

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13/02/2020

DATED : 21.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 821 of 2020

And

W.M.P.No. 991 of 2020

V.Narayanasamy

... Petitioner

..Vs..

1. The Union of India
Represented by the Secretary to Government
Ministry of Home Affairs
New Delhi.
2. The Advisor (UT)
Ministry of Home Affairs
New Delhi
3. The Administrator of Puducherry
Puducherry.
4. The Assembly Secretary
Puducherry Legislative Assembly
Puducherry

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of declaration declaring the action of the third respondent in differing with the aid and advice of the Council of Ministers by the Resolution No.2018/M.38/279 dated 07.06.2019 and referring the same to the first respondent vide the file notings bearing Ref.235/LGS/2019 dated 05.09.2019 and the consequential decision of the first respondent advising the Government of Union Territory of Puducherry to continue with the DBT (Cash) Scheme in lieu of distribution of free rice under the Puducherry Free Rice Scheme communicated through the order of the second respondent dated /12/2019 bearing Ref.Nil as illegal and ultravires and consequently direct continuation of the policy of the Government of Puducherry as per the Puducherry Free Supply of Rice, Edible Oil and Other Essential Food Grains Every Month to All Ration Card Holders, Rules, 2016 in kind.

For Petitioner : Mr. ARL. Sundaresan
Senior Counsel
for Mr.R.Saravanan

For RR 1 & 2 :: Mr.G.Rajagopalan
Additional Solicitor General
assisted by Mr.K.Srinivasamurthy

For 3rd Respondent : Mr.A.L.Somayaji
Senior Counsel
Mr.Arvind Datar
Senior Counsel
for Mr.V.Chandrasekaran

For 4th Respondent : Mr.T.R.Rajagopalan
assisted by Mr.Ravichandran

ORDER

The Writ Petition had been filed by V.Narayanasamy, the Chief Minister of Puducherry, seeking a declaration, declaring the action of the third respondent, namely, the Administrator of Puducherry, in differing with the aid and advise of the Council of Ministers of their Resolution No.2018/M.38/279 dated 07.06.2019 and referring the same to the first respondent, namely, the Ministry of Home Affairs, represented by the Secretary to Government, Union of India, through the file notings bearing Ref.235/LGS/2019 dated 05.09.2019 and the consequential decision of the first respondent advising the Government of the Union Territory of Puducherry to continue with the DBT (Cash) Scheme in lieu of distribution of free rice under the 'Puducherry Free Rice Scheme', communicated through the order of the second respondent, namely, the Advisor (UT), Ministry of Home Affairs, New Delhi dated /12/2019 as illegal and consequently direct continuation of the policy of the Government of Puducherry as per the Puducherry Free Supply of Rice, Edible Oil and Other Essential Food Grains Every Month to All Ration Card Holders Rules, 2016.

2. In the affidavit filed in support of the Writ Petition Mr.V.Narayanasamy, the Chief Minister of Puducherry, had stated that the Government of India had framed the Scheme Antyodaya Anna Yojana (hereinafter referred to as "AAY") in the year 2000 to provide to about 1 crore families living Below the Poverty Line (BPL) food grains such as Wheat and Rice at subsidized price. The scheme also envisaged the allocation of food grains to the concerned State/Union Territory. A separate Ration Card with the endorsement 'AAY' was to be issued. The families, who

were to benefit under this scheme, had also been identified as: landless agricultural labourers, marginal farmers, rural artisans, craftsmen such as weavers, blacksmiths, slum dwellers, carpenters, as well as porters, coolies, rickshaw pullers, handcraft polishers, fruit and flower sellers, snake charmers, rag pickers, cobblers, destitute, widows, terminally ill persons, etc. Subsequently, the National Food Security Act 2013 was enacted and came into force on 10.09.2013 whereby persons belonging to priority households became entitled to receive a minimum of 5 kgs of food grains at subsidized prices, through a targeted Public Distribution System. The State Governments were given the authority to frame requisite guidelines.

