IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2019
DELIVERED ON : 11.03.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.2806 and 2808 of 2019

W.A.No.2806 of 2019:

1. The Union of India
   rep. 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. .. Appellants

vs.

1. K.Lakshminarayanan

2. The Administrator of Puducherry
   Government of Puducherry
   Puducherry.

3. The Chief Secretary to Government
   Government of Puducherry
   Puducherry.

4. Dr.Kiran Bedi
   Administrator of Puducherry
   Puducherry. .. Respondents

W.A.No.2808 of 2019:

The Administrator of Puducherry
Government of Puducherry
Puducherry. .. Appellant

vs.

1. K.Lakshminarayanan

2. The Union of India
   rep. by the Secretary to Government
   Ministry of Home Affairs
   Government of India
   New Delhi.

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

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

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

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

PRAYER: Appeals under Clause 15 of the Letters Patent against the order dated 30.4.2019 passed in W.P.No.28890 of 2017 by the learned Single Judge.

For Appellants in W.A.No.2806 of 2019 and respondents 2 to 4 in W.A.No.2808 of 2019	Mr.Aman Lekhi Addl. Solicitor General assisted by Mr.Ujjwal Sinha, Ms.Mehak Huria for Mr.K.Srinivasa Murthy
For Appellant in W.A.No.2808 of 2013	Mr.A.L.Somayaji Senior Counsel assisted by Mr.V.Chandrasekaran
	Mr.Arvind P.Datar Senior Counsel assisted by Mr.Rahul Unnikrishnan and 2nd respondent in W.A.No.2806 of 2019 Mr.V.Chandrasekaran
For 1st respondent in both appeals	Mr.G.Masilamani, Sr. Counsel Mr.V.T.Gopalan, Sr. Counsel Mr.Om Prakash, Sr. Counsel assisted by Mr.R.Saravanan Mr.P.Dinesh Kumar and Mr.Vardhaman Jain

For 3rd respondent in W.A.No.2806 of 2019 and 5th respondent in W.A.No.2808 of 2019	:	Mr.A.Gandhiraj Government Pleader (Pondy) assisted by Mr.D.Ravichander Addl. Government Pleader (Pondy)

JUDGMENT

HON'BLE CHIEF JUSTICE

A gubernatorial dispute is the focal point of this controversy that led to the filing of a writ petition by the first respondent after a communication dated 27.1.2017 was delivered by the fourth respondent to the Central Government, addressed to the Home Minister, with a copy of the same to the Prime Minister of the country. The communication expressed a painful inharmonious feeling that was almost desperate in content and arose out of an understanding that the communication reflected a disrespectful attitude towards Her Excellency, the Lieutenant Governor and Administrator of Puducherry. It almost indicated a constitutional crisis, where the Lieutenant Governor of Puducherry felt it would be no longer possible for her to discharge the duties of her office with the resources at her command. Her communication narrated as if

the edifice of the Constitution might be ruined on account of disregard to mutual respect by constitutional authorities and, therefore, a timely intervention by calling upon the Chief Minister of the State to recall the communication was the only course to save and avoid this situation. As to what had actually transpired, the language or the material that was employed and what impression had been gathered appears to have been communicated terming it as unwarranted. A conscientious scrutiny upon systematic examination was expected from the Home Ministry of the failing effectiveness of the discharge of duties by constitutional functionaries.

2. The background appears to be a discontent, a fastidious approach that got converted into almost a battle of words. The taking of strong positions almost headed towards a paralysis of performance. Thus, an opportunity that befell before constitutional authorities by the will of the people and the mandate of the Constitution seemed to be giving up harmony. The result of this discontent reminds us of ***Omar Ibn***, who said "***Four things come***

not back: the spoken word; the sped arrow; the time past and the neglected opportunity."

3. The challenge before the learned Single Judge found favour with the first respondent/writ petitioner and the writ petition was allowed, in our opinion, on the premise of almost an equality enjoyed by elected government and Legislature of a Union Territory to be constitutionally at par with the States of the Union. The learned Single Judge further on an examination of the relevant provisions applicable to the controversy culled out that the legality of the matter also indicated a default in the role played by the Central Government, as was evident from the impugned communications, resulting in quashing of the same.

4. The learned Single Judge while proceeding to deal with the issues raised has first dealt with the question of *locus standi* in paragraph (34) of the impugned judgment, which is extracted herein under:

> *"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."

5. An opposition was raised by the appellants herein contending that the challenge is to certain clarifications issued by the Ministry of Home Affairs which cannot be questioned by the first respondent/writ petitioner, in as much as this is not a public interest litigation. It has also been stated in the written submissions that the first respondent/ writ petitioner, not being the representative of the Government, could not sue and, therefore, the petition being filed on behalf of the Union Territory of Puducherry against the Union Government was not maintainable.

6. The learned Single Judge has then proceeded with the other issues mentioning the judgment of the Apex Court in ***State (NCT of Delhi) vs. Union of India and another, (2018) 8 SCC 501***. He has then referred to Articles 239A and 239AA of the Constitution of India and recorded in paragraph (42) that there is a distinction between the two Articles, but goes on to hold that there are no restrictions as against the NCT of Delhi found in Article 239A when dealing with the Union Territory of Puducherry. Paragraph (42) of the impugned judgment is extracted herein under:

"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."

7. The learned Single Judge then proceeds to discuss the power of the Administrator not to promulgate any ordinance during

the period of dissolution or suspension of the Legislature and in paragraph (45), while referring to Article 239A read with Article 239B of the Constitution of India, records that the above Articles symbolize 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. The conclusion is that the Union Territory of Puducherry enjoys a superior position when it comes to the powers of the Legislature as compared to that of the Administrator.

8. The learned Single Judge then goes on to discuss the power of the Legislature to legislate on the subjects and goes on to hold in paragraph (52) about the limitations of the power of the Administrator to the effect that the Administrator cannot withhold financial bills.

9. The learned Single Judge then in paragraph (56), after discussing Sections 25 and 25A of the Government of Union Territories Act, 1963 (for brevity, "*the 1963 Act*") comes to the

conclusion that Sections 25 and 25A indicated that a Union Territory cannot be ruled by Ordinances. The learned Single Judge also mentions that 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.

10. In paragraph (59) of the impugned judgment, the learned Single Judge holds that the Administrator can exercise discretion only in matters of special responsibilities, even though the Act does not *per se* specify any special responsibilities. However, taking a turn, in paragraph (61), the learned Single Judge expresses restraint by refraining from going into the findings of the Delhi High Court in view of the Constitution Bench judgment in the case of ***State (NCT of Delhi) vs. Union of India and another,*** (supra) and after copiously quoting the judgment of the Apex Court, comes to the conclusion that the aid and and advice of the Council of Ministers is binding, except where there are restrictions. The learned Single Judge has then inferred that the Apex Court has also embarked upon the harmonious and oriented functioning of the

Lieutenant Governor of Delhi and the elected Government.

11. The learned Single Judge then copiously extracts from the Constitution Bench judgment of ***Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225***, and in paragraph (67) of the impugned judgment discusses the parameters and concept of federalism to hold that the authority of the Legislative Assembly of a Union Territory cannot be undermined or subdued against the basic spirit of the Constitution. The learned Single Judge on this inference holds that the authority of the Administrator in legislative matters is limited even where the Administrator exercises his discretion in view of the language employed under Article 239B of the Constitution of India.

12. The learned Single Judge in paragraph (70) also indicates that the Parliament while amending Article 239A did not find it fit to grant unassailable powers to the Administrators and, therefore, the Rules framed under an Act cannot go beyond the same.

13. The learned Single Judge in paragraph (72) holds that such acts are subject to judicial scrutiny and while describing the status of the Constitution as quasi-federal, he further went on to hold that the independent existence of the State and its administration is a important feature of the Constitution.

14. For building up this reasoning, the learned Single Judge in paragraph (74) has referred to the policy of the Union Government being shifting towards independence of the Union Territories in a long way and has referred to three Union Territories being given the status of a State. The learned Single Judge went on to hold that the Union Territory of Puducherry is far more better suited to function independently when compared to other Union Territories of the country. The learned Single Judge, however, indicates that though the Union Territories generally do not enjoy the same power and independence as that of a State, yet they have the capacity to function as such and it appears that for this very reason, on such comparison, has arrived at the conclusion in paragraph (105) that 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 are formidable than that of the Governor of a State, as in exceptional circumstances, he can exercise discretion after referring the matter to the President or the Central Government or to pronounce ordinance under certain circumstances.

15. The learned Single Judge in paragraphs (107) and (108) has again laid emphasis on the status of governance by an elected Government in Puducherry and has at the same time, come to the conclusion that the elected government cannot be defeated by the act of the Administrator by interfering in the day-to-day affairs of the Government.

16. The learned Single Judge has ultimately concluded that the Administrator would be bound by the aid and advice of the Council of Ministers in the matters where the Legislative Assembly is competent, subject however to the power of the Administrator to differ on any fundamental issue and the same at the utmost can be

a matter of reference to the President. The learned Single Judge has further ruled that in financial matters, the Council of Ministers have the power to take a decision and the Administrator will have to act in harmony with the same. Similarly, with regard to other affairs, including service conditions, etc. and other day-to-day affairs, it has been held that the Administrator cannot interfere with the same and neither the Central Government nor the Administrator can impede the functioning of the Government, as the very concept of democracy would be defeated. The Administrator, in the opinion of the learned Single Judge, has no exclusive authority to run administration, and has ultimately quashed the impugned communications.

17. The Union of India aggrieved by the impugned judgment had approached the Apex Court in Special Leave to Appeal (c) No.12072 of 2019, in which notices were issued on 10.5.2019. An interim order came to be passed therein on 4.6.2019, which is extracted herein under:

> *"Leave to join the Chief Minister of Puducherry as a party respondent so far as the present interlocutory*

application is concerned.

Mr. A.S. Nadkarni and Mr. Aman Lekhi, learned ASG have vehemently pressed for the interim relief prayed for in the present application and have requested to consider the grant of relief of status quo ante prevailing prior to the impugned judgment and order passed by the High Court. It is submitted if such a relief is not granted in that case the administration of the Union Territory is likely to standstill and/or likely to be affected. They have also placed on record the agenda of the Cabinet meeting to be convened on 03.06.2019 which is reported to 3 be now adjourned to 07.06.2019. They have submitted that if the final decisions are taken on the said agenda items, most of them would be having a financial implication and are implemented, main special leave petition shall become infructuous including present application.

The prayer is opposed by Mr. P. Chidambaram and Mr. Kapil Sibal, learned senior counsel appearing on behalf of the contesting respondents-original writ petitioners before the High Court.

Having heard the learned ASG and senior counsel appearing on behalf of the respective parties, notice on this application, returnable on 21.06.2019.

Dasti, in addition, is permitted.

In the meantime, the contesting respondents may file counter to the present application. It will be open for the contesting respondents to file counter affidavit in the main special leave petition also, if they so choose.

Till the next date of hearing of the present application, it is directed that any decision in the Cabinet meeting to be convened on 07.06.2019 having financial implication/implications or with respect to any transfer of the lands shall not be implemented. However, 4 it shall be without prejudice to the rights and contentions in the main special leave petition as well as in the present application.

So far as the substantive prayer for interim relief to direct to maintain the status quo ante prior to the impugned judgment passed by the High Court is concerned, the learned senior counsel appearing on behalf of the original writ petitioner(s) have stated at the Bar that till the matter is heard no contempt proceedings shall be initiated to implement the impugned judgment and order passed by the High Court.

The counsel for the Union of India as well as counsel for the Government of Pudurcherry shall file additional affidavit with grounds including placing on record the agenda of the Cabinet meeting to be held on 07.06.2019 within three days from today."

18. The Apex Court took up the matter on 12.7.2019 and the Special Leave Petition was dismissed on the ground that it is open to the appellant/Union of India to challenge the judgment before a Division Bench through a Letters Patent Appeal. The order dated 12.7.2019 is extracted herein under:

"As it is open for the petitioners to challenge the impugned order before the Division Bench of the High Court by filing Letters Patent Appeal, we are not inclined to interfere in the matters any further.

The special leave petitions are dismissed. Pending applications stand disposed of."

19. This is how two of the present appeals came to be preferred before us, one on behalf of the Union of India and the other on behalf of the Administrator/Lieutenant Governor of Puducherry.

20. The arguments led on behalf of the appellants has been spearheaded by Mr.Aman Lekhi, learned Additional Solicitor General of India along with Mr.Arvind P.Datar, learned Senior Counsel appearing for the Lieutenant Governor and Mr.A.L.Somayaji, learned Senior Counsel who has also supplemented the arguments.

21. On behalf of the first respondent/writ petitioner, arguments have been advanced by Mr.G.Masilamani, learned Senior Counsel along with Mr.V.T.Gopalan, learned Senior Counsel and Mr.Om Prakash, learned Senior Counsel.

22. On behalf of the Chief Secretary to Government, Government of Puducherry, arguments were advanced by Mr.A.Gandhiraj, Government Pleader (Puducherry).

23. Questioning the correctness of the said conclusion drawn, Mr.Aman Lekhi, learned Additional Solicitor General for the appellant/ Union of India has made the following submissions:

(a)The basic premise on which the writ petition is based is completely incorrect, in as much as Union Territory of Puducherry is governed by Part VIII of the Constitution, whereas Part VI of the Constitution deals with States. Union Territories are classified differently from States in Schedule I to the Constitution of India, being included in Part II thereof, unlike States which are included in Part I of the said Schedule.

(b)The provisions of Articles 239 and 239A have been misconstrued and misapplied by the learned Single Judge and the difference between Articles 239A and 239AA of the Constitution of India has been ignored.

(c)The learned Single Judge has erred in holding that the Administrator can exercise her discretionary powers only in circumstances where the Legislative Assembly is not in session or where the Administrator acts in judicial or quasi-judicial

capacity.

(d)The reasoning of the learned Single Judge is not supported either by Articles 239 and 239A of the Constitution or Section 44 of the 1963 Act and also the Rules of Business of the Government of Puducherry, 1963 (for brevity, "*the 1963 Rules of Business*").

(e)The Administrator is not bound by the advice of the Council of Ministers in matters under Rule 4(2) in Chapter II of the 1963 Rules of Business and Administrator may only when "he deems fit" consult the Council or the Chief Minister before exercising her powers. The said power is consistent with Section 44 of the 1963 Act and it does not fall foul of the constitutional scheme which stipulates in Article 239 that a Union Territory shall be administered by the President through an Administrator appointed by him, save as otherwise provided by Parliament by law, which law under

Article 239A of the Constitution of India is the 1963 Act that contains Section 44.

