decisions. This view is also strengthened by the fact that after the Seventh Amendment of the Constitution by which the words "Part C States" were substituted by the words "Union Territories", the word "State" in the proviso to Article 73 cannot be read to mean Union Territory as such an interpretation would render the scheme and purpose of Part VIII (Union Territories) of the Constitution infructuous.

....

207. At the outset, we must declare that the insertion of Articles 239-AA and 239-AB, which specifically pertain to NCT of Delhi, is reflective of the intention of Parliament to accord Delhi a sui generis status from the other Union Territories as well as from the Union Territory of Puducherry

to which Article 239-A is singularly applicable as on date. The same has been authoritatively held by the majority judgment in *NDMC case* [*NDMC* v. *State of Punjab*, (1997) 7 SCC 339] to the effect that the NCT of Delhi is a class by itself.

....

213. We must note here the stark difference in the language of Article 239-A clause (1) and that of Article 239-AA clause (2). Article 239-A clause (1) uses the word "may" which makes it a mere directory provision with no obligatory force. Article 239-A gives discretion to Parliament to create by law for the Union Territory of Puducherry a Council of Ministers and/or a body which may either be wholly elected or partly elected and partly nominated to perform the functions of a legislature for the Union Territory of Puducherry.

....

225. Another important aspect is the interpretation of the phrase "aid and advise" in Article 239-AA(4). While so interpreting, the authorities in *Samsher Singh* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] and *Devji Vallabhbhai Tandel* [*Devji Vallabhbhai Tandel* v. *Administrator of Goa, Daman & Diu*, (1982) 2 SCC 222 : 1982 SCC (Cri) 403] have to be kept in mind. Krishna Iyer, J., in *Samsher Singh* [*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] , has categorically held that the President and the Governor,

being custodians of all executive powers, shall act only upon and in accordance with the aid and advice of their Ministers save in a few well-known exceptional situations. *Devji Vallabhbhai Tandel* [*Devji Vallabhbhai Tandel* v. *Administrator of Goa, Daman & Diu*, (1982) 2 SCC 222 : 1982 SCC (Cri) 403] , on the other hand, has observed that there is a functional difference in the powers and the position enjoyed by the President and Governor on one hand and the Administrator on the other hand. It has also been observed that it is not possible to hold to the view laid down in *Samsher Singh*[*Samsher Singh* v. *State of Punjab*, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] in the context of Governor and President to mean that the Administrator is also purely a constitutional functionary who is bound to act on the "aid and advice" of the Council of Ministers and cannot act on his own.

226. It is necessary to note with immediacy that *Devji Vallabhbhai Tandel* [*Devji Vallabhbhai Tandel* v. *Administrator of Goa, Daman & Diu*, (1982) 2 SCC 222 : 1982 SCC (Cri) 403] represents a pre-Sixty-ninth Amendment view and that too in the context of a Union Territory which does not have a unique position as NCT of Delhi does. Presently, the scheme of Article 239-AA(4) is different. It requires the Lieutenant Governor to act as per the "aid and advice" of the Council of Ministers with respect to all matters for which the Legislative Assembly of Delhi has the power to enact laws except what has been stated in the proviso which requires a thoughtful interpretation.

....

279. Though ordinarily the term "renaissance" is used in the context of renewed activity especially pertaining to art and literature, yet the said word is not alien to the fundamental meaning of life in a solid civilised society that is well cultivated in culture. And, life, as history witnesses, gets entrenched in elevated civilisation when there is fair, appropriate, just and societal interest oriented governance. In such a situation, no citizen feels like a subject and instead has the satisfaction that he is a constituent of the sovereign. When the citizens feel that there is participatory governance in accordance with the constitutionally envisaged one, there is prevalence of constitutional governance.

....

V.*The conclusions in seriatim*

284. In view of our aforesaid analysis, we record our conclusions in seriatim:

284.1. While interpreting the provisions of the Constitution, the safe and most sound approach for the constitutional courts to adopt is to read the words of the Constitution in the light of the spirit of the Constitution so that the quintessential democratic nature of our Constitution and the paradigm of representative participation by way of citizenry engagement are not annihilated. The courts must adopt such an interpretation which glorifies the democratic spirit of the Constitution.

284.2. In a democratic republic, the collective who are the sovereign elect their law-making representatives for enacting laws and shaping policies which are reflective of the popular will. The elected representatives being accountable to the public must be accessible, approachable and act in a transparent manner. Thus, the elected representatives must display constitutional objectivity as a standard of representative governance which neither tolerates ideological fragmentation nor encourages any utopian fantasy, rather it lays stress on constitutional ideologies.

284.3. Constitutional morality, appositely understood, means the morality that has inherent elements in the constitutional norms and the conscience of the Constitution. Any act to garner justification must possess the potentiality to be in harmony with the constitutional impulse. In order to realise our constitutional vision, it is indispensable that all citizens and high functionaries in particular inculcate a spirit of constitutional morality which negates the idea of concentration of power in the hands of a few.

284.4. All the three organs of the State must remain true to the Constitution by upholding the trust reposed by the Constitution in them. The decisions taken by constitutional functionaries and the process by which such decisions are taken must have normative reasonability and acceptability.

Such decisions, therefore, must be in accord with the principles of constitutional objectivity and symphonious with the spirit of the Constitution.

284.5. The Constitution being the supreme instrument envisages the concept of constitutional governance which has, as its twin limbs, the principles of fiduciary nature of public power and the system of checks and balances. Constitutional governance, in turn, gives birth to the requisite constitutional trust which must be exhibited by all constitutional functionaries while performing their official duties.

284.6. Ours is a parliamentary form of Government guided by the principle of collective responsibility of the Cabinet. The Cabinet owes a duty towards the legislature for every action taken in any of the Ministries and every individual Minister is responsible for every act of the Ministry. This principle of collective responsibility is of immense significance in the context of "aid and advice". If a well-deliberated legitimate decision of the Council of Ministers is not given effect to due to an attitude to differ on the part of the Lieutenant Governor, then the concept of collective responsibility would stand negated.

284.7. Our Constitution contemplates a meaningful orchestration of federalism and democracy to put in place an egalitarian social order, a classical unity in a contemporaneous diversity and a pluralistic milieu in

eventual cohesiveness without losing identity. Sincere attempts should be made to give full-fledged effect to both these concepts.

284.8. The constitutional vision beckons both the Central and the State Governments alike with the aim to have a holistic edifice. Thus, the Union and the State Governments must embrace a collaborative federal architecture by displaying harmonious coexistence and interdependence so as to avoid any possible constitutional discord. Acceptance of pragmatic federalism and achieving federal balance has become a necessity requiring disciplined wisdom on the part of the Union and the State Governments by demonstrating a pragmatic orientation.

284.9. The Constitution has mandated a federal balance wherein independence of a certain required degree is assured to the State Governments. As opposed to centralism, a balanced federal structure mandates that the Union does not usurp all powers and the States enjoy freedom without any unsolicited interference from the Central Government with respect to matters which exclusively fall within their domain.

284.10. There is no dearth of authorities with regard to the method and approach to be embraced by constitutional courts while interpreting the constitutional provisions. Some lay more emphasis on one approach over the other, while some emphasise that a mixed balance resulting in a

unique methodology shall serve as the best tool. In spite of diverse views on the said concept, what must be kept primarily in mind is that the Constitution is a dynamic and heterogeneous instrument, the interpretation of which requires consideration of several factors which must be given their due weightage in order to come up with a solution harmonious with the purpose with which the different provisions were introduced by the Framers of the Constitution or Parliament.

284.11. In the light of the contemporary issues, the purposive method has gained importance over the literal approach and the constitutional courts, with the vision to realise the true and ultimate purpose of the Constitution not only in letter but also in spirit and armed with the tools of ingenuity and creativity, must not shy away from performing this foremost duty to achieve constitutional functionalism by adopting a pragmatic approach. It is, in a way, exposition of judicial sensibility to the functionalism of the Constitution which we call constitutional pragmatism. The spirit and conscience of the Constitution should not be lost in grammar and the popular will of the people which has its legitimacy in a democratic set-up cannot be allowed to lose its purpose in simple semantics.

284.12. In the light of the ruling of the nine-Judge Bench in *NDMC* [*NDMC* v. *State of Punjab*, (1997) 7 SCC 339], it is clear as noonday 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.

284.13. With the insertion of Article 239-AA by virtue of the Sixty-ninth Amendment, Parliament envisaged a representative form of Government for NCT of Delhi. The said provision intends to provide for the Capital a directly elected Legislative Assembly which shall have legislative powers over matters falling within the State List and the Concurrent List, barring those excepted, and a mandate upon the Lieutenant Governor to act on the aid and advice of the Council of Ministers except when he decides to refer the matter to the President for final decision.

....

295. Constitutional morality places responsibilities and duties on individuals who occupy constitutional institutions and offices. Frohnen and Carey formulate the demands of the concept thus:

"Constitutional moralities … can be understood as anticipated norms of behaviour or even duties primarily on the part of individuals within our constitutional institutions. We use the term morality and refer to constitutional morality with regard to these norms or duties principally because of the purpose they serve; they can be viewed as

imposing an obligation on individuals and institutions to ensure that the constitutional system operates in a coherent way, consistent with its basic principles and objectives." [Bruce P. Frohnen and George W. Carey, "Constitutional Morality and the Rule of Law", Journal of Law and Politics (2011), Vol. 26, at p. 498.]