3. In the affidavit, it was stated that in 2013, the Government of Puducherry took a decision to distribute 10 kgs of free rice to all Ration Card holders of Puducherry and Karaikal Regions. This was implemented from November 2013. This was extended to the Mahe and Yanam Regions from September 2015. Rules were also framed for the free supply of 10 kgs of Rice and 5 kgs of Wheat every month to all Ration Card holders by the Union Territory of Puducherry Rules 2015. This was also published in the Gazette on 28.05.2015, pursuant to G.O.Ms.No. 1/2015 Civil Supplies and Consumer Affairs / 1159 dated 27.05.2015. The petitioner claimed that his party had promised to continue to supply of 20 kgs of free Rice to all Ration Card holders through Public Distribution System. Subsequently, in the Cabinet meeting held on 06.06.2016, the Cabinet decided to increase the supply of rice from 10 kgs to 20 kgs. This was implemented from August 2016 to all Ration Card holders. It was claimed that, this was implemented by the Government of Puducherry and not by the Government of India. In the meanwhile, the Government of India framed the Cash Transfer of Food Subsidy Rules 2015. Under Rule 3, discretion was granted to the State Governments to either supply food grains, or credit cash to the accounts of the card holders. The petitioner claimed that he wrote to the Ministry of Civil Supplies and Consumer Affairs, Government of India, New Delhi, on 16.02.2018 seeking continuance of supply of food grains in kind. It is further claimed that the said Minister granted permission by a Demi Official letter dated 19.04.2018. The petitioner claimed that the third respondent directed a reduction in distribution of free rice from 20 kgs to 10 kgs in January 2018 for Above Poverty Line (hereinafter referred to as "APL") card holders and that Direct Benefit Transfer (hereinafter referred to as "DBT") as cash must be done. The petitioner further claimed that the matter was placed before the Cabinet for discussion on 07.06.2019. It was further claimed that the Cabinet deliberated all the relevant factors and by resolution No. 2018/M38/279 dated 07.06.2019 decided to continue the distribution of free rice, under the Free Rice Scheme, rather than transferring the

equal amount of cash in the bank account of the beneficiaries. The said file was circulated among various departments and finally, it reached the third respondent. By notings in the file dated 05.09.2019, the third respondent differed with the view of the Cabinet and the Council of Ministers and referred the matter to the first respondent under the Proviso to Section 44 of the Government of Union Territories Act, 1963, read with the Rules of Business of the Government of Puducherry, 1963. The third respondent also directed that the rice should not be supplied in kind, but that the benefit must be extended only by DBT (Cash) method, pending the decision of the first respondent. The petitioner claimed that accordingly, cash is being transferred to the accounts of the beneficiaries. The first respondent, Ministry of Home Affairs, Union of India, represented by the Secretary to Government, passed an order answering the reference that was made, by issuing an advisory to the Union Territory of Puducherry to continue with the DBT (Cash) method in lieu of distribution of free rice. This was communicated and received in the Chief Secretariat of the Government of Puducherry on 19.12.2019. The instant Writ Petition has been filed questioning the said order.

4. In the counter affidavit filed on behalf of the first and second respondents, the Deputy Commandant in the Ministry of Home Affairs, North Block, New Delhi stated that the impugned proceedings, namely, the Advisory to the Union Territory of Puducherry, received by the petitioner on 19.12.2019 is an official communication endorsing the view of the third respondent. It had been issued under the Government of Union Territories Act, 1963 and the Rules of Business of the Government of Puducherry and is not an order against the petitioner or the Government of Puducherry. It is only an answer to the reference raised by the third respondent in view of different positions adopted. It is stated that it is an official decision taken in discharge of an official duty of the Union of India under Section 44 of the Government of Union Territories Act, 1963. सत्यमेव जयते

5. In the Counter affidavit, it was further stated that the issue was only with respect to extension of benefit by supply of rice or by transfer of cash and therefore, the petitioner was in no way directly affected by the communication. It was also stated that the Writ Petition is liable to be rejected on the ground that, under Section 55 of the Government of Union Territories Act, 1963, any suit or case can be filed only in the name of the Union of India. It was also stated that the Writ Petition has not been filed in the manner of a Public Interest Litigation. It was also stated that the third respondent has been appointed as a Lieutenant Governor of the Union Territory of Puducherry and the Writ Petition is not

maintainable under Article 361(1) of the Constitution of India.