(f) In ***K.Lakshminarayanan v. Union of India, reported in 2018 (15) SCALE 644***, the Apex Court, approving the decision in ***State of Rajasthan v. Union of India, (1977) 3 SCC 592***, held that the Constitution has features which are deviations from the federal character and are strikingly unitary, and that the Union Territories ordinarily belong to the Union, which is why they are in the administrative control of the President, and only to a limited extent, the power of the Union is diluted with respect to Puducherry vide Article 239A and the 1963 Act permits the Administrator to act on her discretion.

(g)The Supreme Court in ***Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu, (1982) 2 SCC 222***, while dealing with the functional differences between the powers and position of the

Administrator of the Union Territory on the one hand and the President or the Governor on the other, emphasized that the Administrator enjoys still some more power to act in derogation of the advice of the Council of Ministers, and the said principles applies to Puducherry. In the decision in ***State (NCT of Delhi) v. Union of India****, (supra)*, it was clearly held that the judgment in ***Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu*** (supra) encapsulates the pre-69th Amendment law and therefore the law applicable is Article 239A and not Article 239AA.

(h) The judgments in ***K.Lakshminarayanan v. Union of India*** (supra) and ***State (NCT of Delhi) vs. Union of India and another,*** (supra) have not been examined in the impugned judgment to conclude that in the case of Puducherry governance by the Administrator is contrary to the finding of the Apex Court. The judgment in ***State (NCT of Delhi)***

v. Union of India (supra) is applicable only to Delhi and the said decision clearly held that the Union Territory of Puducherry cannot be compared with the NCT of Delhi, as it is solely governed by Article 239AA. The Insertion of Articles 239AA and 239AB, which specifically pertain to the NCT of Delhi, reflects the intention of the Parliament to accord the Union Territory of Delhi a sui generis status, a class apart from the other Union Territories, including the Union Territory of Puducherry, to which Article 239A applies.

(i) In a diversion to the classical federal structure, Section 50 of the 1963 Act, gives an overriding power to the President to given directions that are binding and the said provision has not been referred to in the impugned judgment.

(j) The difference between the structures of governance of Delhi and Puducherry were not considered by the learned Single Judge. The

Legislative Assembly of Delhi is a constituent body; all its members are elected and there is no corresponding provision like Section 41 of the Government of National Capital Territory of Delhi Act, 1991 in the 1963 Act. Likewise, Delhi has no Rule 4(2) of Chapter II or provisions from Rules 46 to 48 in Chapter IV of the 1963 Rules of Business which in Puducherry confer powers on the Administrator very different from that of the Administrator of Delhi.

(k) The use of the expression "*by or under*" in Section 44 of the 1963 Act extends the discretionary power of the Administrator beyond the provisions of the 1963 Act to the 1963 Rules of Business framed thereunder and consequently, Rule 4(2) and 49 get attracted, allowing the Administrator a wide area of discretionary jurisdiction, unfettered by the advice of the Council of Ministers. Moreover, Section 44(3) of the 1963 Act permits the Administrator to

exercise discretion in relation to any special responsibility vested on her.

(l) The omission of Section 44(2) of the 1963 Act does not in any way affect the existence of, and interplay between, Sections 44(1) and 44(3) of the 1963 Act and the special responsibility of the Administrator remains intact. In interpreting Section 44(3) of the 1963 Act, the interplay between Article 371A(1)(b) and like Articles with Article 163(1) of the Constitution is relevant and is a statutory embodiment of the constitutional scheme, wherein the administrative head is entitled to act in its discretion. Section 44 of the 1963 Act is a completely different legal scheme and cannot be interpreted the way Article 239AA(4) of the Constitution has been interpreted in the **State (*NCT of Delhi) v. Union of India*** (supra).

(m) The learned Single Judge has completely misunderstood the provisions of law and arrived at

the conclusion that the Administrator has no independent power to take decisions, and it is only when the subject matter is not covered by Chapter IV, she can take decisions only "*after consulting with the Council or the Chief Minister*."

(n)The learned Single Judge has extensively dealt with Rules 6 to 27 of the 1963 Rules of Business without noticing that the said rules are in Chapter III which will only apply in the absence of a difference of opinion between the Administrator and the Council of Ministers, and without dealing in any detail with Rule 4(2) in Chapter II and Chapter IV, which are the portions of 1963 Rules of Business actually applicable to the controversy in question.

(o)The learned Single Judge had proceeded to deal with issues it had no concern with, i.e., services and finance. In so far as Union Territory of Puducherry is concerned, the powers of the Appointing Authority under the CCS (CCA) Rules, 1965 have

been delegated upon the Administrator of Puducherry and the Administrator ha authority under Section 47(1) of the 1963 Act to pass appropriate orders, *inter alia*, in relation to all disciplinary proceedings in respect of Group A and B Officers.

(p)The learned Single Judge wrongly concluded that the financial powers are to be exercised on the aid and advice of Council of Ministers. In so holding, the learned Single Judge referred to the wrong provisions of the 1963 Act and the 1963 Rules of Business, did not deal with Section 47(1) of the 1963 Act which deals with "*all revenues received*" and not just the money from the Central Government and did not also deal with Section 47(3) of the 1963 Act and the Consolidated Fund of the Union Territory of Pondicherry, Rules, 1963. Under the Consolidated Fund of the Union Territory of Pondicherry, Rules, 1963, any reference to the

Government shall be construed as reference to the Administrator and moreover, any payment or withdrawal of money from the said Consolidated Fund shall be regulated by the Central Government Account (Receipts and Payments) Rules, 1983 and the expression "competent authority" therein means the Administrator, subject to any delegation in terms of Rule 13 of the Delegation of Financial Power Rules, 1978, the ultimate control over which vests in the Administrator only.

(q)The Government of India, correctly, in its first communication dated 27.1.2017 refers to the constitutional scheme and scheme of the 1963 Rules of Business, dealing specifically with division of 1963 Rules of Business into six Chapters and Rule 4(2) limiting the aid and advice of Council of Ministers only to matters contained in Chapter III, and declaring that the Administrator plays an integral role in policy making as well as day-to-day

affairs of Union Territory of Puducherry.

(r) The subsequent communication dated 16.6.2017, as the queries submitted to Union of India themselves demonstrate, dealt with Chapter III of the 1963 Rules of Business only and for differences of opinion arising between the Administrator and Council of Ministers while so action. This communication dated 16.6.2017 had no bearing on the controversy which was raised in the petition in which the impugned judgment has been rendered.

24. The aforesaid submissions of Mr.Aman Lekhi have been supplemented by Mr.Arvind P.Datar, who submits that a bare perusal of the provisions of the 1963 Act would be more than sufficient to arrive at the conclusion that the learned Single Judge has erroneously drawn a parallel between the constitution and the functioning of a State Legislature and that of the Legislature, which has been created by the Parliament, and is to function under the 1963 Act, as well as the Rules of Business framed thereunder.

25. He has advanced his submissions contending that the communication made to the Union Home Ministry, which is the competent authority to act on behalf of the Central Government in the name of the President of India, has simply clarified the legal position through the impugned communications which does not impinge upon either the individual rights of the first respondent/writ petitioner or even impede the functioning of the State Legislature and the duly elected government, and to the contrary, it is the elected government which is trying to undermine the functioning of the Administrator, who has every power under the 1963 Act and the 1963 Rules of Business to summon the files, call upon the Secretaries and to issue instructions within the permissible limits. In the absence of any transgression of law, the allegations of the first respondent/writ petitioner were without foundation and the learned Single Judge on a fallacious comparison of a Union Territory Legislature with that of a State Legislature has arrived at totally incorrect conclusions.

26. Mr.Arvind P.Datar submits that even on going through the judgments that have been cited at the bar, even though the Union Territory of Puducherry enjoys a separate status, yet in its case the provisions of the 1963 Act and the Rule of Business leave no room for doubt that in specific areas, where the Administrator/Lieutenant Governor of the Union Territory of Puducherry has independent powers, in the event of any differences, as per the Rules referred to, the matter has to go to the President of India, which has already been clarified by the Union Home Ministry, and the same is in conformity with law.

27. He contends that there is nothing in the said communications which can be said to be either illegitimate or illegal or contrary to the prescription of powers that can be exercised by the Central Government through the President of India in coming to the right conclusion. The clarifications issued, therefore, do not impinge upon the functionality of the elected Government of Puducherry and is rather explanatory to the extent of clarifying the respective roles to be played in the matter of governance.

28. He has invited the attention of the Court to the submissions that were raised before the learned Single Judge on behalf of the Lieutenant Governor and he contends that the appeals deserve to be allowed and the impugned judgment deserves to be set aside.

29. Responding to the said submissions, the learned Senior Counsel appearing for the first respondent/writ petitioner have raised their submissions, which are as follows:

(a)The impugned letters permitting day-to-day administrative and consequential actions of the Administrator are directly contrary and diametrically opposite to the authoritative pronouncement of the Apex Court in ***State (NCT of Delhi) v. Union of India*** (supra).

(b) The submission made on behalf of the respondents that the Constitution Bench judgment is not applicable to Puducherry are untenable, in as much

as a reading of the judgment makes it clear that the basic principles which guided the Supreme Court to formulate the conclusions are on the basis of the basic structure of the Constitution of India, which include the principles of Democracy, power only to the persons responsible to the Legislature of the territory, Constitutional Morality and other general principles applicable to every person, institution and organizations of India and, therefore, the conclusions amount to law laid down for the entire country and will be applicable in all force to the Union Territory of Puducherry also, and it cannot be now tried to be distinguished as if Puducherry will only have a democracy in name and not in reality.

(c) The impugned order itself clearly lays down that the powers of the Administrator in Delhi and powers of the Administrator in the Union Territory of Puducherry are under similar circumstances and the impugned order itself is based on the Delhi High

Court judgment and merely because the Delhi High Court judgment has been overturned to the inconvenience of the respondents, the respondents cannot be permitted to approbate and reprobate and cannot be now permitted to contend that the Constitution Bench in respect of Delhi is not applicable and, therefore, the same principles in respect of the National Capital Territory of Delhi are applicable in respect of the Union Territory of Puducherry also.

(d)The argument as to the higher pedestal or lower pedestal is fallacious because irrespective of the unique position, the question involved in the writ petition is to the powers available to the Administrator who is the Eo-nominee agent of the President of India, which is the same for New Delhi and Puducherry, irrespective of the difference in the nature and status of the Territory. Therefore, the judgment of the Supreme Court is applicable in all

force.

(e)Even on a literal interpretation of the 1963 Act and the 1963 Rules of Business, there is no way by which the Administrator can act independently without the aid and advice; nor can any policy decision emanate from her; nor can she give any directions to the subordinates on her own; nor can she different with the Ministers and concur with the Secretary or any other official in the hierarchy; nor return each and every file wherever she wants by way of queries so as to perpetrate her opinion; nor differ without any adequate reasons and without resorting to the detail procedure of referring for consensus and then referring to the Council of Ministers and differing with the Council of Ministers and then referring to the President and abiding by the decision of the President; nor hold everyday meetings with the officials and issue orders to them and direct compliance totally bypassing and

overlooking the elected government as if there is monarchy in Puducherry, and for the said reasons, the impugned orders passed by the Central Government and the action of the Administrator cannot be justified by way interpretation of the relevant provisions of law and rules in force.

(f) A plain reading of Rule 47 of the 1963 Rules of Business makes it clear that it is in respect of "*persons serving in connection with the administration of the Union Territory*" and thus refers the persons lent from the service of the Union. The service matters shall be within the executive power of the elected government of the Union Territory of Puducherry. Rule 47 relied upon by the appellants only relates to the powers given to her in respect of the officers of Indian Administrative Service.

(g) The decision in ***Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu*** (supra) was

a challenge to the detention order under the COFEPOSA Act, which is an exercise of the statutory power. The said detention order was challenged on the ground that the Administrator has passed the order without the aid and advice of the Legislature of the then Union Territory of Goa. In that context, it has been held that the Administrators are vested with more powers than the Governor such as statutory powers which can be exercised on their own, whereas the instant case relates to the complaints of unilateral administration, framing of policy, granting of directions *suo motu* and negation of the Council of Ministers by the Administrator, which cannot in any manner be said to be governed by the pronouncement in ***Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu***, (supra).

(h) The Constitution of India mentions special responsibilities for the Governors of certain States

in Articles 371A to 371J and there is no special responsibility for the Lieutenant Govenor of Puducherry under the Act as the said Union Territory does not share any international border or there are no specific backward or tribal regions in the Union Territory. Thus, by no stretch of imagination, powers regarding finance and accounting procedures, which are part and parcel of every administrative function can be treated as "*Special Responsibility*" and there is no "*Special Responsibility*" for the Lieutenant Governor of Puducherry under the 1963 Act.

(i) The financial powers are clearly kept within the realm of the responsible Government under Chapter III in the 1963 Rules of Business. The saving clause contained in Rule 7 is relating to the upper limit which is delegated by the Government of India through the Union Territory Government is for any expenditure for more than Rs.100.00 crores, the

Union Territory Administration is required to get the approval of the Home Ministry. Only in that view of the matter, the words delegation to the Administrator is mentioned. Once the limit is delegated to the Administrator, the same is within the domain of the elected Government of the day and by duly following the procedures, that is to say, the Government of India accounting Rules, the Government of India Estimate Rules, etc., it is open for the elected Government of the day to deal with the finances as approved by the Legislature and the said power is fully within the realm of aid and advice.

30. The first respondent/writ petitioner, nominated as a Parliamentary Secretary in the Government of the Union Territory of Puducherry and also an elected Member of the Legislature, came up before the learned Single Judge raising a challenge to the communication dated 27.1.2017, followed by another

communication dated 16.6.2017 in the shape of a clarification that were issued by the appellant to the Lieutenant Governor of Puducherry on a subject relating to the matters of administration of the Union Territory of Puducherry. The contention raised by the first respondent/writ petitioner was that the said communications clearly trench upon the democratic functioning of a Government that has been formed by a popularly elected legislature duly constituted under the Constitution of India, by virtually allowing the Lieutenant Government of Puducherry to interfere in the day to day affairs of the Government thereby causing impediments and creating obstacles in the smooth governance by an elected Government for the Union Territory of Puducherry.