296. Another major feature of constitutional morality is that it provides in a Constitution the basic rules which prevent institutions from turning tyrannical. It warns against the fallibility of individuals in a democracy, checks State power and the tyranny of the majority. Constitutional morality balances popular morality and acts as a threshold against an upsurge in mob rule:

"It is important not to forget that human beings are fallible, that they sometimes forget what is good for them in the long run, and that they yield to temptations which bring them pleasure now but pain later. It is not unknown for people to acquire the mentality of the mob and act on the heat of the moment only to rue the consequences of the decision later. By providing a framework of law culled over from years of collective experience and wisdom, constitutions prevent people from succumbing to currently fashionable whims and fancies. Constitutions anticipate and try to redress the excessively mercurial character of everyday politics. They make some dimensions of the political process beyond the challenge of ordinary politics." [Rajiv Bhargava (Ed.), *Politics and Ethics of the Indian Constitution* at pp. 14-15.]

....

313. Article 239-A is enabling. It enables Parliament to enact a law for the Union Territory so as to create a legislature *or* a Council of Ministers *or both*. In creating a legislature, Parliament is left free to determine whether the legislative body should be entirely elected or should consist of a certain number of nominated legislators. Parliament, in its legislative power, may decide either to create a legislature or a Council of Ministers. Whether to do so, in the first place, is left to its discretion. Whether one or both of such bodies should be created is also left to the legislative authority of Parliament. If it decides to enact a law, Parliament is empowered to specify the constitutional powers and functions of the legislature and of the Council of Ministers. While the Constitution provides an enabling provision, the setting up of a legislature, the creation of a Council of Ministers and the ambit of their authority are to be governed by an ordinary law to be enacted by Parliament. Such a law, clause (2) clarifies, would not constitute an amendment of the Constitution under Article 368 even if it were to contain provisions which amend or have the effect of amending the Constitution. Creating democratic institutions for governing Union Territories under Article 239-A was left to the legislative will of Parliament.

314. In contrast to the provisions of Article 239-A is the text which the Constitution has laid down to govern Delhi. The marginal note to Article 239-AA provides that the

Article makes "special provisions with respect to Delhi". Article 239-AA provides thus:

"**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 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 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 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."

Article 239-AA is a product of the exercise of the constituent power, tracing its origins to the Sixty-ninth Amendment which was brought into force on 1-2-1992. Under clause (1), with the commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union Territory of Delhi is called the National Capital Territory of Delhi. Its Administrator, who is appointed under Article 239, is designated as the Lieutenant Governor. The Administrator appointed by the President under Article 239(1) is designated as the Lieutenant Governor for the National Capital Territory. The source of the power to appoint the Lieutenant Governor is traceable to Article 239(1).

....

474. .....The touchstone for recourse to the proviso is that the difference of opinion is not a contrived difference. The matter on which a difference has arisen must be substantial and not trifling. In deciding whether to make a reference, the Lieutenant Governor must always bear in mind the latitude which a representative Government possesses to take decisions in areas falling within its executive authority. The Lieutenant Governor must bear in mind that it is not he, but the Council of Ministers which takes substantive decisions and even when he invokes the proviso, the Lieutenant Governor has to abide by the decision of the President. The Lieutenant Governor must also be conscious of the fact that unrestrained recourse to the proviso would virtually transfer the administration of the affairs of the NCT from its Government to the Centre. If the expression "any matter" were to be read so broadly as to comprehend "every matter", the operation of the proviso would transfer decision-making away from the Government of the NCT to the Centre. If the proviso were to be so read, it would result in a situation where the President would deal with a reference on every matter, leaving nothing but the husk to the administration of the Union Territory. Article 239-AB makes a provision where there is a failure of the constitutional machinery in the Union Territory. The proviso to Article 239-AA(4) does not deal with that situation. Hence, in the application of the proviso it would be necessary to bear in mind that the Council of Ministers for

the NCT has a constitutionally recognised function, as does the Legislative Assembly to whom the Council is collectively responsible. The role of the Lieutenant Governor is not to supplant this constitutional structure but to make it workable in order to ensure that concerns of a national character which have an innate bearing on the status of Delhi as a national Capital are not bypassed. If these fundamental precepts are borne in mind, the operation of the proviso should pose no difficulty and the intervention of the President could be invoked in appropriate cases where a matter fundamental to the governance to the Union Territory is involved.

....

M. *Conclusions*

475. After analysing the constitutional and statutory provisions and the precedents on this point, this Court reaches the following conclusions:

....

475.4. While Article 239(1) indicates that the administration of a Union Territory is by the President, the opening words of the provision ("Save as otherwise provided by Parliament by law") indicate that the nature and extent of the administration by the President is as indicated in the law framed by Parliament. Moreover, the subsequent words of the provision ("to such extent as he thinks fit") support the same position.

....

475.12. Under the Transaction of Business Rules, the Lieutenant Governor must be kept duly apprised on all matters pertaining to the administration of the affairs of the NCT. The Rules indicate the duty of the Council of Ministers to inform the Lieutenant Governor right from the stage of a proposal before it. The duty to keep the Lieutenant Governor duly informed and apprised of the affairs of the NCT facilitates the discharge of the constitutional responsibilities entrusted to him and the fulfilment of his duties under the GNCTD Act, 1991 and the Transaction of Business Rules.

475.13. While the provisions contained in the Transaction of Business Rules require a scrupulous observance of the duty imposed on the Council of Ministers to inform the Lieutenant Governor on all matters relating to the administration of the NCT, neither the provisions of Article 239-AA nor the provisions of the Act and the Rules require the concurrence of the Lieutenant Governor to a decision which has been taken by the Council of Ministers. Rule 14 of the Transaction of Business Rules in fact indicates that the duty is to inform and not seek the prior concurrence of the Lieutenant Governor. However, in specified areas which fall under Rule 23, it has been mandated that the Lieutenant Governor has to be apprised even before a decision is implemented.

....

475.18. While it may not be possible to make an exhaustive catalogue of those differences which may be referred to the President by the Lieutenant Governor, it must be emphasised that a difference within the meaning of the proviso cannot be a contrived difference. If the expression "any matter" were to be read as "every matter", it would lead to the President assuming administration of every aspect of the affairs of the Union Territory, thereby resulting in the negation of the constitutional structure adopted for the governance of Delhi.

475.19. Before the Lieutenant Governor decides to make a reference to the President under the proviso to Article 239-AA(4), the course of action mandated in the Transaction of Business Rules must be followed. The Lieutenant Governor must, by a process of dialogue and discussion, seek to resolve any difference of opinion with a Minister and if it is not possible to have it so resolved to attempt it through the Council of Ministers. A reference to the President is contemplated by the Rules only when the above modalities fail to yield a solution, when the matter may be escalated to the President.

....

560. The above clearly indicates that Parliament has power to make laws for NCTD with respect to any of the matters enumerated in State List or Concurrent List. The Legislative Assembly of NCT has legislative power with respect to any of the matters enumerated in the State List or in the

Concurrent List excluding the excepted entries of the State List.

B.*Executive powers of the Union (President/ Lieutenant Governor) and that of the GNCTD*

561.[Ed.: Para 561 corrected vide Official Corrigendum No. F-3/Ed.B.J./64/2018 dated 19-11-2018.]. Although there is no express provision in the constitutional scheme conferring executive power to the Lieutenant Governor of the Union Territory of Delhi, as has been conferred on the Union under Article 73 and conferred on the State under Article 154. Under the constitutional scheme, executive power is coextensive with the legislative power. The executive power is given to give effect to legislative enactments. Policy of legislation can be given effect to only by executive machinery. The executive power has to be conceded to fulfil the constitutionally conferred democratic mandate. Clause (4) of Article 239-AA deals with the exercise of executive power by the Council of Ministers with the Chief Minister as the head to aid and advise the Lieutenant Governor in exercise of the above functions. The submission of the respondent is that executive power in relation to all matters contained in List II and List III is vested in the President.

562. The Union and States can exercise executive power on the subjects on which they have power to legislate. This Court in *Ram Jawaya Kapur* v. *State of Punjab* [*Ram Jawaya Kapur* v. *State of Punjab*, AIR 1955 SC 549] , while

considering the extent of the executive power in para 7 held the following: (AIR p. 554)

"*7*. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these Articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following, the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:

'**162.** ***Extent of executive power of State***.—Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws:

Provided that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.'

Thus under this Article the executive authority of the State is exclusive in respect to matters enumerated in List II of the Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself

or in any law passed by Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also. Neither of these Articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr Pathak seems to suggest, that it is only when Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 172 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the

Constitution. These provisions of the Constitution therefore do not lend any support to Mr Pathak's contention."

....

582. From the above discussions, it is thus clear that aid and advice of the Council of Ministers is binding on the Lieutenant Governor except when he decides to exercise his power given in proviso of clause (4) of Article 239-AA. In the matters, where power under proviso has not been exercised, aid and advice of the Council of Ministers is binding on the Lieutenant Governor. We are of the view that the proviso to clause (4) of Article 239-AA cannot be given any other interpretation relying on any principle of parliamentary democracy or any system of Government or any principle of constitutional silence or implications.

....

604. In view of the foregoing discussions we arrive at the following conclusions on the issues which have arisen before us:

604.1. The interpretation of the Constitution has to be purposive taking into consideration the need of time and constitutional principles. The intent of the Constitution Framers, the object and reasons of a constitutional amendment always throw light on the constitutional provisions. For adopting the purposive interpretation of a particular provision the express language employed cannot be given a complete go-by.

604.2. Parliament has power to make laws for NCTD in respect of any of the matters enumerated in the State List and the Concurrent List. The Legislative Assembly of NCTD

has also legislative power with respect to matters enumerated in the State List (except excepted entries) and in the Concurrent List.

....