6. In the counter affidavit, it had been further stated that under the National Food Security Act, 2013, the Government of India provides food grains to priority households and Antyodaya Anna Yojana (AAY) through Direct Benefit Transfer (DBT) Cash method. The Government of Puducherry is implementing a separate scheme for the distribution of rice free of cost to all families irrespective of the economic status at 20 kilos per BPL family and 10 kilos per APL family. It had been stated that owing to insufficient allocation of funds in the budget, the Government of Puducherry had distributed rice only intermittently and on many occasions, instead of rice, cash equivalent to the benefit had been transferred to the bank accounts. It was also stated that the third respondent had been informed that there were repeated complaints regarding the quality of rice. Further, the third respondent had opined that the Union Territory of Puducherry must switch over to the DBT Cash method from the Financial Year 2019-2020. It had been stated that the third respondent had forwarded the entire file to the first respondent, for a decision with respect to difference from the view of the Council of Ministers dated 07.06.2019, where they had decided to continue distribution of free rice in kind rather than transfer equivalent amount of cash to the bank account while the third respondent had granted approval to adopt DBT as the mode of distribution from the financial year 2019-2020. It was stated that the communications between the petitioner and the Union Minister for Consumer Affairs Food and Public Distribution cannot relied on by the petitioner as a direction to supply free rice. It was also stated that the respondent, after examining the relevant factors had directed the Government of Puducherry, to continue with DBT (Cash) scheme, in lieu of distribution of Free Rice and this was communicated by letter dated 20.12.2019. It was stated that much earlier, by communication dated 29.11.2019, the Ministry of Home Affairs had communicated to the Union Territories of Andaman and Nicobar Islands, Chandigarh, Dama & Diu, Dadra and Nagar Haveli, Delhi, Lakshwadeep and Puducherry that to ensure transparency, the disbursement of welfare benefits may be made through Direct Benefit Transfer. It was stated that under Section 44 of the Government of Union Territories Act, 1963, when a decision is given by the President, it should be strictly acted upon. It was also stated that as per Section 50 of the said Act, the Administrator and the Council of Ministers shall be under the general control of the President. It was therefore concluded that the order communicated and obtained is binding on the Union Territory of Puducherry and that therefore the Writ Petition must be dismissed.

7. The Private Secretary to the Lieutenant Governor, Puducherry, filed a counter affidavit on behalf of the third respondent. It was stated that the National Food Security Act, 2013 came into force on 05.07.2013 and according to that Act, all persons belonging to priority households were vested with the right to receive food grains at subsidized prices under the targeted Public Distribution System. It was stated that the Union Territories were required to prepare guidelines. It was stated that under Section 2(22) of the National Food Security Act, 2013, it was further stated that the Central Government framed Cash Transfer of Food Subsidy Rules 2015. According to the said Rules, cash has to be transferred directly to the bank account of the households. It was stated that the Central Government was releasing the food grains' entitlement by cash transfer from September 2015 till January 2020. It was stated that in Puducherry, there are 32,000 AAY families with 84,735 members and there are 5,33,648 individuals availing benefit under the National Food Security Act by DBT (Cash) method. The statistics relating to the release of amount in the bank account had also been given in the counter affidavit and it is seen that in the Financial Year 2019-2020, upto September 2019, a sum of Rs.64.02 crores had been transferred. It was also stated that the Central Government had called upon the Union Territory to frame Rules and the Council of Ministers in their meeting on 12.09.2017 framed a draft Puducherry Food Security Rules 2017 to which the third respondent granted approval on 20.10.2017. The Rules were also notified in the Gazette on 26.10.2017. The final approval was also granted on 12.01.2018. The Rules were called the Puducherry Food Security Rules 2017 and was notified in the Extraordinary Official Gazette of Puducherry on 17.01.2018. It was further stated by the third respondent that Rule 5 provides cash equivalent shall be transferred to the bank accounts of the households as per the provisions of Cash Transfer of Food Subsidy Rules 2015. It was thus stated that the Council of Ministers had decided to transfer cash benefit which was also notified in the Extraordinary Official Gazette of Puducherry. It was stated that thereafter on 16.02.2018, the Chief Minister of Puducherry, without reference to the Council of Ministers, had independently addressed the Union Minister of Consumer Affairs, Food and Public Distribution, and requested allocation of 3809 MT of single boiled rice, per month, instead of DBT cash transfer, to subsume the Central Scheme with another Scheme of Union Territory Government, whereby free rice was being distributed to all the ration card holders. It was stated that this communication by the Chief Minister was not communicated either to the Council of Ministers, or to the third respondent. It was stated that the Union Minister had actually requested the Chief Minister in reply, to continue implementation of cash transfer of food subsidy and had also