31. Thus, the very status and functioning of the executive triggering off a discord between the Hon'ble Chief Minister of Puducherry and his government on the one hand and Her Excellency, the Lieutenant Governor of Puducherry on the other that has led to this legal debate which assumes importance not only by the nature of the mutual dissent giving rise to the controversy, but

also on account of the intervention of the Central Government in defining the parameters of the authority of governance as between the two pillars of the executive, one of the Chief Minister in the capacity of the head of an elected government and the other of the Administrator/ Lieutenant Governor nominated by His Excellency, the President of India on the aid and advice of the Union Government. This is therefore a triple dimensional contest between the Union Government, the Administrator of Puducherry, namely the Lieutenant Governor and the Government of Union Territory of Puducherry, represented through its popularly elected legislators.

32. The scheme of governance is constitutionally defined and is statutorily prescribed. The methodology adopted by the said functionaries is being questioned by each other asserting authoritative competence on the strength of the powers claimed by them to be flowing from the Constitution and the statutes governing the said methodology. The interplay of the role of governance with the aid of the 1963 Rules of Business coupled with the nature of

differences that arose led to the despatch of a letter dated 18.1.2017 by the Hon'ble Chief Minister to the Lieutenant Governor, the contents whereof, even though stated to be confidential, have to be necessarily reproduced for understanding the genesis of the controversy as reflected therein. The said letter is extracted herein under:

> *"No.1-51/CM/2016 Date: 18.01.2017*
>
> *Hon'ble Lt. Governor,*
>
> *Kindly refer to your Secretariat's endorsement of Note No.LGS/Admn/2016/130 dated 11th & 13th January, 2017 regarding fortnightly review meeting with Secretary (Finance) scheduled to be held on 19/01/2017.*
>
> *2. Hon'ble Lt. Governor will be aware of the constitutional scheme that an elected Government through the Council of Ministers is collectively responsible to the Legislature. Moreover, Rule 6(2) of Rules of Business of the Government of Puducherry, 1963 states that the Minister-in-Charge of a department shall be primarily responsible for the disposal of the business pertaining to that department.*

3. As the Chief Minister and Minister-in-charge of Finance Department, I am already seized of the matters concerning the finances of the Puducherry Government and regularly reviewing the progress. Such being the position, I am constrained to state that the ***scheduling of one-to-one review meeting*** *with the Finance Secretary or for that matter with any other Secretary or official of Govt. of Puducherry,* ***without the approval of Minister, overlooking the letter and spirit of Rules of Business*** *of the Government of Puducherry, is an exercise to* ***undermine the authority of the elected Government****.*

4. Hon'ble Lt. Governor should ***not take over day to day administration*** *of the territory, which has to be run by the elected Government. The Minister-in-charge is accountable to legislature in respect of his portfolio and hence, he only can review the work of the Department. I have noted that in addition to one to one meetings with Secretaries/HoDs, you have been* ***issuing direct official orders through electronic media,*** *social networking groups, e-mails, SMSs etc. which have been banned by the elected Government.*

5. Unless such interference is stopped forthwith, I will have no other choice, but to order officers not to

attend any meeting in Raj Nivas, where policy decisions are taken and day-to-day administrative orders are issued at the back of Minister-in-charge. I have already directed CS, DC, Finance Secretary and other Secretaries to attend such meetings in Raj Nivas only after obtaining approval from my office/concerned Minister."

33. The Lieutenant Governor responded to the said letter addressing her concerns in the communication dated 20.1.2017, which was despatched to the Union Home Minister, with a copy of the same to the Hon'ble Prime Minister. The same is extracted herein under:

"January 20, 2017

To
The Hon'ble Union Home Minister
New Delhi.

Respected Sir,

I, as Lieutenant Governor, am in receipt of a letter from the Chief Minister dated January 18th, 2017 (enclosed).

The language is highly ***derogatory and demeaning***

for the office *of Lieutenant Governor/Administrator.*

It is totally suffocating and ***alienating the functioning*** *of the Lieutenant Governor/Administrator's office. It is also diminishing the effectiveness of the Union Territory and must get withdrawn forthwith.*

I quote the concluding paragraph of this:

> *'Unless such interference is stopped forthwith, I will have no other choice, but to order officers not to attend any meeting in Raj Nivas, where policy decisions are taken and day-to-day administrative orders are issued at the back of Minister-in-charge. I have already directed CS, DC, Finance Secretary and other Secretaries to attend such meetings in Raj Nivas only after obtaining approval from my office/concerned Minister'*

I request the Union Home Ministry to order withdrawal of this ***highly insulting order*** *forthwith, as it is not possible for me, or any Lieutenant Governor to carry out his/her responsibilities with the dignity and command which the office of Lieutenant Governor of Puducherry mandates.*

I wish to say that I shall not be able to fulfill my responsibilities effectively as long such orders exist."

34. It is in response to the said communication of the Lieutenant Governor that the impugned communication of the Home Ministry dated 27.1.2017 was despatched and was challenged before the learned Single Judge of this Court. The contents of the said letter are extracted herein under:

"No.U-11018/1/2017-UTL
Government of India
Ministry of Home Affairs

North Block, New Delhi
Dated the 27th January, 2017

To
The Secretary to LG, Puducherry
Raj Niwas
Puducherry.

Sub: Matters relating to the administration of Union Territory of Puducherry.

Sir,

I am directed to refer to LG, Puducherry's letter dated 20.1.2017 addressed to the Union Home Minister and to say that the matter has been examined in this Ministry in light of the Government of Union Territories Act, 1963, the Rules of Business of the Government of

Puducherry, 1963 and the Constitution of India. The following legal position emerges in the matter:

(i) Puducherry being a Union Territory, under Article 239A, the Legislative Assembly has been created by law with such power and functions which may be specified in law. Further 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 Lt. Governor.

(ii) The law which occupies the field for Puducherry is the Government of Union Territories Act, 1963. Under the rule making power of Section 46 of the said Act, the Rules of Business of the Government of Puducherry were brought into force. The rules are divided into six chapters – Chapter-I (Preliminary), Chapter-II (General), Chapter-III (Disposal of Business allocated amongst Ministers), Chapter-IV (Disposal of business relating to Administrator), Chapter-V (References to the Government of India) and Chapter-VI (Miscellaneous) are of particular significance.

(iii) In Chapter-II, Rule 4 provides as follows:

> *4(1) The business of the Government in relation to matters with respect to which the Council is required under section 44 of the Act to aid and advise the Administrator in the*

exercise of his functions shall be transacted and disposed in accordance with the provisions of Chapter III.

(2) The remaining business of the Government shall be transacted and disposed of in accordance with the provisions of Chapter IV.

(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2), prior reference in respect of the matters specified in chapter V shall be made to the Central Government in accordance with the provisions of that Chapter.

Thus, for the functions which need to be transacted and disposed in accordance with Chapter-III, the Lt. Governor as Administrator would be required to receive the aid-and-advice of the Council of Ministers whereas as per the functions mentioned in Chapter-IV, the Administrator would not require the aid-and-advice of the Council of Ministers.

(iv) In so far as Rule 6(2) is concerned, all that it provides is that the concerned Minister should primarily be responsible for disposal of business relating to that Department. ***The said Rule does not place any fetters or restrictions on the powers of the Administrator otherwise vested in him.***

(v) In ***Departmental Disposal of Business Rules***

regarding part Chapter-III, ***it appears that Administrator has powers to directly interact with the officers in certain cases****. The relevant Rules i.e. Rule 21(5), Rule 25 and 26 are reproduced below:*

> *21(5). The Administrator may call for papers relating to any case in any Department and such a request* ***shall be complied with by*** *the Secretary to the Department concerned who shall* ***simultaneously inform the Minister-in-charge of*** *the Department of the action taken by him.*
>
> *25. The following classes of cases shall be submitted to the Administrator* ***through the Chief Minister*** *before the issue of orders, namely:- (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 Castes 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; (v) constitution of Advisory Boards under section 9 of the Maintenance of Internal Security Act, 1971 (26 to 1971); (vi) cases required to be referred to the Central Government under the Act or under Chapter V; (vii) cases pertaining to the Administrator's Secretariat and personal establishment and other matters relating to his office; (viii) Omitted. (ix) financial proposals involving new taxation; (x) Omitted. (xi) All proposed resolutions on Administration*

Reports; (xii) Omitted; (xiii) Cases relating to issue of rules under an Act in force in the Union territory; (xiv) Petitions for mercy from persons under sentence of death and other important cases in which it is proposed to recommend any revision of a judicial sentence; (xv) Any departure from these rules which comes to the notice of the Chief Secretary or the Secretary of any Department; (xvi) cases relating to summoning, 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 concerned matters; (xvii) Omitted; (xviii) matters relating to Plan evaluation; (xix) ***any case of administrative importance as the Chief Minister may consider necessary.***

26. Where in any 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:
Provided that the notes minutes or comments of the Administrator in any such case shall not be brought on the Secretariat record unless the Administrator so directs.

(vi) From a conjoint reading of the above Rules, it is clear that the ***Administrator is to play an integral role in the policy making as well as the day-to-day affairs of the Union Territory of Puducherry****. The fact that the Administrator can call for papers from*

the Secretary of a Department makes it abundantly clear that the Administrator ***has the right to interact with the officers*** *and while doing so is discharging his responsibility as the Administrator.*

(vii) It is pertinent to note that even the office of ***Chief Minister is obligated to furnish information*** *to the Administrator in certain situations, as envisaged under Rule 27. The said Rule provides that the Chief Minister shall furnish to the Administrator such information relating to the Administration of the Union Territory and proposals for legislation* ***as the Administrator may*** *call for. The said Rule 27 further provides that if the Administrator so requires,* ***the Chief Minister shall submit for the consideration of the Council*** *any matter on which a decision has been taken by a Minister but which has not been considered by the Council.*

(viii) Chapter-V which deals with powers of Administrator to refer to the Government of India any draft Bill, prior to the same bing introduced in the Legislative Assembly for the advice of the Central Government ***is evocative of the fact*** *that the Administrator has been provided with adequate powers to interact with the officers. In any case, the* ***mandate*** *of Rules 50-54 and 56 which are reproduced herein*

below ***cannot be achieved if the Administrator does not have direct interaction or interface with the officers.*** *The said Rules are reproduced below:*

> *50. In case of difference of opinion between the Administrator and a Minister in regard to any matter referred to in sub-rule (1) of rule 4, the Administrator shall endeavour by discussion of the case to settle any point on which such difference of opinion has arisen. Should the difference of opinion persist, the Administrator may direct that the case be referred to the Council.*
>
> *51. In case of difference of opinion between the Administrator and the Council, with regard to any matter referred to in sub-rule (1) of rule 4,* ***the Administrator shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President.***
>
> *52. Where a case is referred to the Central Government in pursuance of rule 51, it shall be competent for the Administrator to direct that action shall be suspended pending the decision of the President on such case or , in any case where the matter is in his opinion so urgent that it is necessary that immediate action should be taken, to give such direction s he deems necessary.*
>
> *53. Where a direction has been given by the Administrator in pursuance of rule 52, the* ***Minister concerned shall take action to give effect to such direction.***

*54. (1) in respect of each **financial year**, the Administrator shall have a **development plan** (which shall represent the approved phase for the year in the financial Year Plan for the Union territory) drawn up with such details as the Central Government may be order prescribe.*

*(2) After the annual plan has been considered by the Administrator and his Council, **it shall be referred to the Central Government for approval.***

56. (1) The Administrator shall refer to the Central Government every Bill which – (a) If passed by the Legislative Assembly, is required to be reserved for the consideration of the President under sub-section (2) of section 21 or, as the case may be, under the second proviso to section 25, of the Act; (b) relates to any matter enumerated in the Concurrent List in the Seventh Schedule to the Constitution; (c) attracts the provisions of article 304 of the Constitution as applicable to the Union territory; (d) relates to any matter which may ultimately necessitate additional financial assistance from the Central Government through substantive expenditure from the Consolidated Fund of the Union territory or abandonment of revenue or lowering of the rate of any tax; (e) pertains to any matter relating to Universities; (f) affects or is likely to affect the interests of any minority community, Scheduled Caste or Backward Class.

(2) Subject to the provisions of any instructions which may from time to time be issued by the Central Government, the Administrator shall make a prior reference to the Central Government in the Ministry of

Home Affairs or to the appropriate Ministry with a copy to he Ministry of Home Affairs, in respect of the following matters, namely:- (a) all important cases raising questions of policy; (b) cases affecting the relations of the Central Government with any State Government, the Supreme Court or any High Court or the Court of Judicial Commissioner; (c) ***proposals for appointment of the Chief Secretary, Development Commissioner, Finance Secretary, Law Secretary, Inspector General of Police and appointments to posts which carry an ultimate salary of Rs. 2,000/- per mensem or more****; (d) Inter-sectional alteration in plan schemes; and (e) Non-delegated financial powers.*

(ix) Rule 59 which obliges the Chief Secretary to personally bring to the notice of the Administrator inter-alia whenever there is material departure from the careful observance of these Rules.

2. ***The LG may bring the above position of law and rules to the notice of the Chief Minister.***

3. ***This issues which the approval of the Competent Authority.****"*

35. It appears that the differences between the two functionaries continued and escalated with the intervention of a clarification by the Ministry of Home Affairs issued on 16.6.2017.

The said response appears to have been made after the letters dated 3.2.2017, 6.2.2017, 7.2.2017, 8.2.2017 and 19.2.2017 sent by the Hon'ble Chief Minister to the Ministry of Home Affairs. The clarification dated 16.6.2017 is extracted herein under:

"No.U-11018/1/2017-UTL
Government of India
Ministry of Home Affairs

North Block, New Delhi
Dated the 16th June, 2017

To
The Secretary to LG, Puducherry
Raj Niwas
Puducherry.

Sub: Matters relating to the administration of Union Territory of Puducherry.