604.4. When the Constitution was enforced, executive power of the Union in reference to Part C States with regard to the Concurrent List was not excluded. Part C States having been substituted by the Seventh Constitution Amendment as Union Territories. The word "State" as occurring in proviso to Article 73 after the Seventh Constitution Amendment cannot be read as including the Union Territory. Reading the word "Union Territory" within the word "State" in proviso to Article 73 shall not be in consonance with scheme of Part VIII (Union Territories) of the Constitution.

604.5. Executive power of the Union is coextensive on all subjects referable to Lists II and III on which Legislative Assembly of NCTD has also legislative powers.

604.6 [Ed.: Para 604.6 corrected vide Official Corrigendum No. F-3/Ed.B.J./64/2018 dated 19-11-2018.]. The "aid and advice" given by the Council of Ministers as referred to in clause (4) of Article 239-AA is binding on the Lieutenant Governor unless he decides to exercise his power given in the proviso to clause (4) of Article 239-AA."

62.The Constitutional Bench of the Apex Court has considered the laws, various other judgments, facts and circumstances applicable to NCT of Delhi. Ultimately, the Apex Court held that the Legislative Assembly of Delhi was empowered to enact laws; that the aid and advice of the Council of Ministers is binding, wherever the Legislative body has authority to make laws with respect to matters in State List and Concurrent List except where there is a restriction. In so far as matters falling within the exclusive domain of the Administrator, the Administrator is not bound by the "aid and advice of the Council". The Hon'ble Apex Court has also held that Union Territories were not State within the meaning of Article 246 and therefore, the authority of the Lieutenant Governor was much higher than that of the Governors of the State, implying that administrative decisions have to be communicated to the Lieutenant Governor which does not mean that concurrence is necessary; that the provisions must be interpreted keeping in mind the purpose with which different provisions were introduced; that the executive power of the government of NCT of Delhi is co-extensive with that of the legislative power; that the Parliament is still within its powers to make laws with respect to matters in State and Concurrent Lists as applicable to the Union Territories and the word " any matter" cannot be read as "every

matter". It has also embarked upon the harmonious and oriented functioning of the Lieutenant Governor and the elected Government.

63.It had touched upon Articles 239A and 239B to a limited extent as the authority of the Lieutenant Governor/Administrator of Puducherry was not an issue before it. Article 239A, as held by the Apex Court is singularly applicable to the Union Territory of Puducherry. The statement of objects and reasons for bringing in Article 239A clearly purports the intention of the Parliament to create a legislature for Pondicherry, now Puducherry. Though the language employed in Article 239A is "may", the Parliament thought it wise to immediately promulgate the Government of Union Territories Act, 1963 by which Article 239A was given effect to. Section 3 of the Act provides for a Legislative Assembly for each Union Territory.

64.Therefore, once the Parliament has acted in furtherance of Article 239A, the contention that the Union Territory continues to be governed only by the Administrator under Article 239 cannot be accepted and it goes against the finding of the Apex Court in the judgment(supra), wherein emphasis has been laid on purposive interpretation while dealing with laws made by the Parliament and Legislature. At this juncture, it is relevant to refer to the relevant portions of the judgment of the Apex Court in Keshavananda Bharati's case, which has been relied upon by the counsel for the 4th

respondent to contend that in view of conflict between the Constitution and the Parliament made law, the constitutional provisions would be supreme and that the constitutional provisions cannot be altered or amended by Parliament made law.

65.In Kesavananda Bharati v. State of Kerala, reported in (1973) 4 SCC 225, paragraphs 651, 1378, 1876 to 1878, 2064 and 2068 to 2070 are relevant, and the same are extracted hereunder:

> "**651.**We find it difficult to accept the contention that our Constitution-makers after making immense sacrifices for achieving certain ideals made provision in the Constitution itself for the destruction of those ideals. There is no doubt as men of experience and sound political knowledge, they must have known that social, economic and political changes are bound to come with the passage of time and the Constitution must be capable of being so adjusted as to be able to respond to those new demands. Our Constitution is not a mere political document. It is essentially a social document. It is based on a social philosophy and every social philosophy like every religion has two main features, namely, basic and circumstantial. The former remains constant but the latter is subject to change. The core of a religion always remains constant but the practices associated with it may change. Likewise, a Constitution like ours contains certain features which are so essential that

they cannot be changed or destroyed. In any event it cannot be destroyed from within. In other words, one cannot legally use the Constitution to destroy itself. Under Article 368 the amended Constitution must remain "the Constitution" which means the original Constitution. When we speak of the "abrogation" or "repeal" of the Constitution, we do not refer to any form but to substance. If one or more of the basic features of the Constitution are taken away to that extent the Constitution is abrogated or repealed. If all the basic features of the Constitution are repealed and some other provisions inconsistent with those features are incorporated, it cannot still remain the Constitution referred to in Article 368. The personality of the Constitution must remain unchanged.

...

1378. The Constitution itself treats the subject of ordinary legislation as something distinct and different from that of amendment of the Constitution. Articles 245 to 248, read with Seventh Schedule deal with ordinary legislation, while amendment of Constitution is the subject-matter of Article 368 in a separate Part. Article 368 is independent and self-contained. Article 368 does not contain the words "subject to the provisions of this Constitution" as are to be found at the beginning of Article 245. The absence of those words in Article 368 thus shows that an amendment of the Constitution made under that

article has a status higher than that of legislative law and the two are of unequal dignity. If there is any limitation on power of amendment, it must be found in Article 368 itself which is the sole fountain head of power to amend, and not in other provisions dealing with ordinary legislation. As stated on pages 24-26 in the *Amending of Federal Constitution* by Orfield 'limitation on the scope of amendment should be found written in the amending clause and the other articles of the Constitution should not be viewed as limitations'. The very fact that the power of amendment is put in a separate Part (Part XX) and has not been put in the Part and Chapter (Part XI, Chapter I) dealing with legislative powers shows that the two powers are different in character and operate in separate fields. There is also a vital difference in the Procedure for passing ordinary legislation and that for bringing about a constitutional amendment under Article 368. The fact that an amendment Bill is passed by each House of Parliament and those two Houses also pass ordinary legislation does not obliterate the difference between the constituent power and the legislative power nor does it warrant the conclusion that constituent power is a species of legislative power.

...

1876. During the British period neither the people of this country nor their elected representatives were endowed with the power to

make or amend their Constitution Act. The Constitution Act by which they were governed until August 14, 1947 was enacted by the British Parliament. The power to amend that Act was vested in that Parliament. The elected representatives of the people could until that date make only legislative laws under the Constitution Act. The Constitution Act endowed them with a legislative power. Under Sections 99 and 100 of the Government of India Act, 1935, the Union and Provincial Legislatures made legislative laws. Under Sections 42, 43 and 44 and Section 72 of Schedule IX the Governor-General made ordinances. The Governor made ordinances and Acts under Sections 88, 89 and 90. The headings of all those provisions describe the law-making power as "legislative power". The framers of the Constitution were familiar with the historical meaning of the expression "legislative power" in this country. They were also aware of the meaning of 'constituent power'. Accordingly, it is reasonable to believe that they have made a distinction between 'legislative power' and "constituent power". Indeed they have described the power of making legislative laws as a 'legislative power'. The heading of Part XI is 'Distribution of Legislative Powers'; the heading of Article 123 is 'legislative power of the President; the heading of Article 213 is "legislative power of the Governor". It may be observed that the framers did

not include Article 368 under the heading 'legislative power' or in Part XI or in the company of the provisions dealing with the legislative procedure in Part V of the Constitution. They placed it in a separate part. This omission is explained by the fact that they were making a distinction between "legislative power" and 'constituent power'.

1877. Broadly speaking, "constituent power" determines the frame of primary organs of Government and establishes authoritative standards for their behaviour. In its ordinary sense, legislative power means power to make laws in accordance with those authoritative standards. Legislative power may determine the form of secondary organs of Government and establish subordinate standards for social behaviour. The subordinate standards are derived from the authoritative standards established by the constituent power. Discussing the concept of 'legislative power', Bose, J., said: "We have to try and discover from the Constitution itself what the concept of legislative power looked like in the eyes of the Constituent Assembly which conferred it. When that body created an Indian Parliament for the first time and endowed it with life, what did they think they were doing? What concept of legislative power had they in mind? ... First and foremost, they had the British model in view where Parliament is supreme in the sense that it can do what it pleases and no Court

of law can sit in judgment over its Acts. That model it rejected by introducing a federation and dividing the ambit of legislative authority. It rejected by drawing a distinction between the exercise of constituent powers and ordinary legislative activity..." [*In re The Delhi Laws Act, 1912* at p. 1112].

1878. Parliament's additional power to amend certain provisions of the Constitution by ordinary law would not obliterate the distinction between constituent power and legislative power. Constitutions may be uncontrolled like the British Constitution, or controlled like the Constitution of the United States of America. There may be a hybrid class of Constitutions, partly controlled and partly uncontrolled. In an uncontrolled Constitution the distinction between constituent power and legislative power disappears, because the legislature can amend by the law-making procedure any part of the Constitution as if it were a statute. In a controlled Constitution the procedure for making laws and for amending the Constitution are distinct and discrete. No part of the Constitution can be amended by the law-making procedure. This distinction between constituent power and legislative power in a controlled Constitution proceeds from the distinction between the law-making procedure and the Constitution-amending procedure. Our Constitution is of a hybrid pattern. It is partly controlled and partly

uncontrolled. It is uncontrolled with respect to those provisions of the Constitution which may be amended by an ordinary law through the legislative procedure; it is controlled with respect to the remaining provisions which may be amended only by following the procedure prescribed in Article 368. When any part of the Constitution is amended by following the legislative procedure, the amendment is the result of the exercise of the legislative power; when it is amended through the procedure prescribed by Article 368, the amendment is the result of the exercise of the constituent power. The amending power conferred by Article 368 is a constituent power and not a legislative power.