stated that if the Union Territory Administration wanted to adopt the system of distribution of food grains by PDS, then they must ensure preparedness in terms of arrangements for lifting of allocated food grains from Food Corporation of India, prepare godowns for immediate storage and for delivery for food grains up to the door step of the fair price shops through authorised agencies. It was further stated in the counter affidavit that the third respondent had examined switching over to the PDS system for both the State Government and the Central Government schemes instead of DBT (Cash) method. It was stated that it was found that if this method was implemented then, there would be substantial reduction in the quantity of free rice being made available for AAY and BPL families. It was therefore stated, that by implementation of the scheme now insisted upon by the petitioner, there would actually be a reduction in the supply of free rice to AAY families. It was stated that the third respondent discussed the said issue with the Minister of Supplies, Puducherry in person and requested him to place the statistics before the Council of Ministers since it was a shift in the policy decision. She also gave written notes on 29.08.2018. It was stated that for 16 months, the Council of Ministers did not deliberate on this issue. It was stated that the scheme of the Puducherry Government, for supply of free 10 kgs of rice and 5 kgs of Wheat to all ration card holders was also notified in the Government Gazette, and under that scheme, no income criteria was fixed. It is stated that when a decision was taken to increase the existing level of 10 kgs to 20 kgs of free supply of rice, financial approval for such implementation was also placed before the third respondent and the third respondent claimed that she also granted financial approval. However, the Government was unable to provide adequate funds for the implementation of the scheme. It was therefore stated that it had been provided under the Rules that the quantity as fixed by the Government from time to time would be supplied to the card holders. The third respondent claimed that since the priority sector were the AAY and BPL families, she had requested the Government to exclude income tax assesses, senior Central and State Government Officers holding Grade-A and Grade-B post and dealers registered under goods and service tax department with huge turn over from the scheme. However, the petitioner wanted to supply free rice to all Card holders irrespective of the income. This would naturally mean reduction of supply of rice to BPL/AAY families. It was stated that due to insufficient availability of funds, the rice scheme was implemented only intermittently from June 2016. Free rice was distributed through fair price shops only for 17 months. The Government released cash equivalent of free rice to the accounts of the beneficiaries for 15 months. Neither food grains nor cash was distributed for the remaining 11 months. It was specifically stated that there are no funds available to

implement the scheme from October 2019 onwards. It was stated that considering all aspects, including the poor quality of rice supplied, the third respondent on 28.02.2019 directed that DBT method should be adopted from the Financial Year 2019-2020. It was also pointed out that till January 2019, the Department had released cash instead of food grains for a period of 10 months. It is under these circumstances that the third respondent claimed that she expressed her opinion and referred the difference in opinion to the President for a decision. It was stated that in accordance with the intermittent direction of the third respondent, cash equivalent of free rice was released to the bank account of the beneficiaries for five months from April to August 2019. It has been stated that the Administrative Department now has funds only to pay the suppliers of free rice and to pass pending bills worth Rs.12 crores and to release cash equivalent to food subsidy for one more month, namely, September 2019. No money is available for supply of either rice or transfer cash from October 2019 onwards. It was stated that thereafter the Ministry of Home Affairs / first respondent had communicated the approval of the DBT method in lieu of supply of rice and it was stated that the decision of the third respondent was in conformity with the Scheme Rules as amended in the year 2016 which provided that the entitlement would be fixed by the Government from time to time. It was also stated that the elected Government is subject to the control of the President through the Ministry of Home Affairs. It was therefore stated that the Writ Petition should be dismissed.

8. The petitioner filed a reply affidavit to the counter affidavits filed by the respondents. The petitioner justified his locus to file the Writ Petition. It was also stated that Section 65 of the Government of Union Territories Act, 1963 cannot be applied to the facts of the present case. The petitioner also stated that it was factually incorrect that the Government of India provides food grains for priority households beneficiaries and also for AAY scheme Beneficiaries through DBT (Cash) method. The petitioner again reiterated that the statements in the counter affidavits of the first and second respondents with respect to complaints regarding bad quality of price and that more than 90% of the property households of AAY Scheme beneficiaries expressed satisfaction regarding the DBT mode is not correct. It was stated that the quality of rice supplied by the Government of Puducherry was of very good quality. It was stated that the rice and food grains are being distributed by framing rules in a most transparent manner and did not violate the letter dated 29.11.2019. It was stated that the Government of Puducherry is ready to lift the entire stock of rice from Food Corporation of India alone and distribute the same to the general public of Puducherry. It was stated that a plain reading of Articles 239, 239-A and the

Proviso to Article 240 of the Constitution of India and the Rules of Business of Government of Puducherry would clearly establish that it is the duty of the elected Government to decide whether to supply food grains in kind or give equivalent cash.

