







A RAJ NIVAS PUBLICATION

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## RULE OF LAW

Under Indian Constitution



## IN PURSUIT OF JUSTICE

Excerpts of Historic Judgments pertaining  
to UT of Puducherry Administration

2016-2020



## Introduction

*Never in the history of the Administration, the U.T. of Puducherry, witnessed these many path breaking court cases. Justice was wrought, in each of the case mentioned hereunder :-*

- (a) Nominated MLA case*
- (b) Medical Admission case;*
- (c) Powers of the Administrator;*
- (d) Free Rice Distribution and*
- (e) Appointment of State Election Commissioner.*

*Of the above, the Office of the Lt. Governor was not a party to the Nominated MLA case alone. 3 Nominated MLAs were appointed by the Central Government. The Speaker of the U.T. Legislative Assembly, however, wasn't inclined to swear them in. The Administrator had to therefore intervene and exercise the powers.*

*The swearing in was therefore held in Raj Nivas. The Office of the Administrator was targeted for swearing in the Nominated MLAs. The Assembly Speaker refused to recognize the swearing in made by the Administrator. The Nominated MLAs were prevented from entering the Assembly. It's a long story in itself. The dispute reached the corridors of the Hon'ble High Court of Madras and the Hon'ble Supreme Court. The Hon'ble Courts upheld their appointment and the swearing in made by the Administrator, vindicating the action of the Administrator.*

*The contours pertaining to law relating to Nominated MLAs and the status of U.T. under concept of Co-operative Federalism has now been elaborately laid out by the Court.*

*Not only the Nominated MLA case, in each of the other cases, the courts have interpreted the law relating to administration of the Union Territory for posterity. We take the opportunity to present in pith the rulings of the courts in the other cases along with the background for better understanding.*

# 1

## THE FIRST BATTLE - MEDICAL ADMISSIONS

### Chapter 1

In the Union Territory of Puducherry there are seven private medical colleges, of which, four are deemed universities. Until NEET came into force in the year 2016, the Management quota seats were filled by the Colleges themselves. The lack of laws by the U.T. Government led to multiple controversies from irregularity in admissions to charging of exorbitant fee by the Private Medical colleges.

For the first time in academic year 2017, MCI permitted State / U.T. Governments to make admissions to Post Graduate Medical Courses. The MCI regulation stipulated for admissions to private medical colleges to be made by a common counselling through Government (Government appointed Agency based on NEET Percentile. The MCI Regulation interalia stipulated 50% seats for State Quota and 50% for Management Quota.

The Deemed Universities, who were at liberty to manage admissions until then, for the first time came under the ambit of common counselling and had to surrender 50% of seats to Government. This was challenged by the Deemed University colleges with no success. The MCI regulation continued to hold forte providing for common counselling and 50% State Quota.

The MCI guidelines stipulated that counselling be done after the Fee for the courses are made known to the Students. In sharp contrast, the CENTAC commenced its first round of counselling to PG Medical Courses, on 4th May 2017 without fee notification. Volley of complaints was received in the open house and on intervention, the fee Committee fixed a fee of Rs. 5.5 lakhs and Rs.14 lakhs for State Quota and Management Quota seats respectively. This was applicable for only the 3 Affiliated colleges. The four Deemed Universities were at liberty to fix their own fee and they charged Rs.40 to Rs.50 lakhs.

On the penultimate day of counselling viz., on 29th of May 2017, the students and parents were again at the Open House alleging irregularities in Mop Counselling conducted by CENTAC. For a better understanding, visit was made to CENTAC the next day viz., the 30th May 2017.

The MCI regulation had not provided for either exchange or diversion of Government quota seats. However, the Counselling Authorities, on their own, had resorted to exchange of seats. By this diversion of seats to Management Quota, the meritorious students of backward class and poor were deprived of their opportunity. The affluent and rich were able procure those seats that were diverted to Management Quota.

The injustice to meritorious students by diversion of seats of Government Quota was immediately undone. Directions were issued to restore Govt. quota seats and re-do the mop-up counselling in accordance with MCI regulation.

The plight of students did not end with restoration of Government quota seats. The Meritorious students who had been allotted seats under restored Government Quota now needed to secure admissions. The determining factor was the fee. The Colleges would not let the student set in his foot unless he paid the fee demanded by them. Requests made to treat the students selected under State Quota as a common entity was not heeded to. Students of socially and economically weaker sections were refused admissions despite selection on merit. Interaction with the students who were selected by CENTAC but were denied admission brought the name of Mr. VBR Menon, a PIL lawyer who willingly took up the case for the cause of the students. Destiny brought into our fold, a public spirited lawyer.

It was prayed before the court that the State has a bounden duty to protect the interest of meritorious students and students who hail from the socially and economically weaker sections of society for whom reservation had been provided under State Quota. Thanks to the extensive research done by Mr. VBR Menon, PIL Lawyer and supported by Assistant Solicitor General of India, Mr. Su Srinivasan on our behalf, we were able to place our case in the right perspective before the Hon'ble High Court.