...

2064. Articles 3, 4 and 169, para 7 of the Fifth Schedule and para 21 of the Sixth Schedule emphasise an important aspect of the distinction between constitutional law and ordinary law. What is authorised to be done by these provisions would normally fall within the scope of Article 368. In order however to take out such matters from the scope of that Article and to place those matters within the ordinary legislative sphere, special provisions are made in these articles that any laws passed thereunder shall not be deemed to be an amendment of the Constitution for the purposes of Article 368.

Article 13(1) provides:

"*Laws inconsistent with or in derogation of the fundamental right.*— (1) All laws in force in the territory of India immediately before the commencement of this Constitution, insofar as they are inconsistent with the provisions of this part shall, to the extent of such inconsistency, be void."

...

2068. The fundamental distinction between constitutional law and ordinary law lies in the criterion of validity. In the case of constitutional law its validity is inherent whereas in the case of an ordinary law its validity has to be decided on the touchstone of the Constitution. With great respect, the majority view in the *Golaknath case* did not on the construction of Article 13(2), accord due importance to this essential distinction between legislative power and the constituent power. In a controlled constitution like ours, ordinary powers of legislatures do not include the power to amend the Constitution because the Body which enacts and amends the Constitution functions in its capacity as the Constituent Assembly. Parliament performing its functions under Article 368 discharges those functions not as a Parliament but in a constituent capacity.

2069. There is a fundamental distinction between the procedure for passing ordinary laws and the procedure prescribed by Article 368 for effecting amendments to the Constitution. Under Article 368, a

bill has to be initiated for the express purpose of amending the Constitution, it has to be passed by each House by not less than two-thirds members present and voting and in cases falling under the proviso, the amendment has to be ratified by the legislatures of not less than half the States. A bill initiating an ordinary law can be passed by a simple majority of the members present and voting at the sitting of each House or at a joint sitting of the two Houses. Article 368 does not provide for a joint sitting of the two Houses. The process of ratification by the States under the proviso cannot possibly be called an ordinary legislative process for, the ratification is required to be made by "resolutions" to that effect. Ordinary bills are not passed by resolutions.

2070. The distinction between constituent power and ordinary legislative power can best be appreciated in the context of the nature of the Constitution which the court has to interpret in regard to the amending power. In *McCawley* v. *King* [1920 AC 691] Lord Birkenhead used the words "controlled" and "uncontrolled" for bringing about the same distinction which was made between "rigid" and "flexible" constitutions first by Bryce and then by Dicey. In a "controlled" or "rigid" Constitution, a different procedure is prescribed for amending the

Constitution than the procedure prescribed for making ordinary laws.

66.In the case of ***S.R. Bommai v. Union of India*, (1994) 3 SCC 1**, the Supreme Court has held as under:

"**174.**As earlier stated, the organic federalism designed by the Founding Fathers is to suit the parliamentary form of Government to suit the Indian conditions with the objective of promoting mutuality and common purpose rendering social, economic and political justice, equality of status and opportunity; dignity of person to all its citizens transcending regional, religious, sectional or linguistic barriers as complimentary units in working the Constitution without confrontation. Institutional mechanism aimed to avoid friction to promote harmony, to set constitutional culture on firm foothold for successful functioning of the democratic institutions, to bring about matching political culture adjustment and distribution of the roles in the operational mechanism are necessary for national integration and transformation of stagnant social order into vibrant egalitarian social order with change and continuity economically, socially and culturally. In the *State of W.B.* v. *Union of India* [(1964) 1 SCR 371 : AIR 1963 SC 1241] , this Court laid emphasis that the basis of distribution of powers between Union and the States is that only those powers and authorities which are concerned with the regulation of local problems are vested in the State and those which tend to maintain

the economic nature and commerce, unity of the nation are left with the Union. In *Shamsher Singh* v. *Union of India* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] this Court held that parliamentary system of quasi-federalism was accepted rejecting the substance of Presidential style of Executive. Dr Ambedkar stated on the floor of the Constituent Assembly that the Constitution is, "both unitary as well as federal according to the requirement of time and circumstances". He also further stated that the Centre would work for common good and for general interest of the country as a whole while the States work for local interest. He also refuted the plea for exclusive autonomy of the States. It would thus appear that the overwhelming opinion of the Founding Fathers and the law of the land is to preserve the unity and territorial integrity of the nation and entrusted the common wheel (*sic* weal) to the Union insulating from future divisive forces or local zealots with disintegrating India. It neither leaned heavily in favour of wider powers in favour of the Union while maintaining to preserve the federal character of the States which are an integral part of the Union. The Constitution being permanent and not self-destructive, the Union of India is indestructible. The democratic form of Government should nurture and work within the constitutional parameters provided by the system of law and

balancing wheel has been entrusted in the hands of the Union Judiciary to harmonise the conflicts and adopt constitutional construction to subserve the purpose envisioned by the Constitution."

67.On a bare reading of the above paragraphs in Keshavananda Bharati's case and S.R.Bommai's case, it is clear that our founding fathers have preserved the supremacy of the basic features of the constitution and preferred only to have a parliamentary system of quasi-federalism rejecting the substance of Presidential style of Executive. Further, as per the ratio in Kesavananda Bharathi's case, the basic structure of the Constitution cannot be amended though Article 368 empowers the Parliament to bring in any amendment to the Constitution. The validity of other laws are to be tested in conformity with the Constitution. The alteration of the status of a Union Territory and the gestation of the laws of Union Territories for self governance in parlance with the States by bringing in amendments to the Constitution, cannot be held to be one of the basic features of the Constitution. The concept of federalism has been inserted by our forefathers taking into account the diversity of the country. The concept of pluralism in the Constitution is fortified by VII Schedule or in other words, by creation of separate and divesting of powers in the spheres of legislation in the form of Union, State and Concurrent Lists.

Therefore, the authority of the Legislative Assembly of the Union Territory, created by an enactment in conformity with the constitutional powers cannot be undermined or subdued, against the basic spirit of the Constitution. As stated above, the scope and authority of the Administrator in legislative matters is limited even in matters where the Administrator exercises his discretion in view of the language employed in Article 239B. The only restriction on the legislative body is found in Section 20 of the Act, wherein it has been stated that the provisions of Articles 287, 288 and 304 with necessary modifications apply to the legislature of a Union Territory, as it applies to a State. Articles 287 and 288 deal with exemption on tax on electricity and water. Article 304 deals with restriction on trade, commerce and intercourse among states, which is basically dealt by various Entry Tax enactments.

68.Article 239(2) of the Constitution makes it clear that any law made by the Parliament shall not be treated as an amendment to the Constitution under Article 368. Therefore, the powers or restrictions granted by way of an Parliamentary Act, cannot be treated as incorporated in the Constitution. As held by the Apex Court, only when the Parliament by exercising its constitutional power under Article 368

alters the provisions of the Constitution, it can be treated as an amendment to the Constitution.

69.However, when the rights are traceable to any particular Article in the Constitution, the same has to be given effect to. In this context, it is relevant to point out the decision reported in 41 STC 409 (POLESTAR ELECTRONIC(PVT.)LTD. v. ADDITIONAL COMMISSIONER, SALES TAX, AND ANOTHER), of the Honble Supreme Court, wherein, at Page 422, it has been held as under:-

> "....It may be pointed out in the first place that the legislature could have easily used some such words as "inside the Union Territory of Delhi" to qualify the word "resale", if its intention was to confine resale within the territory of Delhi, but it omitted to do what was obvious and used the word "resale" without any limitation or qualification, knowing fully well that unless restrictions were imposed as to situs, "resale" would mean resale anywhere and not merely inside the territory of Delhi. The legislature was enacting a piece of legislation intended to levy tax on dealers who are laymen and we have no doubt that if the legislative intent was that "resale" should be within the territory of Delhi and not outside, the legislature would have said so in plain unambiguous language which no layman could possibly misunderstand. It is a well-settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey

that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all. We may repeat what Pollock, C.B., said in Attorney-General Vs. Sillem. That "if this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation ; it might have been expressed in language so clear that no human being could entertain a doubt about it". We think that in a taxing statute like the present which is intended to tax the dealings of ordinary traders, if the intention of the legislature were that in order to qualify a sale of goods for deduction, "resale" of it must necessarily be inside Delhi, the legislature would have expressed itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act. The absence of specific words limiting "resale" inside the territory of Delhi is not without significance and it cannot be made good by a process of judicial construction, for to do so would be to attribute to the legislature an intention which has chosen not to express and to usurp the legislative function. ...."

70.The natural corollary that emanates from the above judgment is that if the Parliament, in its wisdom while amending the Constitution and bringing in Articles 239A and 239B, thought it not fit to grant unassailable powers to the Administrators, the empowerment if any,

even in the Acts and Rules enacted by the Parliament under delegated legislation cannot empower the Administrator.

71.Section 16 of the Government of Union Territories Act, 1963 talks about powers, privileges,etc., of members which reads as follows:

> "**16.Powers, privileges, etc., of members.**-(*1*) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislative Assembly, there shall be freedom of speech in the Legislative Assembly of the Union territory.
>
> (*2*)No member of the Legislative Assembly of the Union territory shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Assembly or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of such Assembly of any report, paper, votes or proceedings.
>
> (*3*)In other respects, the powers, privileges and immunities of the Legislative Assembly of the Union territory and of the members and the committees thereof shall be such as are for the time being enjoyed by the House of the People and its members and committees.
>
> (*4*)The provisions of sub-sections (*1*), (*2*) and (*3*) shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise to take part in

the proceedings of, the Legislative Assembly of the Union territory or any committee thereof as they apply in relation to members of that Assembly.