9. With respect to the averments made in the counter affidavit filed on behalf of the third respondent, it was stated though Union Territories are under the general control and supervision of the Union /Central Government, they are an independent entity on their own. It was stated that the President of India had not delegated the power to the first respondent under the Government of Union Territories Act, 1963 and therefore the impugned order of the first respondent is without jurisdiction. The other allegations regarding quality of rice and pilferages and other related issues were specifically denied by the petitioner in his reply affidavit.

10. It was also stated that the Council of Ministers had taken a considered decision after due discussion. It was reiterated that on a reading of Articles 239, 239-A, 240 of the Constitution of India read with Section 18 and Section 44 of the Government of Union Territories Act 1963, it is clear that the executive functions have to be carried on only with aid and advise of the Chief Minister and the Council of Ministers. It was also stated that the Legislative Assembly of Puducherry had been given specific powers under the Government of Union Territories Act 1963 and it was within their power to pass resolutions to supply food grains in kind and the Executive has no other option but to carry out the mandate of the Legislature. It was stated that the public of Puducherry preferred distribution of free rice. It was stated that the Writ Petition is maintainable and it should be allowed.

11. Pending the Writ Petition, the petitioner filed an Additional Affidavit and a rejoinder to the same was also filed by the third respondent. In the additional affidavit of the petitioner, it had been stated that he had a meeting with the Union Minister of Consumer Affairs, Food and Public Distribution, Government of India and after such discussion, by Demi Official letter bearing D.O.No.5-3/2007-NFSA (Pt.2)/1281 dated 13.01.2020, it had been stated that though the Government of India was ready to supply food grains as per its policy, there was no response from the Union Territory Administration. It was stated that it was not a policy of the Union Territory Administration or that of the Government of India to deposit cash.

12. A rejoinder was filed by the third respondent. It was pointed out that the Council Minister of Consumer Affairs, Food

and Public Distribution had by letter dated 30.01.2020, conveyed to the Secretary of Civil Supplies Department of Government of Puducherry that in the principle approval given to the Union Territory to revert to the earlier distribution of rice through PDS from the existing DBT (Cash) system under NFSA stood withdrawn. It was reiterated that it was well powers of the Administrator under Section 44 of the Government of Union Territories Act, 1963 to make a reference to the President in the event of difference of opinion with the advice of the Ministers and pending such decision of the President, it shall be competent for the Administrator to give such direction in the matter. It was again reiterated that the Writ Petition should be dismissed.

13. Heard arguments advanced by Mr. ARL. Sundaresan, learned Senior Counsel for the writ petitioner, Mr.G.Rajagopalan, learned Additional Solicitor General for the first and second respondents; Mr.Somayaji, learned Senior Counsel and Mr.Arvind Datar, learned Senior Counsel for the third respondent and Mr.T.R.Rajagopalan, learned Senior Counsel for the fourth respondent.

14. Mr. ARL. Sundaresan, learned Senior Counsel for the writ petitioner took the Court through the facts of the case and stated that the Cabinet of the Union Territory of Puducherry had passed a resolution on 07.06.2019 to supply free rice through Public Distribution System in lieu of transfer of cash through DBT cash system to the card holders and stated that this decision was put up before the third respondent for final ratification. The learned Senior Counsel stated that the third respondent had unfortunately given her personal opinion that the DBT (Cash)system would be more beneficial and in view of the difference, had referred the matter to the President. Thereafter, a communication had been received from the Ministry of Home Affairs that the Central Government had approved the opinion of the third respondent. The learned Senior Counsel further pointed out that pending the Writ Petition, the petitioner had a discussion with the Union Minister of Consumer Affairs, Food and Public Distribution, Government of India and a letter was issued by the Union Minister that they were ready to supply food grains for supply through Public Distribution System. The conditions imposed were that the Government of Puducherry should take steps to transport the rice and also make arrangements for its storage and distribution at the door step of the PDS shops. The learned Senior Counsel stated that the supply of food grains to the card holders was the rule and granting DBT cash was only an exception. It was also stated that if there were any difficulties in the supply of food grains through PDS rice, the same could be rectified. It was also stated that the majority of the people preferred supply of food