Sir,

The undersigned is directed to refer to MHA's letter of even number dated 27.1.2017 on the subject and to state that the matter has been further examined in the Ministry and following clarification are furnished in respect of the issues raised before this Ministry:

S.No.	***Issue***	***Clarification***
1	Whether LG, Puducherry has powers to dispose of business relating to Depratmetns on day to day basis when Minister(s) shall be primarily responsible for the business relating to the Department	The power to dispose of business relating to departments on a day-to-day basis is of the Ministers sided by the Secretaries. However, equally so there is Rule 21(5) under which the Lt. Governor can call for the papers

S.No.	Issue	Clarification
	under Rule 6, sub-rule 2 of the Business of Government of Puducherry (RoB).	relating to any case. Thereafter, there are Rules 50-53 which deal with the situation of difference of opinion. Along with this, in the background of the conclusion drawn by the Delhi High Court in the conclusion drawn by the Delhi High Court in paras 99 and 100 of its judgment (copy annexed), while the normal day-to-day business rests with the Ministers and the Secretaries, the Lt. Governor would have power to call for the file of any particular case. The use of the word "papers" in Rule 21(5) would necessarily include all the papers comprising the file.
2.	Whether LG has powers to directly interact with officers and in which kind of cases	Direct interaction with officers of the Lt. Governor can only be in the exercise of powers under Rule 21(5).
3.	Whether LG can call for entire file from the Department or only papers from the Secretary of the Department and the Secretary in consultation with Minister send reply to the LG	Even though the word used in Rule 21(5) is "papers" but the same would be wide enough to include the entire file as well.
4	Whether LG can exercise executive functions dehors the Council of Ministers and the Legislative Assembly and is it not violative of the basic structure of the Constitution	The answer to this issue has been given by the Division bench judgment of the Delhi High Court in paras 99 & 100 where the High Court does hold in somewhat similar circumstances that the Lt. Governor would have executive powers wider than the discretion which is exercised by a Governor of a State. In fact, it has been held that the Lt. Governor while

S.No.	Issue	Clarification
		exercising such powers and discharging such functions which "any law" requires to be done "in his discretion" acts on his own judgment without seeking the aid and advice of the Council of Ministers. Further, in a case of difference of opinion, while referring the case to the Central Government/ President, in case of urgency, the Lt. Governor can take action as he deems necessary and can give such directions as he deems necessary.
5	Whether the LG can declare an order null and void under her own signature, without it being processed in the Secretariat or in Raj Niwas	The papers would first have to be called by the Lt. Governor and if she/he disagrees with the order, it would have to be conveyed to the Secretary concerned, who would proceed to take appropriate action. In case the Secretary or Minister decides otherwise then power can be exercised under Rules 50-53 and while ultimately referring the matter to the President, action can be taken by the Lt. Governor under Rule 53.
6.	Whether LG can take actions such as: (a) Orally direct officers of Town & Planning Department and Port Department to bring files. (b) Directly forward the petitions received to subordinate officers without the knowledge of CM/Minister/Chief Secretary/ Secretary.	While the day-to-day business of each department is to be carried on by the Minister and the Secretary concerned, it would be open for the Lt. Governor to proceed under Rule 21(5) and call upon the Secretary of the department to present before him papers relating to any case and thereafter take action as envisaged under Rules 50-53 of the Rules of Business.

S.No.	Issue	Clarification
	(c) Write letters to Judicial Members of NGT for taking action against Govt. of Puducherry, suspend officers directly, call department officers for review meeting, issue directions directly to Municipal Commissioner for making payments for works done, order release of elephant in a temple on objection raised by PETA etc.	So far as forwarding of petitions are concerned, the same should be forwarded to the Secretary or Minister concerned and a report sought from them.
7.	Whether LG can call CM and his cabinet colleagues for making presentation on departments held by them.	While reading of the Rules of Business does not show any provision where the Lt. Governor can call the Chief Minister and his Cabinet colleagues for making a presentation on departments held by them, in case of any doubt, the Lt. Governor could, as a measure of courtesy, request the Chief Minister and any Cabinet colleague to update him on any doubt or query which the LG may have.

3. This issues with the approval of Competent Authority."

36. It is in this factual backdrop that the writ petition was filed with a prayer to quash the aforesaid two communications contending that they were clearly intended to subvert the democratic functioning of a popularly elected government, levelling

allegations against the Lieutenant Governor of imposing her personal views and undertaking exercises which were beyond her competence and amounted to a clear interference in the day-to-day affairs of the functioning of an elected government. The constitutional mandate was invoked by contending that the entire executive power is vested in an elected government and the Lieutenant Governor could not have acted independently to assume authority and power for running the affairs of the Union Territory of Puducherry, as it was in violation of the 1963 Rules of Business of the Government and various enactments that govern the field. Consequently, a writ of certiorari was sought to quash the said communications, as they amounted to vesting the Lieutenant Governor with powers which are not conferred by the Constitution or the law as governing the field.

37. A counter affidavit was filed on behalf of the Union of India supporting the impugned communications and raising objections to the very locus of the writ petitioner to maintain the writ petition and also contending that the writ petition would not be

entertainable, inasmuch as this was not a justiciable cause nor a petition could be entertained for any such relief.

38. The learned Single Judge allowed the writ petition and quashed the said communications, that has been questioned before us in these appeals contending that the learned Single Judge has exercised jurisdiction of the issuance of a writ in a petition that was neither entertainable nor maintainable for the simple reason that the Court cannot enter into any such adjudicatory process and thereby impose its own philosophy and opinion of governance by pronouncing that the stature of a Union Territory and its legislature is at par with that of a State Legislature. It is contended that this was far beyond the controversy and not within the scope of the powers of this Court to equate a Union Territory with a State in the matter of governance and then proceed to quash a communication which was otherwise not amenable to writ jurisdiction. The findings, therefore, recorded by the learned Single Judge have been questioned on several grounds, but primarily on the ground of total lack of jurisdiction to issue such a declaration.

39. The larger question that looms for consideration before us involves the sovereignty and will of the people expressed through the elected representatives under Republican Constitutional Democracy, the political philosophy by which the nation is governed. The new constitutional republican order that has been set up under the Constitution unifies within itself a federal system where autonomy and control coupled with the striking features of checks and balances between the governing components of the States, the Union Territories and the Union have been placed on a pedestal where this control on the principles of federalism has been entrenched indicative of a control by the Centre on the other constituents.

40. The Constitution includes within itself different forms of provincial administration, substantially based on the principles of democracy, but with a different form of governance that stands reflected in the Constitution and functioning of the Central, the Provincial and the other forms of Government, including that of

Union Territories. Our Constitution framers were aware of the multi-diversity of the local aspirations and in order to assimilate the same, the system of provincial administration was minimized under the Constitution by making provisions for the governance of the Union, the governance of the State, the governance of the Union Territories and special provisions for the administration of the Tribal areas in the North East.

41. It is thus to be seen that there is an internal division underlined with the doctrine of separation of powers of sovereignty being exercised by exercising autonomy at different levels of governance. It is for this reason that Granville Austin, in his study on the Indian Constitution, described the same as "*Co-operative Federalism*". This system with a sensible approximation of powers at different levels with an elasticity of adjustment is pervasive in the autonomy of provincial governance. The Constitution makers had in mind what can be said that the system has been tabled like a ship that should not be overthrown by uneven weight on the one side.

42. Jurisprudentially, the constitutional philosophy that emerges at the outset on a reading of the Preamble is that sovereignty resides in the people, but while elaborating the Constitution, the Constitution framers thought it fit to express this sovereign will of the people through its elected representatives, be it the Parliament, Legislature or other elected bodies. The Parliament and other legislative constituents have all been created under the Constitution and, therefore, the supremacy to make laws for the governance of the Union and the States vests in the Legislatures. The Constitution, therefore, in that sense gains supremacy as it is this document which defines the manner in which this sovereignty and the will of the people has to be expressed for the governance of the nation and other provincial areas, including Union Territories. Thus, the Parliament and the Legislatures while making laws are not free from legal limitations and are rather controlled and governed by the Constitution. This is how the doctrine of separation of powers and the doctrine of distribution of powers is preserved in the Constitution and, therefore, the expression of sovereignty and the will of the people through its

elected representatives is governed by the Constitution and not by any authority outside it. Thus, all authorities under the Constitution have to function within the Constitution to give effect to this sovereign will of the people through exercise of the powers conferred on them under the Constitution. The constitutional authorities, therefore, have to act in furtherance of good governance and public good alone without trenching upon each others powers and at the same time striking an adjusting balance in the exercise of such powers.

43. As in the present case, the governance of the Union Territory of Puducherry is basically the issue raised relating to the mode and procedure of governance on the one hand by the exercise of authority through a popularly elected government and its coordination with and control by the Administrator and on the other hand, the supervening power of the Central Government to intervene in the event of a conflict or dissent between the decisions of the elected government and the Administrator by exercise of its traditional authority and general prerogatives as contained in the

Constitution and the laws made by the Parliament thereunder. One has to keep in mind that there are areas of intrusion by the Centre and it is for this reason that the Constitution confers on the President of India certain practical powers to be exercised for executing governance without overriding the procedure that is prescribed for such governance. We are mentioning this in the light of one of the major issues focused in this case pertaining to the communication issued by the Central Government dated 27.1.2017 and 16.6.2017 which is the bone of contention raised on behalf of the first respondent/writ petitioner.

44. With the said background what has to be kept in mind by the Court is the exercise of powers while proceeding to consider a prayer for invalidating any action, as in the present case by the Central Government and by the Administrator, as to the justiciability of such causes in the light of what can be termed as the political question doctrine. This is necessary to be kept in mind as the learned Single Judge under the impugned judgment, in our opinion, has travelled into this realm by expressing a clear opinion

that the Legislature of a Union Territory and a popularly elected government thereof is at par with the popularly elected governments of any State within the Union. This political equivalence expressed by the learned Single Judge resembles a mounting public pressure to attain Statehood and at least allowing a popularly elected government within the Union Territory to exercise governance at par with any other State within the Union. The said philosophy may suit the popularly elected government, as denial thereof may not be representative of the political will of the present government, but for that a Constitutional amendment coupled with statutory amendments may, in our opinion, be the necessary tools to bring about the said change instead of crossing accepted platitudes of law that have been set at rest by judicial pronouncements, to which reference has been made during the course of arguments.

45. It should not be lost sight of as a Political Scientist said "*The Constitution did not descend on the people – it was not imposed; it was produced and reproduced in everyday encounters*".

46. The judgment of the learned Single Judge does also reflect a tension between constitutionalism and the sentiments of popular democracy, but it should not be lost sight of that every form of governance draws its legitimacy from the Constitution. This legitimacy may be subject to different opinions, criticisms and better suggestions on the principle of freedom of thought and expression, but when it comes to an interpretation and adjudication, let us be reminded of what Justice Benjamin N.Cardozo said "*The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles.*"

47. The judicial gavel should therefore lean in favour of constitutionalism, as there is a presumption of validity in favour of the constitutional provisions and laws made thereunder by the Parliament unless it can be demonstrated that they are unconstitutional, being against the basic features or being contrary

to the laws that have long stood the test of time in this nation. The validity of the actions therefore have to be viewed from this perspective, which, we find to be the ultimate rational method for judging the impugned actions as well as the legality of the impugned judgment of the learned Single Judge.

48. The political philosophy of federalism envisages a dual sovereignty, but while adopting this political doctrine, different forms of government have shaped it as per their own requirements. There are certain subjects where the federal or the Union Government is given more importance with more powers to the exclusion of the States. To balance this in a republican democracy, where the rights of the individuals and State rights are asserted against the sovereignty of the Union, the theory of distinctive nature of powers is pressed into service, where this division of sovereignty is compartmentalized in a manner that defines the limits of the powers to be exercised in matters of governance between the provinces and the Union. To balance this supremacy and precedence between the Union and the States, provisions have

been put into place to minimize the influence over each other, but in order to avoid any conflict, the ultimate sovereignty is vested in the Union, the reason being that the Indian Constitution can be amended only by the Parliament and not by the State Legislature, even though ratifications by the States are envisaged for enforcing certain amendments. Our Constitution envisages an increased federal supremacy, but the Directive Principles did indicate the decentralization of powers and a rollback has been witnessed with conferring autonomy to the States to make laws to empower local self-governments. Thus, to execute constitutional authority, necessary and proper laws can be framed subject to the separation of powers by the Union and by the States and other provincial forms of Government, including Union Territories.

49. What is peculiar in our Constitution is that the involvement of the direct will of the people is provided for a direct adult franchise conferred on the individuals to elect popular governments both at the provincial level as well as a the national level. The sovereignty of the individual to elect representatives to

form governments independently both at the State level and at the Centre is a unique feature of the republican democracy under our Constitution that reflects this electoral structure. This is also extended to the Union Territories through laws made by the Parliament.

50. Nonetheless, the Central Government heading the Union has defined powers and the States or the Union Territories cannot act in conflict with such defined powers under the Constitution or under the laws legitimately made under the Constitution, the execution whereof is the obligation of the concerned province or Union Territory. While maintaining the autonomous structure of such a Government at the provincial level or that of a Union Territory, one has to keep in mind that such territorial areas are an assemblage of individuals which is in aggregation authorized to organize their own Government and be governed by it. But, this aggregation of individuals simultaneously also has been vested with the sovereignty of forming the Government at the Union level with representatives of its own choice. The will, therefore, of the

individual under the Constitution has been allowed to be expressed both to maintain the autonomous structure of the Government at the local level and also at the level of the Union. The laws, therefore, conferring powers on the Union are also laws that have the sanction of authority by virtue of its creation through the representatives of the same individuals, who collectively authorize the Union Government to act under the Constitution in order to maintain a unison with the State autonomy and to work in cohesion without trenching upon each others powers. This system of regulation, control and restraint with defined powers unequivocally also indicates that no sacred powers are vested either in the State or the Union. The powers conferred are designed to balance the federal structure and ensure that the provincial governance survives while respecting the authority of the Union. This establishes the basic principle of federalism and both the Union and the State exercise their authority within their own spheres of power enabling them to efficiently operate within their prescribed limits, with an assurance of freedom to act without questioning the regulations prescribing limitations on the exercise of such sovereignty. The

system, therefore, ensures a participation which promotes local interests without compromising with the larger public interest or interest of national importance. This does not amount to reflect the weakened ability of a provincial set up which has ample freedom to run its governance without any conflict being generated in matters of governance or otherwise. The regulatory control with a supervening authority in the Central Government is, therefore, not an invasion, but is rather a protection to avoid instability and provide for resolution of all matters pertaining to governance under the constitutionally guaranteed powers without violating the laws.