The language used therein is similar to Article 105 of the Constitution which reads as follows:

"105.Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2)No member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3)In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4)The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

72.The findings of the Apex Court in the judgment reported in the Supreme Court in the case of P.V.Narasimha Rao vs. State (CBI/SPE), reported in (1998) 4 SCC 626, rendered while considering the scope and object of the immunity conferred under Article 105(2) on the independent legislators, are as follows:

"Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution; Parliamentary democracy is a part of the basic structure of the Constitution. An interpretation of the provisions of Article 105 (2) of which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law would not only be repugnan to healthy functioning of parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basic structure of the constitution."

The said findings are relevant and applicable to the Union territory of Puducherry also, considering the scope of Section 16 of the Government of Union Territories Act. The protection granted to a Member of the Assembly is limited only to his conduct in the Assembly and cannot extend to matters outside the Assembly. Any Administrative act is subject to judicial scrutiny. Similarly, Article 361 of the Constitution protects the President, Governors and the Rajpramukhs for their acts and during their term of office. However, the legality of their actions, can be reviewed by the Court.

73.The supremacy of the Constitution, its nature, the need for local governance at the State level, the overall scheme of control by the Government of India in areas concerning national policy, national upliftment, national unity, social justice and to preserve the social, economical and regional equality among the different classes of people within the sphere of fundamental rights, the supremacy of the union have all been laid down in the Kesavananda Bharathi's case and S.R.Bommai's case (Supra). It is pertinent to recall that the present Constitution was adopted on 29.11.1949 and came into force on 26.01.1950. Irrespective of whether the nature of set up is federal or quasi- federal, it is republic. In a republic country, the mandate of the

public is supreme. The elected representatives run the Government. The adaptation of the principle of "Republic" at the inception of the Constitution is not insignificant. Though the words "Socialist", "Secular" and "Integrity" were inserted with effect from 03.01.1977, the word "Republic" remained untouched and is a basic feature of our Constitution embedded with the democratic set up. Ours is a democratic and quasi-federal Constitution. The independent existence of the State and its administration is an important feature of our Constitution.

74.Even a law enacted by the State or Union Territory with respect to a matter in State and Concurrent List which is repugnant to the Central Enactment though void, can survive, if it receives the assent of the President. Article 254(2) of the Constitution is the Governing Article, by which the Parliament is vested with the power to bring in any enactment with respect to any matter for the Union Territory or any part thereof as per Proviso to the said Article. Section 21 of the Government of Union Territories Act, 1963 also deals with the same. The Constitution has been drafted by our forefathers in such a way to maintain a check, balance and independency of powers between the State and the Union. The policy of the Union Government

has shifted towards independency of the Union Territories in a long way. Three Union Territories were given full statehood. Provisions for legislature were made in many other Union Territories like Puducherry. Though the Union Territories generally do not enjoy the same power and independency as that of the State, the legislative body of Union Territory of Puducherry is far more better suited to function independently when compared to other union territories of the country.

75.The next line of dispute is the interference of the 4th respondent in the day to day affairs of the Government in the form of directing the Secretaries to report to the Administrator, interference in policy decisions, independent directions are given by the 4th respondent contrary to the decision of the council; that the 4th respondent is disbursing funds on her own and interfering in the governance by conducting inspections and issuing spot orders; that personal social media accounts are used for official purpose contrary to the instructions; the welfare measures taken by the elected Government is thwarted by the 4th respondent, who is acting in a tyrannical manner.

76.The learned Senior Counsel for the petitioner has also pointed out to certain instances regarding such actions of the 4th respondent. Per contra, it has been contended by the learned Senior Counsel for the 4th respondent that actions are taken in the interest of public and

that the 4th respondent, being the administrative head, is empowered to act at her discretion. Reliance was also placed upon the judgment of the Hon'ble Division Bench of this Court in Union of India and Others v. K.Venu and Others, reported in MANU/TN/0591/1983 to contend that the Lieutenant Governor is the Administrative Head and is not bound to act on the advice of the Council of Ministers. Before considering the scope of various enactments regarding the conduct of business, it is necessary to point out that in view of the Constitutional Bench Judgment of the Apex Court (Supra), the Division Bench Judgment in Union of India and Others v. K.Venu and Others, reported in MANU/TN/0591/1983 and the one reported in (2018) 4 MLJ 513, in the case of K.Lakshminarayanan v. Union of India, are no longer applicable.

77.The Other laws that are applicable to the Union Territory of Puducherry are the Rules of Business of the Government of Pondicherry, 1963, the Delegation of Financial Powers Rules, 1978, the Government of Puducherry (Custody of Public Moneys) Rules, 2006 and the Government of Puducherry Accounting Rules, 2006 and the orders issued by the Central Government. Before going into those provisions, the relevant provisions under the Government of Union

Territories Act are taken into consideration. Section 28 of Government of Union Territories Act reads as follows:

> "**28.Procedure in Legislative Assembly with respect to estimates**.-(*1*)So much of the estimates as relates to expenditure charged upon the Consolidated Fund of the Union territory shall not be submitted to the vote of the Legislative Assembly of the Union territory, but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of those estimates.
>
> (*2*)So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.
>
> (3)No demand for a grant shall be made except on the recommendation of the Administrator."

The above Section contains three parts. The first part spells that the expenditure charged upon the consolidated fund shall not be subject to vote in the Legislative Assembly, but can be discussed. The second part empowers the Legislative Assembly to either assent or refuse to assent to any demand that arises out of other expenditure not charged

upon the Consolidated Fund. The third part permits the Legislative Assembly to make provision for grants. It is pertinent to mention here that Section 47 of the Act makes way for the creation of 'Consolidated fund of the Union Territory'. In simple terms, the revenue received by the Central Government or the Administrator in the Union Territory and the loans/advances from the Central Government, form the Consolidated Fund of the Union Territory. The utilization, custody and other matters relating to the Consolidated Fund of the Union Territory shall be as per delegation of powers conferred by the Central Government and the rules framed by the Administrator with the approval of the President and the funds shall be appropriated as per the provisions of the Act.

78.Section 29 of the Government of Union Territories Act, 1963 reads as follows:

> "**29.Appropriation Bills**.-(1)As soon as may be after the grants under section 28 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Union territory of all moneys required to meet—
> (*a*) the grants so made by the Assembly, and
> (*b*) the expenditure charged on the Consolidated Fund of the Union territory but not exceeding in any case the amount shown in the statement previously laid before the Assembly.

(*2*)No amendment shall be proposed to any such Bill in the Legislative Assembly which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the Union territory and the decision of the person presiding as to whether an amendment is inadmissible under this sub-section shall be final.

(3)Subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Union territory except under appropriation made by law passed in accordance with the provisions of this section."

This Section provides that the grants and expenditures out of Consolidated Fund shall be introduced as a Bill in the Assembly to make way for appropriation and the Bill when passed, becomes the law. The Section though imposes certain restrictions regarding the variation as to the amount or destination of grant, it makes it clear that the legislature definitely has its say. The power conferred on the Administrator is not plenary and is subject to the result of the reference to the President or the Central Government.

79.Section 30 speaks about the statement regarding supplementary, additional or excess grants to be placed by the

Administrator with the previous approval of the President under certain circumstances. Section 31 permits the Assembly to make provision for any grant in advance and also legislate for withdrawal of such grant from the Consolidated Fund. The above provisions make it clear that the financial statement shall be laid by the Administrator spelling out the expenditure out of the Consolidated Fund of the Union Territory, but the legislature has the power to either accept or reject the demand for grants which are estimates relating to other expenditure. Therefore, this Court is of the opinion that the Administrator has the authority when it comes to estimating the expenditures out of Consolidated Fund and the law made by the Legislature is supreme when it comes to grants and other expenditures. However, the role of Finance Department is also significant, which is discussed later.

80.Section 33 of the Government of Union Territories Act, 1963 reads as under:

> "**33.Rules of procedure**.-(*1*) The Legislative Assembly of the Union territory may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business:

Provided that the Administrator shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President, make rules—

(*a*) for securing the timely completion of financial business;

(*b*) for regulating the procedure of, and the conduct of business in, the Legislative Assembly in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the Union territory;

(*c*) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of the functions of the Administrator in so far as he is required by this Act to act in his discretion.

(*2*) Until rules are made under sub-section (*1*), the rules of procedure and standing orders with respect to the Legislative Assembly of the State of Uttar Pradesh in force immediately before the commencement of this Act in the Union territory shall have effect in relation to the Legislative Assembly of that Union territory subject to such modifications and adaptations as may be made therein by the Administrator:"

The above Section empowers the Legislative Assembly to make rules with regard to conduct of its business. The Section only authorises the Administrator to make rules for timely completion of financial business and regarding the procedure to be followed in Legislative Assembly in

the conduct of business regarding any financial matter or any bill for appropriation out of Consolidated Fund and as to prohibition regarding discussion on the powers of the Administrator while exercising his discretion, in consultation with the Speaker and approval of the President. It does not permit the Administrator to take over the functions of the Finance Department.

81.Section 46 empowers the President to make rules for allocation of business to the Ministers, transaction of business with the Ministers and for the procedure to be adopted in case of a difference of opinion between the Administrator and the council of Ministers or Minister.

82.Section 48 of the Government of Union Territories Act, 1963 speaks about the creation of the Contingency Fund from and out of the Consolidated Fund, which shall be determined by the law framed by the Legislative Assembly. The provision also makes it clear that such fund shall be in the custody of the Administrator and shall be utilised in case of exigencies and the Administrator has been empowered to make rules with regard to the procedures to be followed for utilisation of the Contingency Fund.