grains through PDS and being a democratically elected Government, the petitioner had to adopt that method. The learned Senior Counsel further stated that erroneous reliance was placed in the counter affidavit of the third respondent on the report by Mr.M.Swaminathan. It was also stated that the decision to supply rice or to grant subsidy through DBT cash method is not an issue which comes under the Government of Union Territories Act, 1963 and consequently, the learned Senior Counsel stated that the third respondent had no right to differ from the opinion expressed by the Cabinet. It was pointed out that this was not the issue which required to be referred to the President for further adjudication. The learned senior counsel was insistent on the fact that the Writ Petition was maintainable and stated that as a Chief Minister of Union Territory of Puducherry, the petitioner had every right to ensure that the decision of the Cabinet is upheld. The learned Senior Counsel pointed out that there was a duty on the third respondent to act on the aid and advice of the Council of Ministers. The learned Senior Counsel also stated that any decision taken by the third respondent must indicate why the decision of the Cabinet was rejected. It was also stated that when any file is referred to the President for a decision, then the said decision should be conveyed with reasons. The learned Senior Counsel pointed out that no reasons had been given in the impugned order as to why the distribution of rice through PDS system ought to be stopped and why grant of cash by DBT cash system alone should be followed. The learned Senior Counsel stated that the act of the third respondent was mala fide and therefore insisted that the Writ Petition must be allowed.

15. Mr.G.Rajagopalan, learned Additional Solicitor General, who argued on behalf of the first and second respondents was categorical in his submission that the Writ Petition is not maintainable. The learned Additional Solicitor General stated that any decision given by the President and conveyed by the Ministry of Home Affairs, with regard to any difference between the advise given by the Cabinet/Council of Ministers and the third respondent is binding on the Government of Puducherry. Learned Additional Solicitor General, pointed out that the petitioner, as the Chief Minister of the Union Territory is also a member of the Council of Ministers and when a binding decision is rendered by the Union Government, the petitioner cannot question the same. Learned Additional Solicitor General pointed out that the Rule of Law implied that the petitioner has to abide with the decision of the President of India. It was also pointed out that under Article 239-A, an Administrator had been appointed and for practical purposes, the Union Territory of Puducherry shall be governed by the Central Government. It was stated that a body was created comprising both nominated / elected members. The learned Additional Solicitor General

reiterated the fact that the petitioner herein cannot ignore the decision of the Union Government. He also stated that the subsequent communications between the petitioner and the Union Minister of Consumer Affairs, Food and Public Distribution had been done without the knowledge of the Ministry of Home Affairs and after they came to know about the same, the first respondent had addressed the Union Minister, who had withdrawn his earlier communication. The learned Additional Solicitor General was emphatic in his submission that the Writ Petition is not maintainable and stated that it should be dismissed.

16. Mr.A.L.Somayaji, learned Senior Counsel, who advanced arguments on behalf of the third respondent stated that the third respondent had a right to differ with the advise given by the Council of Ministers and the proper step to be followed when exercising such right to differ was to refer the difference in opinion to the President of India for a decision. It was pointed out that reasons had been given for the difference. It was stated that the third respondent had specifically stated that there were instances when substandard rice was supplied and rice was pilferaged and stated that on the other hand grant of cash by Direct Benefit Transfer would benefit the card holders. The learned Senior Counsel stated that the Rules of Business of Government of Puducherry, 1963 provides for matters which the Administrator shall refer to the Central Government and also that a decision given by the Central Government shall be binding on the Governor. The learned Senior Counsel further stated that the third respondent had a right to give such directions till a decision by the President was given. The learned Senior Counsel further pointed out that the Council of Ministers, as a body, cannot question the decision of the Central Government to provide direct benefit transfer (Cash) method. The learned Senior Counsel stated that the Writ Petition is not maintainable and should be dismissed.

17. Mr.Arvind Datar, learned Senior Counsel also argued on behalf of the third respondent. As a matter of fact, he advanced arguments prior to Mr.A.L.Somayaji. Mr.Arvind Datar, took the Court through the provisions of Articles 239, 239-A of the Constitution of India and also Section 44 of the Government of Union Territories Act 1963 and stated that once a decision of the Union Government is given, then the Union Territory of Puducherry is bound to act accordingly.