The Hon'ble High Court of Madras, in WP 14232 of 2017, after hearing all the parties concerned passed an interim order directing to admit students on pay of adhoc fee of Rs.10 Lakh. Also the court directed the Ministry of HRD and UGC to constitute a Fee Committee to determine the fees that

have be charged by the Deemed University Colleges.

The above orders of Hon'ble High Court was challenged by one of the Deemed University colleges in Hon'ble Supreme Court in SLP 19315 of 2017. The College sought for interim Stay. Hon'ble Supreme Court was however pleased to extend the benefit of the order passed by High Court to the students of the Union Territory.

The Hon'ble Supreme Court subsequently directed UGC to constitute a Fee Committee to regulate the fee charged by Deemed Universities. The judgment in the case had its PAN India impact.

The gratifying fact was that the judgment was taken note cognizance by UGC. In the Regulation of 2019, UGC incorporated a binding clause relating to Fee. It stipulated that the fee fixed by Deemed University Private Colleges will not exceed the fee prescribed by the Fee Committee.

The battle to secure justice to the meritorious students of Puducherry, reached its logical conclusion by bringing the Deemed Universities under the ambit of Regulatory body.

What started as a battle for justice to Students of Puducherry, has left its large imprint in creating a new paradigm covering the entire Nation.



# 2

## THE SECOND BATTLE -THE POWERS OF THE ADMINISTRATOR

### Chapter 2

For long, Hon'ble Chief Minister has been taking exception to the proactive functioning of the Office of the Lt. Governor. Exception was taken by Hon'ble Chief Minister of Hon'ble Lt. Governor inviting Secretary Finance for discussion.

The matter was taken up with Ministry of Home Affairs. The Ministry of Home Affairs issued an advisory letter on 20th Jan 2017. The letter brought out the salient provisions of the Act and Business Rules of Government of Puducherry. It spelt out the integral role of the Office of Lt. Governor in matters of governance.

Hon'ble Chief Minister however wasn't ready to concede. He was firm in his opinion that the elected Government reigned supreme. He equated the Union Territory at par with that of a State.

He shot of series of letters to Ministry of Home Affairs questioning the advisory rendered by them. The Ministry of Home Affairs, in June 2017 gave a clarification to all the queries raised by him. It reiterated the integral role of the Lt. Governor.

These two letters of Ministry of Home Affairs were taken up for challenge before the High Court of Madras in a Writ Petition filed by Shri Lakshmi Narayanan, Hon'ble MLA and Parliamentary Secretary to Chief Minister. The written petition was filed in 2017. It was however not pursued with. It was a tactical retreat, awaiting the judgment of the Constitutional Bench of Hon'ble Supreme Court in NCT of Delhi Case.

The Constitutional Bench interpreted the 69<sup>th</sup> Constitutional Amendment that gave a special status to NCT of Delhi. The Constitution Bench judgment gave a broad interpretation on the ethos of democracy.

It gave primacy to the elected Government of Delhi but left specific matters to be decided by the courts based on the relevant Acts and Rules. Boyed by the judgement, the case was activated.

The Learned Single Judge delivered a verdict in favour of the Elected Government and set aside the two communications of Ministry of Home Affairs. The Learned Single Judge ruled that Lt. Governor shall not intervene in day to day functions.

The judgment going beyond the remit of challenge vested powers upon the council beyond what was provided in Govt. of U.T. Act, 1963 and the Rules of Business of Government of Puducherry. The Judgment of the Single Bench, transformed a functional Lt. Governor into a notional head as that of the Governor of a State.

The Union of India seized of the impact of the judgment, immediately moved the Hon'ble Supreme Court. The Supreme Court after initially admitting the case, at a later date directed to exhaust the remedy of Intra Court Appeal.

The Case was thereafter heard by the Division Bench of High Court of Madras. The High Court of Madras set aside the judgment of the Single Bench and restored the Finance and Service Powers to the Lt. Governor

### **The salient points of the judgement are :-**

- It brought the overarching powers of Central Government by ruling "The Parliament Act of 1963 and the Rules of Business defines a separate structure of Legislature for a Union Territory where the extent of control by Central Government is more and expressive with powers to intervene".
- It brought out the limitations cast on the functioning of Legislative Assembly of the Union Territory by ruling "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".

- It served a note of caution for the popularly elected Government to work within the framework of law by observing "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"

- It brought out the role the Lt. Governor being the representative of the President by observing that "The role of the Lt. Governor in the true sense controls and acts as a bridge between the Centre and the popularly elected government"

- It ruled on the intertwined role of Lt. Governor and Council of Ministers and the power of scrutiny by the Lt. Governor of decisions of Council of Ministers by ruling "The role of the elected Government and the Administrator are intertwined. The business allocated to the Council of Ministers under Chapter III of the Rules of Business will emanate from the Council and pass through Administrator for scrutiny including the subjects mentioned in Rule 25 of the Rules of Business.