83.As per Section 48A, the Parliament has been vested with the power to enact laws relating to borrowing upon the security of the

Consolidated Fund and such power to borrow can be exercised by the Administrator subject to the conditions imposed by the Government of India.

84.The above provisions under the Government of Union Territories Act makes it clear that the allocation of funds for expenditure under the Consolidated Fund shall be by the Administrator and with regard to all other matters including that of grants shall be by the Legislature. After the funds are allocated, it comes under the custody of the Administrator to ensure that the amounts are spent in consonance with the schemes. Once, a law has been enacted by the Legislative Assembly, the Administrator has no option but to release the funds for the purpose it has been allocated.

85.The Rules of Business of the Government of Pondicherry, 1963 have been framed by the President exercising his powers under Section 46 of the Government of Union Territories Act and Article 309 of the Constitution of India. As per Rule 4(1), Chapter III of the Rules make way for the procedure to be followed when the Administrator is bound to act as per the aid and advice of the Council of Ministers. The procedure to be followed in all other cases is specified in Chapter IV.

86.Rule 5 of the Rules of Business of the Government of Pondicherry, 1963, reads as follows:

"(1)All contracts in connection with the administration of the Union territory of Pondicherry shall be expressed to be made by the President and shall be executed on behalf of the President by such person and in such manner as he may direct or authorize under article 299 of the Constitution.

(2)Where the person authorized to execute contracts is the Administrator, he shall exercise that authority with previous approval of the Central Government in all cases involving exercise of financial powers in excess of those delegated to him from time to time by the Central Government.

(3) Any other person authorized to execute contract shall exercise that authority,-

(a) if the contract is in connection with public works upto the monetary limits prescribed under the Central Public Works Department Code or orders of the Central Government;

(b) in other cases upto such monetary limits and subject to such conditions as the Administrator may prescribe whether generally or in respect of specified classes of contracts to be executed by specified classes of officers;

Provided that in any case covered by clause (b), prior approval of the Central Government shall be obtained, if such approval is required in that case under sub-rule (2).

Rule 5 states that all the contracts shall be executed in the name of the President and by such person authorized by him. If such person is the Administrator, then he shall obtain the previous approval of the Central Government when financial powers that are not delegated to him are involved. A reading of Rule 5(2) & (3) would establish the authority of the Central Government. In simple terms, when there is a delegation, the Administrator or such authority shall pass orders. In case, when the power is not delegated, the Central Government can pass orders.

87.At this juncture it is relevant to refer to Articles 53(1) and 154(1) of the Constitution dealing with the executive power of the Union vested with the President and the executive power of the State vested with the Governor, respectively. By the above Articles, all executive orders of the Union of India shall be in the name of the President as per Article 77(1). Similarly, the executive action taken by the Government of the State shall be in the name of the Governor as per Article 166(1). In so far as the Union Territory of

Puducherry, the executive orders though shall be in the name in the President, but by virtue of Article 239 it is in the name of the Administrator. The above proposition is also fortified by Section 46 of the Government of Union Territories Act. This however does not mean that the Administrator can take decisions independently.

88.Rule 6 of the Rules of Business of the Government of Pondicherry, 1963, reads as follows:

> "(1)The Council shall be collectively responsible for all executive order issued from any department in the name of the Administrator or contracts made in exercise of the powers conferred on the Administrator or any officer subordinate to him in accordance with these rules, whether such orders or contracts are authorized by an individual Minister on a matter pertaining to the Department under his charge or as the result of discussion at a meeting of the Council or howsoever otherwise.
>
> (2) Without prejudice to the provisions of sub-rule (1), the Minister in charge of a department shall be primarily responsible for the disposal of the business pertaining to that department.

As per this rule, irrespective of the executive order issued in the name of the Administrator or other person, the Council shall be responsible and the Minister in-charge of a Department shall be primarily responsible for the business of that Department. The word "howsoever otherwise" which is an addition in comparison to the Delhi Rules,

emphazises that under all circumstances, the Council shall be collectively responsible. It also implies that the decision of the Council in awarding the contract is binding on the person who has been empowered to issue orders. Rules 9 and 10 also emphasises the authority of the Council in decision making in the matters enumerated in the schedule which is as under:

SCHEDULE
(See rules 9 and 10)

1.Cases relating to summoning and prorogation and dissolution of the Legislative Assembly, removal of disqualification of voters at elections to the Legislative Assembly, fixing of dates of elections to the Legislative Assembly and other connected matters.

2.The annual financial statement to be laid before the Legislature and demands for supplementary, additional or excess grants.

3.Cases in which the attitude of the Council to any resolution or Bill to be moved in the Legislature is to be determined.

4.Proposals for the imposition of a new tax or any change in the method of assessment or he pitch of any existing tax or land revenue or irrigation rates.

5.Any proposal which effects the finances of the Union territory which has not the consent of the Finance Minister.

6.Any proposal for re-appropriation to which the consent of the Finance Minister is required and has been withheld.

7.Proposals involving the alienation, either temporary or permanent, or of sale, grant or lease of Government property exceeding rupees three thousand in value or he abandonment or reduction of revenue exceeding that amount except when such alienation, sale, grant or lease of Government property is in accordance with the rules or with a general scheme already approved by the Council.

8.The annual audit review of the finance of the Union territory and the report of the Public Accounts Committee.

9.Proposals involving any important change in policy or practice.

10.Proposed circulars embodying important changes in the administrative system of the Union territory.

11.Any proposal for the institution or withdrawal of a prosecution by Government against the advice tendered by the Law Department.

12.Proposals for the creation or abolition of any public office the maximum remuneration of which exceed rupees two hundred and fifty.

13.Appointment of Committees of Inquiry on the initiative of the Government or in pursuance of a resolution passed by the Legislature of the Union territory and reports of such Committee.

14.Cases required by the Administrator or Chief Minister to be brought before the Council.

15. Omitted.

16.Proposals relating to rules to be made under proviso to section 33(1) of the Act.

17.Draft Bills and proposals for legislation.

18.Proposals for reference to President for decision on questions arising as to whether a member of the Legislative Assembly has become subject to any disqualification under section 14(1) of the Act; any proposal to recover or to waive recovery of the penalty due under section 15, of the Act.

19.Proposals to vary or reverse a decision previously taken by the Council.

The Schedule if read in conjunction with Rules 9 and 10, would clearly illustrate that any subject matter falling in the Schedule, including policy decisions, creation of public office, Annual Finance Statement would have to be placed before the Council for its concurrence and the proposals are to be mooted by respective Ministers through the chief minister.

89.Rule 7 of the Rules of Business of the Government of Pondicherry, 1963, reads as follows:

> (1)The rules and orders made by the Central Government to regulate the procedure in its departments and offices relating to sanctioning of expenditure, appropriation and re-appropriation of funds, public works and purchases of stores required for use in the public service shall, subject to the rules governing the delegation of powers to the Administrators and any general or special orders of the Central Government, continue to apply in relation to the department and offices of the Government of the Union territory.

> (2)Unless the case is fully covered by the powers to sanction expenditure or to appropriate or re-appropriate funds conferred by an general or special orders made by the Finance Department, no Department shall, without the

previous concurrence of the Finance Department, issue any order, which may --

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the Appropriation Act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence in respect of mineral or forest rights or rights to water power or any easement or privilege;

(c) relate to the creation of abolition of posts, fixation of strength of a service; or

(d) otherwise have a financial bearing whether involving expenditure or not.

(3) No proposal which requires previous concurrence of the Finance Department under this rule, but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council.

(4) No re-appropriation shall be made by any Department other than the Finance Department, except in accordance with such general delegation of power of re-appropriation as the Finance Department may have made.

(5) Except to the extent that power may have been delegated to the Department under rules approved by the Finance Department, every order of an administrative Department conveying a sanction to be enforced in audit shall be communicated to the audit authorities by the Finance Department.

(6) Nothing in this rule shall be construed as authorizing any authority or Department, including the Finance Department, --

(a) to make re-appropriation from one Grant or Appropriation for charged expenditure to another Grant or Appropriation for charged expenditure;

(b) to re-appropriation funds provided for charged expenditure to meet votable expenditure;

(c) to re-appropriate funds provided for voted expenditure to meet charged expenditure;

(d) to appropriate or re-appropriate funds to meet expenditure on a new service not contemplated in the budget as approved by the Legislative Assembly.

As per Rule 7, the Rules and Regulations of the Central Government relating to procedures to be followed in Departments shall also apply

to Puducherry in all matters subject to the rules governing delegation of powers or any other general or special order. The rule gives wide powers to the Finance Department and emphasises the significant role in almost all the decisions of the Union Territory including service conditions but excepting appropriation or re-appropriation of funds, including from one head to another.

90.Rule 12 lays down the procedure for getting the remarks of the Council and the Chief Minister before the file is sent to the Administrator by the Secretary. Rule 16 states that the decision of the Council has to be forwarded to the Administrator by the Secretary to the Council and thereafter, the Minister concerned shall take steps to implement the decision. Rules 17 and 18 empowers the Minister-in-Charge of a Department to issue Standing Orders. Rule 21 enables a Secretary in a Department, a Minister and the Chief Secretary to call for papers relating to a case. It is pertinent to mention here that as per Rule 21(4)(b) the Chief Secretary may submit the case for orders to the Minister-in-Charge or to the Chief Minister.

91.From the above provisions, it is clear that generally, it is the Minister-in-Charge along with the Council of Ministers headed by the Chief Minister are empowered to run the Government and the Secretaries including the Chief Secretary are bound to follow the same. It is also clear that the decisions are to be communicated to the

Administrator. The Secretaries are not empowered to issue orders on their own or upon the instructions of the Administrator.