51. The constitutional guarantee, therefore, makes sure that while maintaining local autonomy, there is no space for mutiny against the Constitution either by the Union or by the State or the Union Territory. The trust reposed in a popularly elected government does not authorize any government to throw off its yoke and act independent of the Constitution and the laws framed thereunder. The limits of exercise of responsibilities are, therefore, governed by constitutionalism and not by an absolute free

autonomy. Correspondingly, any Central control is not to dilute or dissolve the autonomous state of affairs by interfering with the affairs of governance in a manner that may be a denial of the basic tenets of democracy, where the elected representatives forming a popularly elected government are entitled to assert and translate the wishes of the electorate into realities by executing them within the limits of their governance. Any intrusion by way of unnecessary interference would also, therefore, be acting against the popular will of the people. It is in this background of the principles of federalism that our Constitution makers being aware of the needs of governance had very wisely introduced a mechanism for an effective governance.

52. With the change of times, and the change of political mood, the people vote for a change in system, particularly where such a change clamours for greater autonomy. The desire of the people to seek such a change is expressed through their exercise of right of franchise or by way of political referendum at the hustings. The change, therefore, in the status of governance or the extent of

autonomy is a political question and cannot be a matter of judicial reviewability on the doctrine of equality. If a particular area is being administered as a Union Territory and not as a State, the same is a matter of political will and a desire that can be translated through a legislative act which, in turn, is dependent on the resolve of a popularly elected legislature. This resolve is also however subject to constitutional limitations, as the reorganization of States or the Union Territories is a subject to be dealt with by the Union Parliament even if there be a demand to the said effect by the States. A Union Territory or a State on its own, bereft of Central authority, has not been conferred the powers to declare itself a State or a Union Territory. In the absence of any such authority, a judicial reviewability in the larger interest of the people cannot be termed as an expression of popular will, inasmuch as the deliverance of a judgment by higher judiciary on a political question does not have a legal acceptability in relation to the status of an organized system of governance which can only be a matter of resolve by the Union Parliament or the appropriate Legislature. If a Union Territory desires to attain Statehood, a writ for the said

purpose to treat the Union Territory as a State and apply laws *pari materia* would not be permissible. Doing so would be disturbing the federal structure of the Constitution, where the legislature in its wisdom has thought it proper to continue the existence of a Union Territory for the better governance of the concerned territory. It is not for the Court to define as to what would be the better form of governance and, therefore, to that extent judicial reviewability is not envisaged under the Constitution. It is either by a popular political decision through parliamentary laws that a Union Territory acquires Statehood like Delhi or vice versa a State gets dissolved into Union Territories like Jammu and Kashmir, or reorganization is otherwise achieved by bifurcation or their amalgamation into new areas of governance by taking recourse to laws preserved with the Centre.

53. In the above background, we may consider at the outset the argument of *locus standi* and also the argument raised of a speculative petition having been filed without there being any concrete facts that may give rise to a grievance for the first

respondent/writ petitioner to have raised the dispute. It is true that the first respondent/writ petitioner was raising a grievance about the stalemate having arisen, but the first respondent/writ petitioner had also illustrated his pleadings through instances of allegations of interference by the Lieutenant Governor in day-to-day affairs, particularly with regard to the mode of functioning of the Administrator/Lieutenant Governor in what he alleges to be an attempt to forestall the decisions taken by a popularly elected government and its authority to discharge its day-to-day functions. This, however, included the allegations and instances of files being summoned by the Administrator, and the Secretaries being summoned to perform functions as per the directions given to them directly. This, in our opinion, cannot be said to be a dispute in abstract or purely speculative in nature. We are not referring to each and every sentence used in the affidavits filed on behalf of the first respondent/writ petitioner and its response given, but it is also evident from the communication dated 27.1.2017 that a dispute had commenced without apportioning any fault on either side. It was thus a dispute on facts that reached the Central Government

resulting in the various communications sent by the Chief Minister to the Central Government that resulted in the impugned clarification issued by the Central Government. The issue of *locus standi* is also connected with the same.

54. We are not inclined to accept the objection on the issue of *locus standi* keeping in view the status of the first respondent/writ petitioner and his interest involved in the governance of the Union Territory of Puducherry. The first respondent/writ petitioner is neither a stranger nor is he an alien to the controversy. He cannot be said to be totally unconnected with the issues raised, as the first respondent/ writ petitioner, how so ever insignificant he might be, cannot be said to be unconcerned with the governance of the Union Territory of Puducherry. The cause raised by him has been answered judicially and it cannot be said that he is not an aggrieved person. Given the broadest connotation of *locus standi* by the Apex Court, the nature of the controversy and the status of the first respondent/writ petitioner cannot go to the extent of denying him the right to represent a cause with which he is directly affected, and

otherwise has raised a cause which has multifarious dimensions, including public interest. The petition was not a public interest litigation even though it may have attributes of public interest as well. Consequently, we are of the opinion that the conclusion drawn by the learned Single Judge on the issue of *locus standi* does not call for any interference. With this background, the issue of *locus standi* also pales into insignificance.

55. Having considered the submissions raised, the first issue of *locus standi* having already been dealt with, we now proceed to deal with the inference drawn by the learned Single Judge that the Legislature of the Union Territory of Puducherry and the elected government are at par with that of a State Legislature.

56. The learned Single Judge has drawn a parallel on the foundations of an expected level of democratic functioning. In our opinion, to foster an opinion that the Legislature of a Union Territory is at par with that of a State Legislature is basically incorrect. The mere mode of election of a Legislator of a State and that of a Union

Territory cannot equate the two Legislatures. The State Legislatures are a creation of the Constitution, whereas the Union Territory Legislature is to be created under a law to be made by the Parliament. This distinction is clearly borne out from a bare perusal of Articles 239 and 239A of the Constitution of India, that read as follows:

> *"**Article 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.*
>
> ***Article 239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.***
> *(1) Parliament may by law create 4 [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."

57. The State Legislature, therefore, is a different entity as compared to a Legislature of a Union Territory. It is for this reason that the Parliament enacted the 1963 Act that defines this separate structure of a State Legislature of a Union Territory. The 1963 Rules of Business framed also are in conformity with the said structure, where one can very easily locate that the extent of control by the Central Government is more and expressive with powers to intervene, as is evident from the provisions that have been discussed in the impugned judgment and would be referred by us also herein after.

58. The view of the learned Single Judge, in our opinion, therefore suffers from a basic fallacy of drawing a parallel on the basis of expected notions of democracy and republicanism *vis-a-vis* the status of elected Legislature of a Union Territory and that of a State. This cannot be done by a judicial pronouncement and has to be through a legislative process by the appropriate Legislature. For the time being, there is no such law which may equate or put them at par, except for the areas for which the Constitution itself provides that the legislatures of the Union Territories shall be empowered to discharge such functions that are at par with the State Legislatures.

59. The job of the Court is to define the law and not to create a status which otherwise is not enjoyed by the Union Territory. For this, we may straightaway refer to the Constitution where States and their existence are constitutionally ordained in Part VI. This is referable clearly to Article 1 which reads as under:

> *"**Article 1. Name and territory of the Union**.—*
> *(1) India, that is Bharat, shall be a Union of States.*
> *(2) The States and the territories thereof shall be as*

specified in the First Schedule.

(3) The territory of India shall comprise—

(a) the territories of the States;

***(b) the Union territories specified in the First Schedule**; and*

(c) such other territories as may be acquired."

Thus, the very first Article in Part I of the Constitution defines the various territorial constituents of the Indian Union that was described as a federation, that is "*an indestructible union of destructible units*" by the Apex Court in the case of ***Raja Ram Pal v. Lok Sabha, (2007) 3 SCC 184***.

60. Article 2 of the Constitution gives a wide latitude for admitting new territories into the Union and establish new States on such terms and conditions it thinks fit. This has also been explained by the Apex Court in the case of ***R.C.Poudyal v. Union of India, 1994 Supp (1) SCC 324***.

61. Then comes Article 3, which is extracted herein under:

"***Article 3. Formation of new States and alteration of areas, boundaries or names of existing States.***

- Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

Explanation I.—In this article, in clauses (a) to (e), "State'' includes a Union territory, but in the proviso, "State'' does not include a Union territory.

Explanation II.—The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory."

We have already dealt with the scope of this Article in our observations made herein above.

62. Article 4 empowers the consequential amendment to be made with a rider that an amendment carried out accordingly would not be deemed to be an amendment of the Constitution for the purpose of Article 368 of the Constitution of India. Accordingly, the First Schedule describes the States and Part II of the said Schedule describes the Union Territories, where the Union Territory of Puducherry has been entailed at Item No.6, extracted herein under:

"*II. THE UNION TERRITORIES*

1 to 5	*****	
6	*Puducherry*	*The Territories which immediately before the sixteenth day of August, 1962, were comprised in the French Establishments in India known as Pondicherry, Karikal, Mahe and Yanam.*
7	*****	

63. The administration of Union Territories is provided for in Part VIII of the Constitution of India and for the present purpose Articles 239 and 239A are relevant and that have already been

extracted herein above. We are not making any further reference to the other Articles except Article 239AA(8), which is extracted herein under:

> *"**Article 239AA. Special provisions with respect to Delhi.-***
>
> *1 to 7 *****
>
> *(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."*

The significance of this Article has been explained in the case of **State (*NCT of Delhi) vs. Union of India and another*** (supra), wherein it has also been observed that Union Territory of Puducherry has a different status.

64. Then comes Article 239B which empowers the Administrator of Union Territory of Puducherry to promulgate ordinances during recess of legislature, the same is extracted herein

under:

> "***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 Puducherry 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 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.*
>
> *(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."

65. The power to make Regulations is conferred on the President of India under Article 240 of the Constitution of India with a caveat that the President of India shall not make any Regulation for the Union Territory of Puducherry when a body is created under Article 239A of the Constitution of India to function as a Legislature

from the date appointed for the first meeting of the Legislature, except when the Legislature is dissolved or remains suspended.

66. Not to say the least, Article 241 of the Constitution of India provides for a High Court for the Union Territory, which jurisdiction is undisputedly being exercised by the Madras High Court.

67. It is in the exercise of such authority that a law was made by Parliament, namely the Government of Union Territories Act, 1963 repealing the earlier provisions, under which the Union Territory of Puducherry came to be defined under Section 2(h) extracted herein under:

> *"Section 2(h) "Union Territory" means the Union Territory of Puducherry."*

68. Section 3 of the said Act ordains the existence of a Legislative Assembly for each Union Territory, including the Union Territory of Puducherry. The Legislature of the Union Territory of Puducherry thus came to be created by virtue of an Act made by

Parliament, namely the 1963 Act, to govern the business of the Government, the Rules of Business of the Government of Puducherry, 1963 were promulgated by His Excellency the President vide notification dated 22.6.1963 in exercise of the powers conferred under Article 239 and the proviso to Article 309 of the Constitution of India read with Section 46 of the 1963 Act. The business of the Government was to be conducted as per the said 1963 Rules of Business.

69. A perusal of the aforesaid constitutional provisions leaves no room for doubt that the Legislature of the Union Territory of Puducherry is a creation under a statute made by the Parliament in the manner aforesaid. The decisions cited at the bar throw light on this issue and we are benefitted by the re-affirmance of the said position of law by a Division Bench of this Court in a recently delivered judgment on 5.3.2020 in W.P.No.1895 of 2020 [***A.Namassivayam v. The Union of India and others***], where the said position has been explained as follows:

> *"46. In Shri Shiv Kirpal Singh v. Shri V.V.Giri [1970 (2) SCC 567] relied on by the learned Senior Counsel*

*appearing for the respondents 3 and 8, one of the issues arose was "**Whether the elected members of the Legislation Assemblies of the Union Territories were entitled to be included in the electoral college for the election of the President**?" and while answering the same, the Hon'ble Apex Court held that "**members of Legislatures created for Union Territories under Article 239-A cannot be held to be members of Legislative Assemblies of States and therefore, rightly excluded from the electoral college**" and in para 242 of the said judgment, the Hon'ble Apex Court had elaborately dealt with the said issue and observed that "**In the case of Union Territories, the provision for Legislatures is contained in Article 239A, but that article does not mention that any House of the Legislature created for any of the Union Territories will be known as as Legislative Assembly. All that that article says down is that Parliament may, by law, create a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union Territory. Such a Legislature created by Parliament is not a Legislative Assembly as contemplated by Article 168 or Article 54. Members of Legislatures created for Union*

Territories under Article 239- A, cannot, therefore, rightly excluded from the electoral college*....”*

47. Therefore, a body which was created under Article 239-A of the Constitution of India for UTP, in strict sense, cannot be a Legislative Assembly as contemplated under Article 168 or Article 54 of the Constitution of India.”

70. The Union Territory of Puducherry is, therefore, not a State as defined under Part VI of the Constitution of India. Its very existence is statutorily controlled through a law made under the Constitution of India by the Parliament. On the other hand, a State is a creation under the Constitution, where the Constitution also defines the Executive, the Legislature and the Judiciary of the State. Chapter III of Part VI of the Constitution of India begins with Article 168 which states that for every State there shall be a Legislature which shall consist of the Governor, and two Houses or one House, as the case may be.

71. A Union Territory, therefore, is under the control of the

Union and the law made by the Parliament with a limited autonomy and hence, in our understanding, stands at a different rung of the ladder between the States and the Union Territories. The extent of control of the Union over the Union Territories is more direct, as is evident from the various provisions of the 1963 Act.

72. The learned Single Judge even though referred to the various provisions indicating control and autonomy, did not discuss the entire constitutional scheme that places a Union Territory at a different level, its creation, its constitution and functioning being though democratic and republican, is more dependent on the Union as compared to the States. The status of the Union Territory, therefore, cannot be equated with that of a State, even if the Legislature of the Union Territory enjoys the liberty to frame laws akin to what State Legislatures can. The power to make laws is one, but the authority to exercise such power stands distributed in a different form, with a control through the Administrator by the Union Government, thereby placing a Union Territory on a different footing than a State.

73. This can be more easily gathered by referring to the provisions of the 1963 Act, where Section 18 reads as under:

> *"**Section 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."*

74. Then comes the provision of Section 21 of the 1963 Act, which is at par with Article 254 of the Constitution of India, where in the event of inconsistency, the law made by Parliament would prevail, or till the law made by a Legislative Assembly gets a presidential assent, with a supervening power to the Parliament to enact any other law to amend, vary or repeal the law so made by the Legislative Assembly of the Union Territory.

75. The Rules of procedure of the Legislative Assembly can be made in exercise of powers under Section 33 of the 1963 Act, but when it comes to control and exercise of authority, we find the powers to be exercisable by the Council of Ministers headed by the Chief Minister on the one hand, the Administrator/Lieutenant Governor on the other hand, and then the final controlling power resting with the Central Government in the manner as prescribed in Sections 44 to 52 of Parts IV and V of the 1963 Act, which are extracted herein under:

> *"**Section 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.