- Restored the Power of Services upon the Administrator by ruling "In-relation to "Service Matters", there is lack of Legislative Power and thus the Executive power cannot be read into the hands of Council of Ministers. It is an Executive function of the Administrator under Chapter IV of Rules of Business of Government of Puducherry, 1963"

- Restored the authority upon the Administrator on matters of Finances by ruling "In-relation to "Finances" the control of finances vests in the Administrator in terms of Section 47 of the Government of Union Territories Act, 1963."

**सत्यमेव जयते**  
**Satyamave Jayate**

The background of the entire page is a detailed black and white illustration of rice. It features several rice stalks with panicles of grains, some of which are shown in a close-up, detailed view. Scattered throughout the background are numerous individual rice grains, some whole and some broken. The style is a fine-line drawing, giving it a textured, artistic appearance.

# 3

## THE THIRD BATTLE - FREE RICE DISTRIBUTION

### Chapter 3

**T**his particular case was filed by Hon'ble Chief Minister himself challenging the reference made to Ministry of Home Affairs by Office of Lt. Governor to distribute cash in lieu of Free Rice through DBT-Direct Benefit Transfer and the concurring decision of MHA.

In view of the multitude problems faced in distribution of rice, such as, pilferages, leakages, distribution of poor quality of rice etc., the Office of the Lt. Governor suggested that the benefit may be extended to the needy people viz., BPL and low income group through DBT mode.

The Council of Ministers insisted that free rice should be distributed in kind. Therefore reference was made to MHA for distribution of benefit through DBT mode. MHA too issued directions to follow the mode of Cash benefit through DBT. Aggrieved at the decision, the Hon'ble Chief Minister himself filed the Writ Petition.

The Hon'ble High Court of Madras ruled that the orders of Central Government intravires the Act and Constitution cannot be questioned by the Chief Minister.

## The Salient features of the judgment are :-

- U.T. of Puducherry cannot be equated with NCT of Delhi for applying the principles of constitutional bench judgment of Supreme Court in NCT of Delhi case.
  - Supply of free food grains or through DBT mode is a financial matter and requires the approval of the Administrator.
  - Exclusion of Income Tax Assessors, Central and State Government employees, who holds Group 'A' and 'B' posts and Dealers registered under Goods and Service Tax department with huge turn over is, when viewed from any angle only logical.
  - Ministry of Home Affairs is the arm through which the President can and shall convey his decisions.
  - The Government of Union Territories Act 1963 has been passed by the Parliament and is a law intra vires, the Constitution. Every provision, every word, every sentence has to be upheld by the Council of Ministers.
  - Chief Minister of the Union Territory cannot question the order of the President communicated through the Ministry of Home Affairs since as the head of the Council of Ministers, he had also taken this oath undertaking to abide with the provisions of the Constitution acted upon. No questions asked. No answers given.
  - Under the Government of Union Territories Act 1963 which is intra vires the Constitution, it has been specifically stated that a decision of the President must be acted upon. No questions asked. No answers given
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# 4

## THE FOURTH BATTLE - APPOINTMENT OF STATE ELECTION COMMISSIONER

### Chapter 4

This particular case related to the executive direction issued by Lt. Governor for an open and transparent process of selection of State Election Commissioner.

Shri T.M. Balakrishnan, IAS (Retd) was proposed for appointment as State Election Commissioner. The Officer was selected on pick and choice method from a panel of Retired Officers who served in the U.T. Administration. The Conditions of Service Rules of State Election Commissioner provided for a wider choice of selection from Officers of Central Government and States too.

In tune with the spirit of the said rules, an executive direction was passed to follow a transparent method of selection extending opportunity to Officers of Central Government and State Governments. The elected Government took exception to the direction and appointed Shri T.M. Balakrishnan without approval of Lt. Governor.

A reference was made by Chief Secretary to Ministry of Home Affairs. The MHA issued directions to appoint the State Election Commissioner by following a transparent process as recommended by Lt. Governor.

## **The salient points of the Judgment are:-**

- There was nothing wrong in going for a transparent procedure as to the selection and appointment of SEC as mooted out by Lt. Governor of Puducherry and approved by the Central Government and their actions were in consonance with Art 239A and Art 240.
- The Legislative body created by Parliament for the U.T. of Puducherry under Art 239A of the Constitution, in strict sense cannot be a Legislative Assembly as contemplated under Art 168 or Art 54 of the Constitution.
- The President is having power to make any regulation for the UTs including Puducherry UT. The Parliament has plenary power to legislate for the U.Ts with regard to any subject. The general power of the President to make regulations extends to all matters on which Parliament can legislate.
- The executive power of the President is exercise by the Central Government in all matters where Parliament has power to legislate.
- Reading Section 44 of the Government of U.T. Act, 1963 as a whole shows that it vests upon the Lt. Governor the discretionary power.