92.Rule 25 of the Rules of Business of the Government of Pondicherry, 1963, states that certain classes of cases shall be submitted to the Administrator through the Chief Minister before the issue of orders, some of which are listed below:

(i)Cases raising questions of policy;

(ii)Cases which affect or are likely to affect the peace and tranquility of the Union Territory;

(iii)Cases which affect or are likely to affect the interest of any minority community, Scheduled Cases and Backward Classes;

(iv)Cases which affect the relations of the Government of the Union Territory of any State Government, the Supreme Court or the High Court at Madras;

93.Rule 26 of Rules of Business of the Government of Pondicherry, 1963 states that in case the Administrator considers that any further action should be taken or that action should be taken otherwise than in accordance with the orders passed by the Minister-in-charge, the Administrator may require the case to be laid before the Council for consideration whereupon the case shall be so laid. Rule 27 states that the Chief Minister shall cause to be furnished to the

Administrator such information relating to the Administrator of the Union Territory and proposals for legislation as the Administrator may call for and if the Administrator so requires, 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.

94.The above two rules make it clear that the Administrator cannot overturn the decision of the Council of Ministers but is entitled to be informed before any orders are issued to enable the Administrator to suggest his input. Strangely it also does not deal with a situation when the Council of Ministers disagree with the Minister-in-Charge. It should only be inferred that such a situation would not arise. This Court is of the opinion that as per the existing provisions, the Council of Ministers even if not concurring with the Minister-in-Charge will have the final say in view of the fact that it has been held by the Supreme Court in the case of Government of NCT of Delhi (Supra) that the Administrator is bound by the aid and advice of the Council of Ministers. Though it could be contended that in case of difference, the matter could be sent to the President / Central Government for suspending such action and to give such directions, the same cannot be as a matter of routine in every case and is to be

limited only to cases where there is specific delegation of power to the Administrator in so far as execution of contracts is concerned with the approval of the Central Government as per Rules 5 (2) and 3 (b).

95.In so far as the executive functions of the Administrator referred under Rule 4 (2) is concerned, the governing Rules are Rules 46 to 48. The Rules empower the Administrator to issue Standing Orders which shall be consistent with Chapters IV, V and the instructions issued by the Central Government. It is needless to state that the decision of the Council of Ministers cannot be contrary to the instructions of the Central Government or any law made by the Parliament. The Rules also make it clear that the Administrator is empowered to lay down the conditions of service of persons in the Union Territory, only as authorised by the rules or by order of the President. It is pertinent to mention here that the Administrator has to act in consultation with the Chief Minister. That apart, when it comes to service conditions of persons recruited for administration, the Administrator shall consult the Union Public Service Commission and is bound by the advice of Union Public Service Commission unless otherwise authorized by the Central Government.

96.The provisions make it clear that when there are rules and regulations determining the procedure to be followed, the same has to be followed by the Administrator, who has no independent power to

take decisions. It is only when a subject matter is not covered by Chapter IV, he can take decisions, that too, after consulting with the Council or the Chief Minister.

97.Chapter V of the Rules of Business of the Government of Pondicherry, 1963, deals with the reference to the Government of India. It enables the Administrator to refer any draft Bill to the Central Government. Such a reference shall also be made with the regard to any matters wherein there could be no meeting of mind between the Administrator and the Council of Ministers where the Administrator is to act in accordance with the aid and advice. Pending the reference, the Administrator is empowered to issue such directions as he deems necessary, which shall be given effect by the Minister concerned. It is pertinent to recall the decision of the Constitutional Bench (Supra) that whenever the Administrator is to act on the aid and advice of the Council of Ministers, he is bound by such advice.

98.The next question for consideration is the scope of financial powers including creation of posts, as between the Administrator and the Council of Ministers. It has been contended by the learned Senior Counsel appearing on behalf of the 4th respondent that in so far as financial matters are concerned, the Administrator enjoys a special responsibility in view of powers delegated to the Administrator under

the Delegation of the Financial Power Rules, 1978. The learned senior counsel had relied upon Rule 7 of the Rules of Business of the Government of Pondicherry, 1963, to contend that the powers have to be traced to the Delegation of Financial Power Rules, 1978._Therefore, in the absence of any specific rules by the Administrator or by the Assembly, the orders of the Central Government from time to time will apply. Also reliance has been placed upon Rule 13 (1), 13 (2) & (3) of the Delegation of Financial Power Rules to illustrate the authority of the Administrator in creating permanent or temporary posts, as it might have financial implications.

99.Per contra, it has been contended on behalf of the petitioner that the financial powers of the Administrator are not a special responsibility. Reliance has been placed upon various provisions of the Rules of Business of the Government of Pondicherry and to the Union Territories Act to contend that none of the provisions confer any special responsibility. Further, the Government of Puducherry has already enacted the Consolidated Fund of Puducherry Rules, 1963 with the approval of the President and only for the time being, the Government of India Financial Rules is being followed.

100.Rules 13(1) and 13(2) of the Delegation of Financial Power Rules, 1978, specifically delegate the financial powers, subject to the ceilings specified from time to time in relation to creation of

permanent posts, creation of temporary posts, appropriation and re-appropriation, incurring of contingent expenditure, incurring of miscellaneous expenditure, and write off of losses.

101.A comparative study of the Delegation of Finance Rules,1978, Standing Orders of the Government, Transactions of Business Rules, 1983 of the Delhi Government, Rules of Business of the Government of Pondicherry, 1963, would clearly establish the powers of the Administrator as well as that of the Council of Ministers to be not absolutely unique under all circumstances. This Court is of the opinion that there are certain grey areas like the use of the words "Special Responsibility" and "Discretion" in the Government of Union Territories Act. The discretion utmost could be only with regard to passing any ordinance when the Assembly is not in session or while returning the Bill to the Assembly or for reserving the same for the consent of the President through the Central Government.

102. The contentions of the 4th respondent though allurable in the context of Rule 13 of the Delegation of Financial Powers Rules and Rule 7 of the Rules of Business of the Government of Pondicherry, 1963, if given a deeper inquest in comparison with the other provisions and the Constitutional Scheme, it would prove otherwise. This Court has already examined the scope and powers of the Administrator

under Section 44 of the Union Territories Act. The Government of Union Territories Act talks only about Special Provisions regarding Financial Bills in Section 23. This Court has already dealt with the provision in Para 52 above. The next relevant provision is Section 27 which has been dealt in the same para. The Chief Minister of Puducherry has retained the portfolio of Finance Department and hence is the Finance Minister heading the Department. Finance Department has been given an important responsibility in the Rules of Conduct of Business. Generally the following categories would come under the Finance Department :

a. Budget and Accounts of the Union Territory

b. Rules and orders regarding control of expenditure and financial procedures

c. Interpretation of financial and accounts rules

d. Scrutiny of financial sanctions

e. Delegation of financial powers

f. Pension and Gratuity

g. General Provident Funds

h. The Consolidated fund of Union Territory

i. The contingency fund of the Union Territory

j. The Chief Ministers Discretionary Grant/The Chief Minister's

Welfare Fund/ Compassionate Funds.

k. Finance Committee/Estimates Committee/Public Accounts Committee.

l. Report of Auditor General/Controller General.

m. Stamps

n. Commercial Taxes

o. Financial Resources

p. Financial Inspections

q. Salaries and Allowances

r. Recruitment/posting/promotion and transfer of all posts exclusive to this department.

103.The above could be culled out from Rules 7, 9, 10, 28, 29, 30, 33, 41 and the Schedule to the Rules of Business of the Government of Pondicherry, 1963, which are to be read along with Sections 27 to 33 of Government of Union Territories Act. It is not to be forgotten that the Delegation of Financial Power Rules were issued to regulate the powers of different authorities for incurring expenditure of public funds for effective control and monitoring of Government spending, out of the allotted funds. The funds covered under the Delegation of Financial Power Rules are the funds allotted by the Central Government and not the funds received by the Union Territory

in the conduct of its business. The scope of General Finance Rules, 2017 is also of the same nature. They are in addition to the existing laws governing the financial matters of the Union Territories but not in derogation or abrogation. This Court has already held that the power exercised under a delegation cannot override the powers granted directly under the Act or Rules. The Government of Union Territories Act was enacted by the Parliament and the Rules of Business of the Government of Pondicherry was promulgated by the President exercising his authority under Article 239 of the Constitution and Section 46 of the Government of Union Territories Act. Therefore, in respect of funds received from the Central Government, the Administrator or his delegates will have the power subject to the aid and advice of the Council of Ministers more specifically the Finance Minister. In other matters covered under Rules 4 (1), 7(2), 9 and 10, the decision of the Council of Ministers is binding. It is pertinent to mention here that by recent communication of the Government of India dated 27.09.2018, having felt the necessity to re-delegate the financial powers for speedy disposal of the cases, the Government of India has delegated the powers to the Secretaries/HOD's and to the Council of Ministers in public interest. The letter also makes it clear in paragraph-4 that the re-delegation also includes the Chief Minister.

Therefore, it cannot be said that the Administrator has exclusive authority over financial and service matters.

104.The next point that arises for consideration is the instruction issued to the Sub-Ordinate officers by the Administrator and their use of private medium of communication. This Court has already discussed the role of Secretaries. They normally act only as a medium of communication, utmost to render their opinion at circumstances. They have no power or authority to override the decisions of the Council. Though, they may report to the Administrator nominated by the President, still they cannot shed their duty to the decision of the Council of Ministers taken as per the procedure laid down in the Government of Union Territories Act and the Rules of Business of the Government of Pondicherry, 1963. While performing their day to day affairs, they are bound to report to the Council of Ministers. It is only when they are performing any act covered by the Delegation of Financial Power Rules, they have to act as per the authority delegated to them directly or by the Administrator. Further, as a public servant, they are bound to use only public media allocated to them. The same was also the instruction given in the office memorandum dated 23.11.2014 issued by the Government of India. They cannot jump the gun and run a parallel Government under the directions of the

Administrator. In so far as Rule 13 of Delegation of Financial Power Rules, authorising the Administrator to create any post both permanent or temporary, it is to be understood in the context of the scope and object of the Rules. Also a reading of Rule 7(2) of the Rules of Business of Government of Pondicherry, 1963, makes it clear that the authority is with the Finance Department. Therefore, the Administrator cannot act independently. At the cost of repetition, the scope of Articles 239AA, Article 239A, 239B and 240 are different. The restrictions imposed on the Government of Delhi is not applicable to the Government of Puducherry.