***Section 45. Other provisions as to Ministers**.-*

(1) 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.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the Union territory.

(4) Before a Minister enters upon his office, the Administrator shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the First Schedule.

(5) A Minister who for any period of six consecutive months is not a member of the Legislative Assembly of the Union territory shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as the Legislative Assembly of the Union territory may from time to time by law determine, and until the Legislative Assembly so determines, shall be determined by the Administrator with the approval of the President.

***Section 46. Conduct of business**.-*

(1) The President shall make rules—

(a) for the allocation of business to the Ministers; and

(b) for the more convenient transaction of business with the Ministers including the procedure to be adopted in the case of a difference of opinion between the Administrator and the Council of Ministers or a Minister.

(2) Save as otherwise provided in this Act, all executive action of the Administrator, whether taken on the advice of his Ministers or otherwise, shall be expressed to be taken in the name of the Administrator.

(3) Orders and other instruments made and executed in the name of the Administrator, shall be authenticated in such manner as may be specified in rules to be made by the Administrator, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Administrator.

***Section 47. Consolidated Fund of the Union territory**.-*

(1) As from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, all revenues received in the Union territory by

the Government of India or the Administrator of the Union territory in relation to any matter with respect to which the Legislative Assembly of the Union territory has power to make laws, and all grants made and all loans advanced to the Union territory from the Consolidated Fund of India and all loans raised by the Government of India or the Administrator of the Union territory upon the security of the Consolidated Fund of the Union territory and all moneys received by the Union territory in repayment of loans shall form one Consolidated Fund to be entitled "the Consolidated Fund of the Union territory".

(2) No moneys out of the Consolidated Fund of the Union territory shall be appropriated except in accordance with, and for the purposes and in the manner provided in, this Act.

(3) ***The custody of the Consolidated Fund of the Union territory, the payment of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to those matters shall be regulated by rules made by the Administrator with the approval of the President.***

Section 47A. Public Account of the Union territory and moneys credited to it*.-*

(1) As from such date as the Central Government may,

by notification in the Official Gazette, appoint in this behalf, all other public moneys received by or on behalf of the Administrator shall be credited to a Public Account entitled "the Public Account of the Union territory".

(2) ***The custody of public moneys, other than*** *those credited to the Consolidated Fund of the Union territory or the Contingency Fund of the Union territory, received by or on behalf of the Administrator, their payment into the Public Account of the Union territory and the withdrawal of moneys from such account and all other matters connected with or ancillary to the aforesaid matters* ***shall be regulated by rules made by the Administrator with the approval of the President.***

Section 48. Contingency Fund of the Union territory*.-*

(1) There shall be established a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the Union territory, into which shall be paid from and out of the Consolidated Fund of the Union territory such sums as may, from time to time, be determined by law made by the Legislative Assembly of the Union territory; and ***the said Fund shall be held by the Administrator to enable advances to be made by him out of such Fund.***

(2) No advances shall be made out of the Contingency Fund of the Union territory except for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislative Assembly of the Union territory under appropriations made by law.

(3) The Administrator may make rules regulating all matters connected with or ancillary to the custody of, the payment of moneys into, and the withdrawal of moneys from, the Contingency Fund of the Union territory.

***Section 48A. Borrowing upon the security of the Consolidated Fund of the Union Territory**.-*

(1) The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of the Union territory within such limits, if any, as may, from time to time, be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed: Provided that the powers exercisable by the Government of India under this sub-section shall also be exercisable by the Administrator subject to such conditions, if any, as the Government of India may think fit to impose.

(2) Any sums required for the purpose of invoking a guarantee shall be charged on the Consolidated Fund of the Union territory.

Section 48B. Form of accounts of the Union territory.-

The accounts of the Union territory shall be kept in such form as the Administrator may, after obtaining advice of the Comptroller and Auditor-General of India and with the approval of the President, prescribe by rules.

Section 49. Audit reports.-

The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union territory for any period subsequent to the date referred to in sub-section (1) of section 47 shall be submitted to the Administrator who shall cause them to be laid before the Legislative Assembly of the Union territory.

Section 50. Relation of Administrator and his Ministers to President.-

Notwithstanding anything in this Act, 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.***

Section 51. Provision in case of failure of constitutional machinery.-

If the President, on receipt of a report from the

Administrator of the Union territory or otherwise, is satisfied,-

(a) that a situation has arisen in which the administration of the Union territory cannot be carried on in accordance with the provisions of this Act, or

(b) that for the proper administration of the Union territory it is necessary or expedient so to do,

the President may, by order, suspend the operation of all or any of the provisions of this Act for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union territory in accordance with the provisions of Article 239.

Article 52. Authorisation of expenditure by President.-

Where the Legislative Assembly of the Union territory is dissolved, or its functioning as such Assembly remains suspended, on account of an order under section 51, it shall be competent for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of that Union territory pending the sanction of such expenditure by Parliament"

76. Section 56 of the 1963 Act empowers the President to

remove difficulties, which is also reproduced for ready reference:

> *"**Section 56. Power of President to remove difficulties.-***
> *If any difficulty arises in relation to the transition from the provisions of any of the laws repealed by this Act or in giving effect to the provisions of this Act and, in particular, in relation to the constitution of the Legislative Assembly for the Union territory, the President may by order do anything not inconsistent with the provisions of this Act which appear to him to be necessary or expedient for the purpose of removing the difficulty."*

77. From the above sections, it is clear that the Administrator has to act on the aid and advice of the Chief Minister and his Council of Ministers in respect of the matters which a Legislative Assembly of Union Territory has powers 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".* Section 44 in its proviso also enjoins 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.

78. Sub-section 3 of Section 44 of the 1963 Act clearly recites that in so far as any special responsibility of the Administrator is involved, the Administrator shall in exercise of his functions act in his discretion. However, when it comes to as to whether the Administrator is required to act in its discretion, the decision of the Administrator had been made final. It is here that we may indicate that the words "*by or under this Act to act in his discretion*" and "*special responsibility of the Administrator*" have to be understood in the light of the 1963 Rules of Business that have been framed by His Excellency the President of India in the exercise of powers under Section 46 of the 1963 Act, quoted herein above.

79. The learned Single Judge while dealing with this matter

and comparing it with the Government of National Capital Territory of Delhi, has missed the point of the difference between the structures of governance of Delhi and Puducherry. The powers conferred on the Administrator under the 1963 Rules of Business are structurally different from that of the powers of the Lieutenant Governor of Delhi. The use of the expression "*by or under*", as referred to herein above, extends to the 1963 Rules of Business, where the Administrator has a wide discretionary jurisdiction as per Rule 4(2) of the 1963 Rules of Business read with Rule 48 thereof. These are enabling provisions allowing the Administrator to exercise discretion in relation to such special responsibilities. The Administrator is also empowered to incur expenditure in the discharge of special responsibilities which is evident from Section 27(3)(f) of the 1963 Act. The compartmentalized business between Rule 4(1) and Rule 4(2) of the 1963 Rules of Business does not appear to have been distinctly dealt with by the learned Single Judge. Similarly, while dealing with the services, the learned Single Judge appears to have erroneously arrived at a conclusion little realizing that Rule 47 of the 1963 Rules of Business is under

Chapter IV and not in Chapter III. There is an absence of State service in Puducherry and in view of lack of any legislative power in that regard, the presence of executive power relating to that subject cannot be read into the hands of the Government. Again with regard to financial powers, it would be apt to mention that Section 47(1) of the 1963 Act deals with all revenues received and not only the money from the Central Government. The Consolidated Fund of the Union Territory of Pondicherry Rules, 1963 deal with this issue and any reference to the Government shall be a reference to the Administrator. The control of finances, therefore, vests in the Administrator to the extent the Administrator is the competent authority, which aspects have not been taken into account by the learned Single Judge.

80. Rule 2(d) of the 1963 Rules of Business defines the "*Council*" to be the Council of Ministers appointed under Section 44 of the 1963 Act, referred to above. The word "*Schedule*" which refers to the business and the separate contents thereof is defined in Rule 2(g) thereof.

81. Rules 3 and 4 in Chapter II of the 1963 Rules of Business are relevant for the present issue, which are extracted herein under:

> *"Rule 3. The business of the Government shall be transacted in accordance with these rules.*
>
> *Rule 4. (1) The business of the Government in relation to matters with respect to which the Council is required* ***under section 44 of the Act*** *to aid and advise the Administrator in the exercise of his functions* ***shall be transacted*** *and disposed in accordance with* ***the provisions of Chapter III.***
> *(2) The remaining business of the Government shall be transacted and disposed of in accordance with the provisions of Chapter IV.*
> *(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2), prior reference in respect of the matters specified in chapter V shall be made to the Central Government in accordance with the provisions of that Chapter."*

82. Thus, the specific matters where the aid and advice of Council of Ministers has to be transacted and disposed of is to be

distinguished from the remaining business of the Government to be transacted and it is here where the role of the Administrator comes into play while exercising discretion *vis-a-vis* special responsibilities. For this, we may straightaway refer to Chapter III, which stipulates the functions that are to be transacted with the aid and advice of the Council of Ministers by the Administrator. The said Chapter is extracted herein under:

"***CHAPTER-III***

Disposal of Business allocated among Ministers

Rule 6. (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.

Rule 7. (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.

Rule 8. The Chief Secretary, shall be the Secretary to the Council and the Secretary to the Administrator shall be the Joint Secretary to the Council. When the Secretary to the Council is absent, the Joint Secretary shall perform his duties.

Rule 9. Subject to the orders of the Chief Minister under rule 10, all cases referred to in the Schedule shall be brought before the Council in accordance with the provisions contained in this Chapter:

Provided that no case in regard to which the concurrence of the Finance Department is required under rule 7 shall, save in exceptional circumstances and under the directions of the Chief Minister, be discussed by the Council unless the Finance Minister has had opportunity of considering it.

Rule 10. All cases referred to in the Schedule shall be submitted to the Chief Minister after consideration by the Minister in charge with a view to obtaining his

orders for the Circulation of the case under rule 11 for bringing it up for consideration at a meeting of the Council.

Rule 11. (1) The Chief Minister may direct that any case submitted to him under rule 10 may, instead of being brought for discussion at a meeting of the Council, be circulated to the Ministers for opinion, and if all the Ministers are unanimous and the Chief Minister thinks that a discussion at a meeting of the Council is unnecessary, the case shall be decided without such discussion. ***If the Ministers are not unanimous or if the Chief Minister thinks that discussion at a meeting is necessary, the case shall be discussed at a meeting of the Council.***

(2) If it is decided to circulate any case, the Department to which the case belongs shall prepare a memorandum setting out in brief the facts of the case, the points for decision and the recommendations of the Minister-in-charge and forward copies thereof to the Secretary to the Council who shall arrange to circulate the same among the Ministers and ***simultaneously send a copy thereof to the Administrator****.*

Rule 12. (1) While directing that a case shall be circulated, the Chief Minister may also direct, if the matter be urgent, that the Ministers shall communicate

their opinion to the Secretary to the Council by a particular date which shall be specified in the memorandum referred to in rule 11.

(2) If any Minister falls to communicate his opinion to the Secretary to the Council by the date specified in the Memorandum, it shall be assumed that he has accepted the recommendations contained therein.

(3) If the Ministers have accepted the recommendations contained in the Memorandum or the date by which they were required to communicate their opinion has expired. The Secretary to the Council shall submit the case to the Chief Minister. If the Chief Minister accepts the recommendations and if he has to observation to make, he shall return the case with his orders thereon to the Secretary to the Council.

(4) On receipt of the case, the Secretary to the Council ***shall communicate the decision to the Administrator*** *and pass on the case to the Secretary concerned, who shall thereafter take necessary steps to issue the orders unless a reference to the Central Government is required in pursuance of the provisions of Chapter V.*

Rule 13. When it has been decided to bring a case before the Council, the Department to which the case belongs shall, unless the Chief Minister otherwise directs, prepare a memorandum indicating with

sufficient precision the salient facts of the case and the points for decision. Copies of the memorandum and such other papers as are necessary to enable the case to be disposed of shall be forwarded to the Secretary to the Council who shall arrange to circulate the memorandum to the Ministers and ***simultaneously send a copy thereof to the Administrator.***

Rule 14. In case which concerns more than one Department, the Ministers shall attempt by previous discussion to arrive at an agreement. If an agreement is reached, the memorandum referred to in rule 11 of rule 13 shall contain the joint recommendations of the Ministers; and if no agreement is reached, the memorandum shall state the points of difference and the recommendations of each of the Ministers concerned.

Rule 15. (1) The Council shall meet at such place and time as the Chief Minister may direct.

(2) Except with the permission of the Chief Minister, no case shall be placed on the agenda of a meeting unless papers relating thereto have been circulated as required by rule 13.

(3) After an agenda paper showing the cases to be discussed at a meeting of the Council has been approved by the Chief Minister, copies thereof together

with copies of such memoranda as have not been circulated under rule 13, shall be sent by the Secretary to the Council to the Administrator, the Chief Minister and other Ministers so as to reach them two days before the date of such meeting. The Chief Minister may, in case of urgency, curtail the said period of two days.

(4) If any Minister is on tour, the agenda paper shall be forwarded to the Secretary in the Department concerned who, if he considers that the discussion of any case shall await the return of the Minister, may request the Secretary to the Council to take the orders of the Chief Minister for a postponement of the discussion of the case until the return of the said Minister.

(5) The Chief Minister or in his absence, any other Minister nominated by the Chief Minister, shall preside at a meeting of the Council.

(6) The Secretary of the Department concerned with the case may be required to attend the meeting of the Council, if the Chief Minister so directs.

(7) The Secretary to the Council shall attend all the meetings of the Council and shall prepare a record of the decisions. He shall forward a copy of such record to each of the Ministers.

Rule 16. (1) ***The decision of the Council relating to***

each case shall be separately recorded and after approval by the Chief Minister or the Minister presiding, shall be placed with the records of the case. An advance copy *of the record of the decision prepared by the Secretary to the Council and also of the record of the decision of the Council, as approved,* ***shall be forwarded by the Secretary to the Council to the Administrator.***

(2) When a case has been decided by the Council and the approved record of the decision has been communicated to the Administrator, the Minister concerned, shall take action to give effect to the decision.