18. Mr.T.R.Rajagopalan, learned Senior Counsel, who argued on behalf of the fourth respondent stated that the Legislative Assembly had passed a resolution favouring supply of rice through Public Distribution System and pointed out that Section 44 of the Government of Union Territories Act, 1963 provides that the Administrator shall act on the advise of the Council of

Ministers. In this case, the learned Senior Counsel stated that the Assembly as a whole, had unanimously decided to supply free rice. The learned Senior Counsel stated that therefore the third respondent had no right to give a different opinion and to refer the matter to the President of India.

19. I must point out that the extract above is only a very very brief summary of the arguments advanced by the learned Senior Counsels on either side. The learned Senior Counsels had taken great pains to explain the underlying features of Articles 239 and 239-A of the Constitution of India and also took the Court through the differences between Article 239-A and 239-AA of the Constitution of India and the scheme of Administrative set up in Puducherry. Further, the learned Senior Counsels also extensively took the Court through Sections 44 and 50 of the Government of Union Territories Act 1963.

20. I have carefully considered the arguments advanced and the materials on record.

21. The following sequence of events will have to be examined:-

"(i) The resolution of the Cabinet / Council of Ministers of the Union Territory of Puducherry to supply free rice through PDS system and the reasons for the same;

(ii) The opinion of the third respondent to opt for DBT Cash method and the reasons for the same;

(iii) The reference to the President of India with respect to this difference in opinion between the resolution of the Council of Ministers and the opinion of the third respondent; and

(iv) the decision of the President of India conveyed through the Minister of Home Affairs and its binding nature."

22. The issues which arise for discussion in the present Writ Petition have to be discussed only with reference to the provisions under Article 239-A of the Constitution of India and with respect to the Government of Union Territories Act, 1963 read with the Rules of Business of Government of Pondicherry, 1963.

23. Part VIII of the Constitution of India deals with the Union Territories. Article 239 relates to Administration of Union Territories. Article 239 of the Constitution of India is as follows:-

"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 "

[Emphasis Supplied]

24. According to the above Article, except as otherwise provided by the Parliament, every Union Territory shall be administered by the President through an Administrator to be appointed by the President.

25. A careful reading of the above Article shows that every Union Territory is normally administered by the President of India. For this purpose, the President of India can appoint an Administrator with any given designation. Puducherry is an Union Territory. Therefore, it has to be administered by the President of India. For such administration, the President can appoint an Administrator. The Designation of the Administrator in the Union Territory of Puducherry is Lieutenant Governor.

26. Article 239(2) provides that the President may also appoint the Governor of any other State as the Administrator of an adjoining Union territory. For example, the President has an option to appoint an Administrator for the Union Territory of Puducherry with the designation, Lieutenant Governor or the President may also appoint the Governor of the State of Tamil Nadu to act as the Administrator of Union Territory of Puducherry, since Puducherry is an adjoining the State of Tamil Nadu. If the Governor of Tamil Nadu is appointed as the Administrator of Puducherry, then he shall exercise his function independently of his Council of Ministers. This would only mean that he would act independently of the Council of Ministers of

Tamil Nadu.

27. Article 239-A deals with creation of Local Legislatures or Council of Ministers or both for certain Union Territories. As on date, the only Union Territory which is covered under Article 239-A is the Union Territory of Puducherry. Originally Goa, Daman and Diu, Himachal Pradesh, Mizoram, Arunachal Pradesh were also included under Article 239-A. After the creation of separate States, as on date, Puducherry is the only Union Territory which is covered Article 239-A.

28. In the "Lok Sabha Debates on Constitutional Amendments," with specific reference to the Fourteenth Amendment Bill, 1962, the initial statement by the Minister of Home Affairs, Shri Lal Bahadur Shastri, who moved the Bill and the final reply given by the Prime Minister Shri Jawaharlal Nehru alone are extracted below:

" LOK SABHA DEBATES

4.9.1962.

The Minister of Home Affairs (Shri Lal Bahadur Shastri): I beg to move:

"That that Bill further to amend the Constitution of India be taken into consideration"

Sir, I am moving for consideration the Constitution (Fourteenth Amendment) Bill, 1962. This Bill contains seven clauses. The first important clause, namely, clause 3, deals with Pondicherry being treated as one of the Union Territories, which will comprise Pondicherry, Karaikal, Mahe and Yanam. I do not want to deal with this matter in extenso just at present. Therefore, I shall try to be as brief as possible.