105.This Court has already referred to the judgment of the Constitutional Bench of the Apex Court in 2018 (8) SCC 501. The Apex Court has clearly held that there is a distinction between the National Capital Territory of Delhi and Puducherry. Considering the scope and restrictions on the legislative capacity of the Government of Delhi and Article 239AA and other Articles, it was held that the NCT of Delhi does not enjoy the power of a State, whereas, the only restriction imposed on Puducherry is in respect of Articles 287, 288 and 304. The same restriction is applicable to the States as well. Therefore, though the Union Territory of Puducherry is not a State, the Legislative Assembly will have the same powers as that of a State and the powers of the

Administrator is formidable than that of the Governor of a State as in exceptional circumstances, he can exercise his discretion when he has referred the matter to the President or the Central Government or to pronounce ordinance under certain circumstances enumerated above.

106.In the words of Alexis de Tocqueville, on Democracy in America, it has been stated thus:

> "In examining the division of powers, as established by the Federal Constitution, remarking on the one hand the portion of sovereignty which has been reserved to the several States, and on the other, the share of power which has been given to the Union, it is evident that the Federal legislators entertained very clear and accurate notions respecting the centralization of government. The United States form not only a republic, but a confederation; yet the national authority is more centralized there than it was in several of the absolute monarchies of Europe...."

107.The concept of "Democracy and Republic" has been infused in the Constitution to make every citizen a participant in the Government. It is done through the process of election of the representatives. The elected representatives represent the will of the people. The citizens raise their voice in their election through democratic process. The Government must truly function with

national/public interest, be it the elected representatives or the Administrator. Anarchy attacks the soul of the Constitution and the public interest. Centralization of power at one hand is not the intention in democracy. "Power", the exercise of which, in contradiction to constitutional and other laws will have a long lasting effect in the administration and on the public. Therefore, the exercise of it must be with care and in conformity to the basic concepts of the Constitution, only then it will get justified. The federalism in-built in the Constitution is protected by way of Parliamentary and Presidential intervention. To advert misuse of powers, the methods have been prescribed in the governing enactments. The need of the hour is participative governance rather than suppressive governance.

108.The Government of Puducherry is a Constituent Elected Body constituted by a Council of Ministers. When the Council of Ministers are not able to take a decision in certain policy issues, then the supervisory power vested with the Administrator comes into operation by which the Administrator can decide the issue and that too with the accent of the President, without causing any detriment to the interest of the elected body, because the Executive Government is formed according to the will and wish of the people by way of conducting elections, and that is prime in nature. Thus the elected Government functioning through the Council of Ministers, cannot be

defeated by the act of the Administrator who is also functioning under the provisions of the Constitution, by way of interfering in the day to day affairs of the Government and calling for each and every officer to the residence of the Administrator and running a parallel Government. The elected representatives of the Government play a major role in decision making, or else, there would be no purpose in having an elected Government, who are the true representatives of the people. Even though technically the Lieutenant Governor is vested with powers to act as Administrator, the power is restricted and applicable only in circumstances explained above. The Administrator cannot interfere in the day-to-day affairs of the Government under the guise of supremacy or public interest, stating technical reasons.

109.The 2nd respondent has issued the impugned proceeding in dated 27.01.2017 bearing Ref.No.U-11018/1/2017 – UTL and the third respondent has issued the impugned order dated 16.06.2017 bearing Ref: U-11018/2017-UTL in the nature of clarification undermining the power of the Legislative Assembly and elevating the power of the Administrator, though not exactly available under the applicable laws, as discussed above in detail. In both the impugned proceedings, the applicable constitutional provisions have not been discussed in detail more particularly Articles 239A, 239B and 240 of the Constitution of

India. The authority to refer the matter to the President or the Central Government or the obligation to communicate the decision of the Council of Ministers or the authority to call for the papers, cannot be equated with vesting of the authority to be an integral part of decision making or to meddle with the day to day affairs. This Court is of the view that for the reasons stated in the preceding paragraphs, the impugned proceedings are unsustainable and hence the same are liable to be aside.

110. **Conclusions**:

●The petitioner who is an elected member of the legislative assembly of puducherry has locus to sustain the writ petition and seek a judicial review of the actions of the 4th respondent and the impugned proceedings justifying such actions.

●The Union Territory of Puducherry has legislative powers to enact laws with respect to all matters enumerated in the State and Concurrent Lists as per the Constitutional Scheme in Articles 239A, 239B, 240 and 254 of the Constitution of India and the Government of Union Territories Act, subject to restrictions imposed in Articles 287, 288 and 304 of the Constitution and the assent of the president.

●The legislative body of the Union Territory of Puducherry enjoys similar power to that of a "State" though not a state and the authority of the Administrator remains intact with regard to exercise of

discretion under certain circumstances when the assembly is not functioning or when a reference is bonafidely required and in cases where he exercises judicial or quasi-judicial functions.

●The Administrator is bound by the aid and advice of the Council of Ministers in matters where the Legislative Assembly is competent to enact laws as contemplated under Section 44 of the Government of Union Territories Act, 1962 though she is empowered to differ with the views of the Council based on some rationale which raises a fundamental issue regarding the action of the Government. A legitimate and warranted policy decision of the Council after deliberation is expected not to be interfered with. The proposal is to be mooted by the appropriate minister through the Chief Minister under the Schedule as enumerated under Rules 9 and 10 of the Rules of Business of the Government of Pondicherry, 1963. The scope of such difference can utmost end only in a reference to the President or the Central Government, as the case may be, under Rule 56 of the Rules of Business of the Government of Pondicherry, 1963 and by no stretch of imagination or interpretation, the provisions enable the Administrator to reject any Bill.

●In financial matters, generally, the Council of Ministers and the Finance Department are entitled to take decisions, as provided under

the Scheme of Government of Union Territories Act and the Rules of Business of the Government of Pondicherry, 1963. However, the Administrator or any other delegate including the Council of Ministers will have the authority to exercise the powers delegated to them under the Delegation of Financial Power Rules or any other Rule or Regulation issued by the Central Government. When the delegation is general, the Administrator, Council or any other authority will have to act in harmony, keeping the public interest in mind. In the absence of delegation, the authority shall vest with the Central Government through the President.

●In so far as the service conditions are concerned, it shall vest with the Administrative Head of the Department, viz. the particular Minister heading the Department and in every case the Finance Ministry is to be consulted and the decision is to be taken based on the instructions of the Finance Ministry and the orders have to be executed in the name of the Administrator or such delegated authority. In matters relating to posting of officers under the Indian Administrative Service is concerned, it shall be by the Administrator in consonance with Article 320 of the Constitution of India.

●The decisions of the Council has to be forwarded to the Administrator. The communication is required to enable him/her to exercise his/her power of reference.

●Whenever, the assent of the Administrator is required, in case of difference of opinion, a constructive discussion has to be held with the Council of Ministers. In case, the difference still exists, the Administrator can withhold the same only for a brief period and the same has to be referred to the President at the earliest. The decision of the President is final in those matters. It is made clear that the use of the word "any" occurring under Section 44 of the Government of Union Territories Act, 1963 does not mean "everything" and the Administrator shall be guided by the preceding conclusions. As held by the Apex Court, the authorities must be conscious of their constitutional duties and must act in discussion and deliberation.

●The Administrator cannot interfere in the day to day affairs of the Government. The decision taken by the Council of Ministers and the Chief Minister is binding on the Secretaries and other officials.

●The Central Government as well as the Administrator should be true to the concept of democratic principles. Otherwise, the Constitutional Scheme of the country of being democratic and republic, would be defeated. Notable and appreciable is the action of the Central

Government to re-delegate further powers to the Council of Ministers in the communication dated 27.09.2018.

●The Government officials cannot use their personal media to address the grievance of the public. A public redressal forum in the form of official e-mails, telephone numbers are to be circulated and used, if already not put into use.

●The Administrator has no exclusive authority to run the administration in derogation of the Constitutional Principles and the Parliamentary Laws governing the issue.

●Both the orders dated 27.01.2017 bearing Ref.No.U-11018/1/2017 – UTL and dated 16.06.2017 bearing Ref: U-11018/2017-UTL , impugned in the writ petition are set aside.

111. With the above observations/directions, the writ petition is allowed. Consequently the connected miscellaneous petitions are closed. No costs.

Index : Yes/No
Internet : Yes/No

30.04.2019

KM

Note to the Registry: Issue order copy on 02.05.2019.

To

1.The Secretary to Government,
Ministry of Home Affairs,
Government of India, New Delhi.

2.The Under Secretary to Government,
Ministry of Home Affairs,
Government of India, New Delhi.

3.The Director (ANL),
Ministry of Home Affairs,
Government of India, New Delhi.

4.The Administrator of Puducherry,
Government of Puducherry,
Puducherry.

5.The Chief Secretary to Government,
Government of Puducherry,
Puducherry.

R.MAHADEVAN, J.

KM

Order made in
W.P.No.28890 of 2017
and
W.M.P.Nos.31106 and 31107 of 2017

30.04.2019