DEPARTMENTAL DISPOSAL OF BUSINESS

A-General

Rule 17. Except as otherwise provided by or under these rules, ***cases may be disposed of by or under the authority of the Minister-in-charge who may, by means of standing order****, give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Administrator and the Chief Minister.*

Rule 18. Each Minister shall, by means of standing orders, arrange with the Secretary of the Department who matters or classes of matters are to be brought to

his personal notice. Copies of such standing orders shall be sent to the Administrator and the Chief Minister.

Rule 19. Every Monday (or if it is holiday, on the next working day), the Secretary shall submit to the Minister-in-charge a statement showing the particulars of important cases disposed of in the Department by the Minister and the Secretary and other officers during the preceding week. A copy of the said statement shall be simultaneously submitted also to the Administrator and to the Chief Minister.

Rule 20. (1) When the subject of a case concerns more than one Department, no order shall be issued (nor shall the case be laid before the Council until it has been considered by all the Departments concerned, unless the case is one of extreme urgency.
(2) If the Departments concerned are not in agreement regarding such a case, the Minister-in-charge of any of the Departments may, if he wishes to proceed with the case, direct that the case be submitted to the Chief Minister for orders or for laying the case before the Council.

Rule 21. (1) A Secretary may call for and see the papers in any Department, other than the Finance

Department or Appointments department, if such papers are required for the disposal of any case in his Department.

(2) A requisition made under sub-rule (1) shall be dealt with under the general or special orders of the Minister-in-charge.

(3) (a) A Minister may call for papers from any Department for his information:

Provided that if the paper is a secret nature, it shall be sent to the Minister only under the orders of the Minister-in-charge of the Department to which it belongs:

Provided further that no paper under disposal shall be sent to any Minister until it has been sent by the Minister-in-charge of the Department to which it belongs.

(b) If the Minister is of opinion that any further action should be taken on the papers called for by him from any Department, he shall communicate his views to the Minister-in-charge of the Department concerned and, in case of disagreement, may submit the case to the Chief Minister with a request that the matter be laid before the Council. No further notes shall be recorded in the cases before the papers area so laid before the Council.

(4) (a) The Chief Secretary may, on the orders of the Chief Minister or any Minister or of his own motion, call for and see the papers relating to any case in any Department and such a requisition by him shall be complied with by the Secretary to the Department concerned.

(b) The Chief Secretary may, after examination of the case, submit it for the orders of the Minister-in-charge, or the Chief Minister through the Minister-in-charge.

(5) ***The Administrator may call for papers relating to any case in any Department and such a request shall be complied with by the Secretary to the Department concerned who shall simultaneously inform the Minister-in-charge of the Department of the action taken by him.***

Rule 22. If a question arises as to the Department to which a case properly belongs, the matter shall be referred for the decision of the Chief Secretary who shall, if necessary, obtain the orders of the Chief Minister.

Rule 23. All communications, received from the Central Government (including those from the Prime Minister and other Ministers of the Central Government) other

than those of a routine or unimportant character, shall, as soon s possible after receipt, be submitted by the Secretary to the Minister-incharge, the Chief Minister and the Administrator for information.

Rule 24. Any matter which is likely to bring the Government of the Union territory into controversy with the Central Government or with any State Government shall, as soon as the possibility of such a controversy is seen, be brought to the notice of the Administrator and the Chief Minister.

Rule 25. ***The following classes of cases shall be submitted to the Administrator through the Chief Minister before the issue of orders****, namely:-*

(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 Castes 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;

(v) constitution of Advisory Boards under section 9 of the Maintenance of Internal Security act, 1971 (26 to 1971);

(vi) cases required to be referred to the Central Government under the Actor under Chapter V;

(vii)cases pertaining to the Administrator's Secretariat and personal establishment and other matters relating to his office;

(viii) Omitted.

(ix) financial proposals involving new taxation;

(x) Omitted.

(xi) All proposed resolutions on Administration Reports;

(xii) Omitted;

(xiii)Cases relating to issue of rules under an Act in force in the Union territory;

(xiv)Petitions for mercy from persons under sentence of death and other important cases in which it is proposed to recommend any revision of a judicial sentence;

(xv)Any departure from these rules which comes to the notice of the Chief Secretary or the Secretary of any Department;

(xvi)cases relating to summoning, 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;

(xvii)Omitted;

(xviii)matters relating to Plan evaluation;

(xix)any case of administrative importance as the Chief

Minister may consider necessary.

Rule 26. ***Where in any 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:***

Provided that the notes minutes or comments of the Administrator in any such case shall not be brought on the Secretariat record unless the Administrator so directs.

Rule 27. ***The Chief Minister shall-***

(a) ***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*

(b) if the ***Administrator so requires****, submit for the consideration of the Council any matter on which a decision has been taken by a Minister but which has not been considered by the Council.*

B- FINANCE DEPARTMENT

Rule 28. The Finance Department shall be consulted in all cases in which its previous concurrence is necessary under these Rules.

Rule 29. When the Finance Department is consulted/under these Rules, the views of that Department shall be brought on to the permanent record of the Department to which the case belongs and shall form part of the case.

Rule 30 (1) The Finance Minister may call for any papers from any Department in which financial consideration is involved and the Department, to whom the request is addressed, shall supply the papers.
(2) On receipt of papers called for under sub-rule (1), the Finance Minister may request that the papers with his notes on them shall be submitted to the Council.
(3) Subject to the provisions of sub-rule (1) of rule 7, the Finance Department may make rules to govern financial procedure in general in all departments and to regulate the business of the Finance Department and the dealings of other departments with the Finance Department.

C- LAW DEPARTMENT

Rule 31. Except as hereinafter provided, the Law

Department is not, in respect of legislation as originating or initiating Department and its proper function is to put into technical shape the projects of legislation on which the policy has been approved; and every proposal to initiate legislation shall be considered in, and if necessary, transferred to the Department to which the subject matter of the legislation relates and the necessity for legislation and all matters of substance to be embodied in the Bill shall be discussed and, subject to rule 6, settled in such Department.

Rule 32. Proposals to initiate legislation shall be treated as a case and shall be disposed of accordingly.

Provided that the case shall not be submitted to the Chief Minister until the department concerned has consulted the Law Department as to –

(i) the need for the proposed legislation from a legal point of view;

(ii) the competence of the legislature of the Union territory to enact the measure proposed;

(iii) the requirements of the Constitution, the Act or any other law for the time being in force as to the obtaining of the previous sanction of the previous sanction of the President thereto; and

(iv) the consistence of the proposed measure with the provisions of the Constitution and in particular those

relating to the fundamental rights.

Rule 33. If legislation is decided upon, the department shall, if the legislation involves expenditure from the Consolidated Fund of the Union territory, prepare in consultation with the Finance Department, a financial memorandum. The papers shall then be sent to the Law Department requesting it to draft the Bill accordingly.

Rule 34. The Law Department shall thereafter prepare a draft Bill and return the case to the Department concerned.

Rule 35. The Administrative Department shall obtain the opinion of such officers and bodies as it deems necessary on the draft Bill and submit the opinion so received with a copy of the draft Bill to the Minister-in-charge.

Rule 36. If the draft Bill is approved by the Minister-in-charge, it shall be circulated to the other Ministers and a copy thereof shall be supplied to the Administrator and thereafter the draft Bill shall be brought before a meeting of the Council in accordance with these Rules.

Rule 37. If it is decided to proceed with the draft Bill,

with or without amendments, the originating department shall send the case to the Law Department requesting it to prepare a final draft of the Bill.

Rule 38. The Law Department shall then finalise the draft and send it to the originating Department indicating at the same time the sanctions, if any, required for the Bill. If any provisions in the Bill involving expenditure from the Consolidated Fund of the Union territory are modified in the finalized draft, the originating Department shall send the finalized draft Bill to the Finance Department for revising, if necessary, the financial memorandum.

Rule 39. The originating Department shall then transfer the final draft Bill to the Law Department with the instructions of the Council thereon, including instructions as to its introduction in the Legislative Assembly and with copies of such papers relating to the Bill, such as, the Statement of Objects and Reasons, the Financial Memorandum, the Memorandum of Delegated Legislation etc., as should be forwarded to the Legislative Assembly. After such transfer, the Bill shall be deemed to belong to the law Department.

Rule 40. Notwithstanding anything contained in rule 31, measure designed solely to codify and consolidate

existing enactments and legislation of a formal character such as repealing and amending Bills may be initiated in the Law Department.

Provided that the Law Department shall send a copy of the draft Bill to the Department which is concerned with the subject matter, for consideration as an administrative measure and the Department to which it is sent shall forthwith make such enquiries as it thinks fit and shall send to the Law Department it s opinion thereon together with a copy of every communication received by it on the subject.

Rule 41. (1) Whenever a private member of the Legislative Assembly gives notice of his intention to move for leave to introduce a Bill, the Law Department shall forthwith send a copy of the Bill and the Statement of Objects and Reasons for information to the Chief Minister and to the Department to which the case belongs.

(2) The Bill shall be dealt with as a case by the Law Department in the first instance, where it shall be considered in its technical aspects, such as, need for previous sanction of the President or the Administrator and the competence of the Legislative Assembly to enact the measure and thereafter the Law Department shall forward the case with its opinion to the

Department to which it belongs.

(3) If any provisions of such Bill involve expenditure from the Consolidated Fund of the Union territory, the Department shall, before it is circulated, prepare, in consultation with the Finance Department, the financial memorandum in respect of the Bill.

Rule 42. The provisions of rule 41 shall apply, as far as may be, to amendments of substance recommended by the Select Committee and also to all amendments, notice of which is given by members of the Legislature for being moved during the consideration of a bill in that legislature.

Rule 43. (1) When a Bill has been passed by the Legislative Assembly, it shall be examined in the Department concerned and the Law Department and shall be presented to the Administrator with –

(a) a report of the Secretary of the Department concerned as to the reasons, if any, why the Administrator's assent should not be given; and

(b) a report of the Law Secretary as to the reasons, if any why the Administrator's assent should not be given or the Bill should not be reserved for the consideration of the President.

(2) Where the Administrator directs that the bill should be reserved for the consideration of the President or

returned to the Legislative Assembly, together with a message for reconsideration as is mentioned in the first proviso to section 25 of the Act, necessary action in that behalf shall be given by the Secretary to the Administrator in consultation with the Secretary of the Administrative Department concerned and the Law Secretary.

(3) After obtaining the assent of the Administrator or the President, as the case may be, the Law department shall take steps for the publication of the Bill in the Official Gazette as an Act of the Legislative Assembly.

Rule 44. Whenever it is proposed in any Department (other than the Law Department)-

(i) to issue a statutory rule, notification or order;

(ii) to sanction under a statutory power the issue of any rule, bylaw, notification or order by a subordinate authority; or

(iii) to submit to the Central Government any draft statutory rule, notification or order for issue by them; the draft shall be referred to the Law Department for opinion and for revision where necessary.

Rule 45. (1) All administrative department shall consult the Law Department

(a) the construction of Statutes, Acts, Regulations and statutory rules, orders and notifications;

(b) any general legal principles arising out of any case;
(c) the institution or withdrawal of any prosecution at the instance of any administrative department; and
(d) the preparation of important contracts to be entered into by the Government.

(2) Every such reference shall be accompanied by an accurate statement of the facts of the case and the point or points on which the advice of the Law Department is desired."

83. As against the aforesaid specific functions which fall within Chapter III, the executive functions of the Administrator are specifically provided under Chapter IV, which is extracted herein under:

"CHAPTER-IV

DISPOSAL OF BUSINESS RELATING TO ADMINISTRATOR'S EXECUTIVE FUNCTIONS REFERRED TOIN SUB-RULE (2) OF RULE 4

Rule 46. The Administrator may, by standing orders in writing, regulate the transaction and disposal of the business relating to his executive functions referred to in sub-rule (2) of rule 4.
Provided that the standing orders shall be consistent

with the provisions of this Chapter, Chapter V and the instructions issued by the Central Government from time to time.

Provided further that in the exercise of his functions with respect to the property of the Union situated within the Union territory, the Administrator shall act in consultation with the Council.

Rule 47. (1) With respect to persons serving in connection with the administration of the Union territory, the Administrator shall exercise such power and functions as may be entrusted to him under the rules and orders regulating the conditions of service of such persons or any other order of the President.

(2) In the exercise of the powers and functions referred to in subrule (1), the Administrator shall act in consultation with the Chief Minister.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), the Administrator shall consult the Union Public Service Commission on all matters in which the Commission is required to be consulted under clause (3) of article 320 of the Constitution; and in every such case shall not make any order otherwise than in accordance with the advice of the Union Public Service Commission unless authorized to do so by the Central Government.

(4) All correspondence with the Union Public Service

Commission and the Central Government regarding recruitment and conditions of service of persons serving in connection with the administration of the Union territory shall be conducted by the Chief Secretary under the direction of the Administrator.

Rule 48. In regard to any matter referred to in sub-rule (2) of rule 4 and in respect of which no specific provisions has been made in the foregoing rules in this Chapter, the Administrator may, if he deems fit either consult his Council or the Chief Minister, before exercising his powers or discharging his functions in respect of that matter."

84. A comparison of the two Chapters would clearly indicate that aid and advice is contemplated in respect of the disposal of business under Chapter III. The subjects are clearly laid out therein. It also entails the manner in which a subject matter will be placed before the Minister and Chief Minister and in case of difference of opinion, the matter be placed before the Council of Ministers. The Rules also provide for a coordination between different departments. The meeting of the Council of Ministers is controlled by the Chief Minister. The decisions taken have to be

communicated to the Administrator and the decisions taken have to be given effect through the Minister concerned. The mode and manner of conducting the day-to-day affairs is reflected in Rule 19 in Part A – General, where the disposal of business has been defined. It is during such conduct of business that Rule 21(5) of the 1963 Rules of Business, which is extracted herein above, assumes significance. The communication of the Lieutenant Governor/Administrator dated 20.1.2017 is clearly reflecting an outcome of such exercise of power by the Administrator.

85. In order to meet any contingency reflecting a conflict with the Union Government or with any other State Government, Rule 24 reflects the issue to be brought to the notice of the Administrator and the Chief Minister simultaneously. There is, however, a mandatory clause, namely Rule 25, that the cases referred to under Rule 25 shall be submitted to the Administrator through the Chief Minister before the issue of orders. It is here again that the Administrator can require the matter to be laid before the Council of Ministers for consideration under Rule 26 of the 1963 Rules of

Business, extracted herein above. Rule 27 enjoins a duty upon the Chief Minister to furnish to the Administrator such information as the Administrator may call for and the Administrator may submit for consideration of the Council any matter on which decision has been taken by a Minister, but which has not been considered by the Council.

