

Lt. Governor cannot differ with Delhi govt. on trivial issues: CJI

Dipak Misra

The Lieutenant Governor (LG) cannot differ with each and every administrative decision of the Delhi government. Though having every authority to differ, his disagreement with the Delhi government should not be “trivial or contrived, but substantive,” Chief Justice of India Dipak Misra orally observed on Tuesday.

Aid and advice (of the Delhi government) should be accepted and respected unless there is an abuse of authority, Chief Justice Misra observed on the second day of a full length hearing by a Constitution Bench on the power tussle between the Centre and the AAP government over the LG’s administrative powers.

Issue-oriented

“The intervention [of the LG] does not mean he will have confrontation. It should be fact and issue-oriented on objective parameters,” Chief Justice Misra observed. He said the LG should conduct his constitutional duties, keeping in mind factors like he is an “august head, keeping in mind the special status of Delhi as the National Capital, what was intended by Parliament in the 69th Constitutional Amendment, not act in a way to defeat the intent of the constitutional provision of Article 239AA of harmonious governance and, most importantly, citizenry’s trust.” “He [LG] cannot supplant the administration,” Justice D.Y. Chandrachud observed from the Bench.

Justice Ashok Bhushan remarked that it was not constitutionally contemplated that one man’s concurrence would be required for each and everything that an entire ministry does.

Chief Justice Misra said the LG however need not concur with everything.

Referring to the Government of National Capital Territory of Delhi Act of 1991, the Chief Justice said the Delhi government is bound to intimate the LG on taking a policy decision. “You are bound to intimate the LG, but you cannot say that the LG has to concur,” Chief Justice Misra said.

‘Egregious situations’

Delhi government counsel and senior advocate Gopal Subramaniam submitted that in “egregious situations where there is palpable abuse of authority, the LG can indeed intervene as a delegate of the President.” Mr. Subramaniam described the LG as a watchdog. He submitted that the LG can intervene if, for example, policies of the Delhi government affect institutions of national importance.

“He can intervene and disagree if policies of the Delhi government amount to manifest transgression. For example, the use of entire monuments for some social occasions. In such cases the LG can step in. He is the *parens patriae*,” Mr. Subramaniam submitted.

But in the present case, Mr. Subramaniam submitted, the LG has been intervening in the day-to-day functioning of the government.

“From functioning of mohalla clinics to appointment of lawyers for the Delhi government, he has intervened. In some cases, the files have been pending for over a year,” Mr. Subramaniam submitted.

“Most innocuous issues are stowed away,” he added.

Justice Chandrachud pointed out from the Conduct of Business Rules of the Delhi government that there were some proposals which had to be “essentially submitted” to the LG for his concurrence, whereas some could be enforced the moment they are communicated to the LG.

Executive functions

Mr. Subramaniam made the position of the Delhi government clear, saying that while the overarching supremacy of Parliament to make laws for the National Capital Territory is acknowledged, the executive functions of the democratically-elected government of Delhi cannot be “eclipsed.” The Delhi government has its own legislative sovereignty and concurrent executive ability.

Barring the LG’s discretion in certain fields, the aid and advice of the Council of Ministers is binding on him, Mr. Subramaniam submitted.

He termed Article 239AA a “provision extraordinaire” which has abrogated the President’s power to delegate powers under Article 239 (1) to the Governor as far as the National Capital is concerned.

“Except in the subjects of police, public order and land for which the LG administers as a delegate of the Centre, the rest is participatory governance,” Mr. Subramaniam submitted.

President’s role

At one point, Justice A.K. Sikri asked about the actual role of the President when the LG refers to him an issue on which the latter has a difference of opinion with the Delhi government.

“Does the President actually act in his personal capacity or on the aid and advice of the Union?” Justice Sikri asked.

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