

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2357 of 2017

Govt. of NCT of Delhi

..... Appellant

Versus

Union of India

..... Respondent

WITH

WRIT PETITION (CIVIL) NO. 887 of 2021

ORDER

1. In this third round of the *lis* between the present parties, at this juncture it is not imperative to delve deep into the history of the controversy. It suffices to succinctly set out the context of the current dispute before this three-Judge Bench.

2. The first round of proceedings culminated into a reference dated 15.02.2017 to a Constitution Bench via order dated 15.02.2017, to decide the issues regarding the interpretation of Article 239AA of the Constitution. Article 239AA provides the constitutional bulwark for the exercise of legislative powers by the Legislative Assembly of the Union Territory of Delhi and the Parliament in respect of the National Capital Territory of Delhi. It governs the relationship between these two legislative bodies to enact laws in relation to corresponding subjects as well as the power of the Parliament to annul the laws made by the Union Territory through the doctrine of

repugnancy. The relevant extract of Article 239AA of the Constitution reads as follows:

239AA. Special provisions with respect to Delhi.

xx xx xx xx

(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.

xx xx xx xx

(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.

3. The Constitution Bench delivered three separate concurring opinions on the interpretation of Article 239AA of the Constitution in its final verdict dated 04.07.2018. The matter was thereafter placed before a two-Judge Bench of this Court to decide the remaining issues in light of the principles enunciated by the Constitution Bench.

4. In the second round of the proceedings, the two-Judge Bench vide its decision dated 14.02.2019, resolved all issues except for one, which was with regard to the legislative competence of the Govt. of NCT of Delhi in relation to the subject matter of 'services' as contained in Entry 41 of List II of the Seventh Schedule of the Constitution. Both the learned judges held divergent viewpoints on this issue, primarily hinged on the interpretation accorded by them to the phrase "**in so far as any such matter is applicable to Union Territories**" which finds mention in sub-clause (a) of clause (3) of Article 239AA. Accordingly, the matter was referred to a larger Bench. This is how we are now seized of the matter.

5. During the course of the hearing, Union of India has moved an application seeking reference of the present dispute to a Constitution Bench keeping in view Article 145(3) of the Constitution, on the premise that the erstwhile Constitution Bench, while construing Article 239AA, has not elucidated on the true meaning and import of the expression "**in so far as**

any such matter is applicable to Union Territories” as mentioned in sub-clause (a) clause (3) of Article 239AA. Additionally, the Respondent has raised the issue that the interpretation of the phrase “**Subject to the provisions of this Constitution**” as contained in the same sub-clause, has not been prominently explained in the Constitution Bench’s decision dated 04.07.2018. Consequently, it has been urged that in the absence of a conclusive pronouncement on the interpretation of these two phrases, the ongoing controversy relating to the scope of legislative competence of the Govt of NCT of Delhi in relation to the subject matter of “services” cannot be authoritatively settled without reference to a Constitution Bench, as envisaged under Article 145(3) of the Constitution.

6. The Respondent has further alluded to the amendments brought through the Government of National Capital Territory of Delhi (Amendment) Act, 2021 and Transaction of Business of the Government of National Capital Territory of Delhi (Amendment) Rules, 2021, constitutionality whereof has been challenged by the Appellant in Writ Petition (Civil) No 887 of 2021. It is asserted that the interpretation of clause (3) of Article 239AA of the Constitution, is not only the central point for determination in the instant case but would also have an indelible impact on the validity of the said amendments. It may be noticed that the aforementioned writ petition has also been tagged with the present civil appeal.

7. Dr. Singhvi, learned Senior Counsel for the Appellant has emphatically opposed the prayer sought by the Respondent, as according to

him, Article 239AA(3) has been exhaustively interpreted by the erstwhile Constitution Bench, both in explicit as well as in implicit terms. He has further argued that the solitary unresolved issue could be conclusively decided by the present three judges' bench, without any legal necessity to make a further reference to a Constitution Bench. Dr. Singhvi also posited that the question of interpretation of Article 239AA(3) of the Constitution having been authoritatively settled by the earlier Constitution Bench, cannot be re-opened on the mere asking of the Respondent as the same would be contradictory to the doctrine of precedent.

8. From the reference application moved by the Union of India, as well as the rival contentions of the parties, the main bone of contention relates to the interpretation of the phrases: "***in so far as any such matter is applicable to Union Territories***" and "***Subject to the provisions of this Constitution***" as contained in Article 239AA(3)(a) of the Constitution. On perusing the Constitution Bench judgment, it appears that all the issues except the one pending consideration before this bench, have been elaborately dealt with. Therefore, we do not deem it necessary to revisit the issues that already stand settled by the previous Constitution Bench.

9. The limited issue that has been referred to this Bench, relates to the scope of legislative and executive powers of the Centre and NCT Delhi with respect to the term "services". The Constitution Bench of this Court, while interpreting Article 239AA(3)(a) of the Constitution, did not find any occasion

to specifically interpret the impact of the wordings of the same with respect to Entry 41 in the State List.

10. We therefore, deem it appropriate to refer the above limited question, for an authoritative pronouncement by a Constitution Bench in terms of Article 145(3) of the Constitution.

11. The registry is directed to place the papers of the present appeal as well as the connected writ petition before Hon'ble the Chief Justice of India on the administrative side for constituting a Bench of five judges.

..... **CJI.**
(N.V. RAMANA)

..... **J.**
(SURYA KANT)

..... **J.**
(HIMA KOHLI)

NEW DELHI
May 06, 2022