86. The Supreme Court in the case of ***Devji Vallabhbhai Tandel v. Administrator of Goa, Daman & Diu*** (supra) dealing with the functional differences between the powers and position of the Administrator of the Union Territory on the one hand and the President or the Governor on the other in the pre-69th amendment Constitutional dispensation held as under:

> *"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 function, is not bound to act according to the advice of the Council of Ministers. This becomes manifest from the proviso to Section 44(1). 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."*

However, the last sentence of the said decision of the Apex Court has to be read in the light of Rule 25 of the 1963 Rules of Business that have been extracted herein above read with Rules 50 and 51. Rule 25 of the 1963 Rules of Business requires that certain class of

subject matters shall be submitted to the Administrator through the Chief Minister "*before the issue of orders*". Rule 26 provides that if the Administrator considers any further action to be taken or action should be taken otherwise, the Administrator may require the case to be laid before the Council of Ministers. Rule 27 further requires that the Chief Minister shall cause to be furnished to the Administrator such information as the Administrator may call for and shall place the matter for consideration before the Council of Ministers if the Administrator so requires. This interplay explains the extent of control that can be exercised by the Administrator, and upon having a difference of opinion, the matter can be further resolved by taking recourse to Rule 50 or by referring it to the President under Rule 51 that has to be read with the proviso to Section 44 of the 1963 Act, quoted herein above.

87. It is thus to be seen that the exercise of powers has been compartmentalized to the said extent and in cases of difference of opinion between the Administrator and the Council with regard to any matter referred to in Rule 4(1) which relates to the matters of

Chapter III, the Administrator shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President as per Rule 51, referred to herein above.

88. The aforesaid provisions are in tandem with the proviso to Section 44 of the 1963 Act, extracted herein above.

89. Rules 52 and 53 of the 1963 Rules of Business, pending such reference to the Central Government, empowers the Administrator to issue such order, which in the opinion of the Administrator is urgent, for taking immediate and necessary action which shall be given effect to by the concerned Minister.

90. Rule 56 (2) of the 1963 Rules of Business, extracted herein above, also calls upon the Administrator to make a prior reference to the Central Government in the Ministry of Home Affairs or to the appropriate Ministry with a copy of the Ministry of Home Affairs in respect of certain specific matters, including all important

cases raising questions of policy. Thus, the entire scheme under the Act and Rules clearly defines the respective authorities that are to be exercised.

91. We may now examine the clarification issued by the Home Ministry on the respective stands taken by the Chief Minister and the Administrator.

92. There cannot be a quarrel with the proposition about the distribution of powers as entailed in Chapter II of the Rules. We may, however, clarify that it is only the residuary part as contained in Chapter IV which is within the domain of the Administrator, where an aid and advice of the Council of Ministers may not be required, but at the same time the word "*discretion*" and the phrase "*special responsibilities*" do not belittle the role of the aid and advice of the Council of Ministers as contained in Chapter III of the said Rules.

93. The impugned communication dated 27.1.2017 goes a bit

beyond the aforesaid prescriptions when it says in Clause (iv) about Rule 6(2), that the said Rule does not place any fetters or restrictions on the powers of the Administrator otherwise vested in him. Rule 6(2) defines the role of the Minister in-charge of the department without prejudice to Rule 6(1), which is not the business of the Administrator and is that of the Council of Ministers.

94. With regard to the recital in the said order to the effect that the Administrator has powers to directly interact with the Officers in certain cases as per Rule 21(5) read with Rules 25 and 26 of the 1963 Rules of Business, it may be pointed out that the Administrator can call for papers that has to be complied with by the Secretary of the Department and certain classes of matters are to be submitted to the Administrator through the Chief Minister. The purpose is that if the Administrator has any difference of opinion, the same can be referred to the Central Government for the decision of His Excellency the President. The aid and advice of the Council of Ministers, therefore, is binding to the said extent that the Administrator cannot on his own outright reject a proposal or

direct the authorities to act otherwise, but the Administrator can differ and refer the matter to the Central Government. This is also evident from a perusal of Rules 50 to 54 and 56 of the said Rules.

95. Coming to the clarification which has been issued on 16.6.2017, while answering query No.4, the Ministry of Home Affairs has commented upon the words "*discretion*". The word "*discretion*" does not mean unfettered discretion and rather should be read as judicious discretion in order to eliminate any sense of misunderstanding about the word "*discretion*". It is here that we would put in a bit of thought in order to allow the constitutional authorities to ponder as to how constitutional authorities should pose questions and give a second thought to the matter before expressing any differences of opinion.

96. The job of this Court is not to lay down as to who has residual control, namely the popularly elected government or the Administrator/Lieutenant Governor or the Central Government, but the fact remains that the 1963 Act read with 1963 Rules of

Business, referred to above, by and large clearly define the distribution of powers and the exercise thereof with a leaning in favour of the Union Government to take an appropriate decision. We may, however, caution that even the Central Government has to act within the limitations of the Constitution and not beyond the same, subject to the laws made by the Parliament. The Central Government having been given a pivotal role in order to resolve a dispute has to first examine the real issue of reference and then proceed to render its opinion. This is more in the nature of a combined adjudiciatory-cum-executive role with primacy to the Central Government to take action. The role of the Central Government should follow the legislative intent and should not be disbalanced by executive misinterpretation. The communications under challenge are more advisory in nature than decisions on a reference.

97. We may remind the appellants and the respondents simultaneously that discretion loses authority when you put too much wind in your sail. One is often forced to choose a side for a

variety of reasons, but in order to set things right, if as stated in the instant case on behalf of the Lieutenant Governor, it is sometimes necessary to scream than prepare a whole thesis. It is true that there are no sacred powers that are to be adjudicated upon, but it is to be equally understood that there is absolutely no necessity to contradict a cause of public good merely because there is a latent lack of effective consultation. We say this because we have to remind ourselves of Thomas Jefferson, who said that "*all Governments derive their just powers from the consent of the governed*". The will of the people is the only legitimate foundation of any Government, and to protect its free expression should be our first object. We should also remind ourselves, when it comes to the functionality of Governments, of William Penn, who said "*If men be good, Government cannot be bad, Governments rather depend upon men, than men upon Governments*."

98. To resolve such a dispute, one has to immediately respond, and for this, we are once again reminded of Thomas Jefferson, who said "*If our house be on fire, without inquiring*

whether it was fired from within or without, we must try to extinguish it." We have similar goals, but we may have dissimilar means. We should not forget that Government is only a means and not an end, as the Government is a trustee for the little man, who should not have the perception that the running of the Government is a gigantic conspiracy. When making decisions, particularly where discretions and special responsibilities are to be taken into account, one cannot forget Aristotle, who said "*Where we are free to act, we are also free to refrain from acting, and where we are able to say 'No', we are also able to say 'Yes'*."

99. The exercise to perform in a democracy gives rise to dissent, but the attitude of reform should be learnt from the Greeks. For the ancient Greeks, excellence was considered to be a moral virtue. Socrates held that dissidence was an exemplary act of excellence. An individual's moral conscience plays a vital role in resistance against injustice. The desire to perform with excellence brings about a revolution against conformism and complacency. A nonconformist has the desire to excel and he lives and thinks in a

different way. The courage and confidence in him is displayed through public acts of questioning. This helps in fighting authoritarianism and foster democracy. Manifestation and evolution through a thought development process by raising a righteous voice helps to foster the democratization of democracy.

100. If the Lieutenant Governor had been taking small steps towards good governance, its acceptability in a more dignified way by giving it a legal shape would do no harm. The Government of Puducherry should not carry on prejudicies so as to reflect ignorance. As Shakespeare said in Julius Caesar, "*We must take the current when it serves, or lose our ventures*". There can be errors of opinion, but reasons should be left free to combat it.

101. The situation which has given rise to this litigation is critical for the public at large. The communication of the Central Government is communicated with some irony and may require a reform. The Central Government ought to have not taken too long,

i.e., six months, to render a clarification and should have rather called upon the specific issues of reference in the event of any differences of opinion in the decision making process as per the 1963 Rules of Business. Had that been done more effectively, the criticism of one constitutional authority of the other would not have been prolonged. Disregard to the laws and customs begin to weaken the very foundations of the authority. The decree of the Parliament has to be obeyed and those who have to interpret it cannot afford to ignore the same. As John Foster said "*Power to its last particle is duty, while exercising powers one should peep into history"*. To remind what Sir Francis Bacon said "*Nothing destroys authority so much as the unequal and untimely interchange of power*."

102. We cannot say as to whether the 1963 Act or the 1963 Rules of Business do require a revisit, but we would definitely remind ourselves of what Edward Gibbon said "*that accumulation of powers should be avoided and the principles of a free Constitution are irrevocably lost, when the legislative power is nominated by the executive*."

103. To say that the Lieutenant Governor has an integral role has also to be understood in the light that it is neither meant to be overwhelmingly awkward or overreaching, but at the same time is not a mere illusory role. The role is that of a governing mechanism in the true sense that controls and acts as a bridge between the Centre and the popularly elected government. The Government of Union Territory should also keep in mind that when the very creation of the Legislature is an outcome of constitutional supremacy, with the power given to the Parliament to make laws, then the words of *Chief Justice Holt* should be remembered that "*An act of Parliament can do no wrong, though it may do several things that look pretty odd.*"

104. The outcome of the above discussion is that the primary responsible role of the governance has to be executed by the Council of Ministers who are under an obligation to issue orders under Rule 17. The exercise of such authority is controlled by Rule 25 where a subject matter as entailed in the said rule shall have to be submitted through the Chief Minister before the Administrator before the issue of orders. The Administrator thereupon has the authority to revist the matter

under Rule 26 and on any further or adverse or other opinion may require the case to be submitted before the Council of Ministers. The Administrator can call for any information from the Chief Minister on proposals for legislation or other information relating to the Administrator as per Rule 27. The channelisation of the process of governance is therefore through the Administrator. If the Administrator with regard to the subject matter of Rule 4(1) has a difference of opinion it has to be resolved by taking recourse to Rule 50 or by referring to the Central Government under Rule 51 whereupon the decision of the President of India shall be acted upon. A draft bill can be referred by the Administrator prior to its introduction in the legislative assembly.

105. The role of the Government and the Administrator are thus intertwined. The Administrator has a segregated control over the matters falling under Rule 4(2) read with Chapter IV of the 1963 Rules. The decisions relating to the subjects under Chapter III of the Rules have to emanate from a decision by the Council of Ministers and pass through the Administrator for scrutiny including the subjects in Rule 25. The final decision to be made by the Central Government under orders of the President of India if there be a difference of

opinion.

106. The Central Government through the Home Ministry under orders of the President of India exercises a referal role to umpire a decision in the event the Administrator makes a reference as per the 1963 Rules for its decision. Such a decision should rest on a sound foundation based on objective material and a rational subjective satisfaction recording a firm opinion.

107. All said and done, the upshot is that the Union Territory of Puducherry and it's legislature as well as it's system of governance is distinct. It therefore cannot be given an equivalent status that of a State through a judicial verdict given it's present Constitutional and legal structure but it is still not a "belonging" but a pride of the nation and a native pride of the people of Puducherry amidst its diverse geographical locations.

108. We, therefore, expect that the popularly elected Government headed by the Chief Minister and the Administrator/Lieutenant Governor of Puducherry shall work in unison and not in division. This expectation has been more

elaborately spelt out in paragraphs 284.2, 284.3 and 284.6 of the Constitution Bench judgment of the Apex Court in the matter of ***State (NCT of Delhi) vs. Union of India and another,*** (supra), which is to the following effect:

> *"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.*
> *....*
> *284.6.* ***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 wold stand negated****."*

This is how one can fulfill the goal of cooperative federalism, while upholding constitutional supremacy.

109. The popularly elected Government of Puducherry no doubt represents the will of the people, as Edmund Burke said "*In*

all forms of government, people are the true legislators", but on the other hand, the Legislature should remind itself of what Montesquieu said "*It is the job of the legislature to follow the spirit of the nation, provided it is not contrary to the principles of government*."

110. Accordingly, we hold that the impugned judgment on the basis of parallel being drawn between a State and a Union Territory was not appropriate for all the reasons aforesaid and the same cannot be achieved by a decree of Court of law, the reasoning being not far to see that under the Constitution it is only the Parliament which can by law grant such equal status. The learned Single Judge, therefore,may have arrived at a conclusion on the basis of certain other parallels but that, in our opinion, were not sufficient to allow the writ petition in the terms it has been done. We have no option, therefore, but to set aside the impugned judgment dated 30.4.2019, but the same is subject to the observations made herein above, with liberty to the Central Government to take appropriate steps in the event a reference is made to it by taking a concrete

decision on the issues so raised on a reference being made under the 1963 Rules of Business read with the 1963 Act. The Central Government can do so provided the reference is brought to its notice by the Administrator/Lieutenant Governor and in the event any such reference is made, then appropriate directions are required to be issued within a reasonable time or else a delayed decision would continue to engage the constitutional functionaries in criticisms that are reflected in the public domain which are not only disquieting, but also tend to undermine the faith in the system. The impugned communications of the Central Government are only advisory and clarificatory in nature. In the event any reference is raised as observed above, the same shall be decided keeping in view the correct impact of the 1963 Act read with the 1963 Rules of Business and other ancillary rules objectively and to the rational satisfaction of the authority.

The appeals are accordingly allowed. No costs. Consequently, C.M.P.Nos.17928 and 17933 of 2019 are closed.

(A.P.S., CJ.) (S.P., J.)

11.03.2020

Index : Yes
sasi

To:
1. The Administrator of Puducherry
   Government of Puducherry, Puducherry.
2. The Chief Secretary to Government
   Government of Puducherry, Puducherry.
3. The Secretary to Government
   Union of India, Ministry of Home Affairs
   Government of India, New Delhi.
4. The Under Secretary to Government
   Ministry of Home Affairs, Government of India, New Delhi.
5. The Director (ANL)
   Ministry of Home Affairs, Government of India, New Delhi.

THE HON'BLE CHIEF JUSTICE
AND
SUBRAMONIUM PRASAD,J.

(sasi)

Pre-delivery judgment
in W.A.Nos.2806 and 2809 of 2019

11.3.2020