As soon as we include Pondicherry in the Union Territories, two consequential amendments automatically follow. The first is that Pondicherry should have representation both in the Lok Sabha and in the Rajya Sabha. Hence, there is a clause for increasing the strength of the Union Territories in the Lok Sabha. Pondicherry will get one seat in the Lok Sabha and one seat in the Rajya Sabha. In that case, the strength of the Rajya Sabha will increase from 225 to 226.

Then, there is the regulation-making

power of the President. During the interim period, the President is empowered to make regulations. But the clause provided in the Bill suggests that as soon as the Assembly has been constituted, regulation-making power will come to an end. This is provided for in clause 5(b) ”

29. The debate continued and it is really revealing to relive the maturity and learning exhibited during the exchange of views. Finally, when several Members had raised that the issue of Delhi too should be considered along with the Union Territories, the then Prime Minister Shri Jawaharlal Nehru replied as follows:

”Shri Jawaharlal Nehru: Yes. But Sir, I wish to say just a few words about the question of Delhi. Delhi is obviously, both because it is a capital and it is a great city of India, a very important part of India. It is absurd for anyone to think that Delhi is excluded because the people of Delhi are not advanced enough. That is ridiculous. We are all people of Delhi, all who are sitting here. The real difficulty is not as to what should be done to Delhi. That has to be carefully considered. But it cannot be easily put in here in this Bill, because the problems that face Delhi are different from the problems that face all the other Union Territories. Therefore, I may mention some of the problems. I do not know how the hon. Member opposite said that the Home Minister said something or the other. Anyhow, I do not understand the statement that it may go out of control of somebody. Where will it go? I do not know. There is no meaning in it.

First of all, Delhi has got a corporation and whatever other amendments we may put to the Constitution in regard to Delhi must fit in with the Constitution. It may be, the Constitution has to be changed to more powers or less powers, whatever it may be. We cannot deal with it apart from that. It becomes two overlapping things.

Secondly, Delhi being the capital with such a large number of foreign Legations,

Embassies, etc., it has to be considered in that context. None of these is the final reason, but all these matters have to be considered. None of these questions arises in regard to the other Union Territories. Therefore, merely to push in Delhi there has no meaning. It confuses the issue.

I can concede all the arguments which the hon. Members have advanced independently of Delhi, but not for Delhi as part of this. We have to consider Delhi separately. Frankly, if I may say so, I have not been satisfied with the present arrangement in Delhi. There are many things which are not satisfactory and I think it requires a change, may be a radical change. Some of the things which hon. Members opposite have suggested have to be considered separately; but they cannot be pushed in here. We cannot put Delhi in the same level as the other Union Territories. Therefore, I submit that this amendment should not be pressed. Whatever may be said about Delhi that may be considered separately."

30. The above is extracted since it has been consistently urged by the learned Senior Counsel for the petitioner that administration in Union Territory of Puducherry stands on the same footing as Delhi. But the law makers have thought it differently.

31. Article 239-A was then inserted by the Constitution (14th Amendment) Act 1962, under Section 4 of the said Act with effect from 28.12.1962. The Statement of Objects and Reasons for the Constitution (14th Amendment) Act 1962 is as follows:-

"Statement of Objects and Reasons appended to the Constitution (Fourteenth Amendment) Bill, 1962 which was enacted as THE CONSTITUTION (Fourteenth Amendment) Act, 1962.

STATEMENT OF OBJECTS AND REASONS

With the ratification of the Treaty of Cession by the Governments of India and France, on 16th August, 1962, the French establishments of Pondicherry, Karikal, Mahe and Yanam became territories of the Indian

Union with effect from that date. This Bill provides for these territories being specified in the Constitution itself as a Union territory called 'Pondicherry'. Under article 81(1)(b) of the Constitution, not more than twenty members are to represent the Union territories in the House of the People. This maximum has already been reached. The Bill accordingly seeks to increase this number to twenty-five to enable representation being given immediately to Pondicherry in the House of the People and to provide for future contingencies. The Bill also provides for representation of the territory in the Council of States.

It is proposed to create Legislatures and Councils of Ministers in the Union territories of Himanchal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry broadly on the pattern of the scheme which was in force in some of the Part C States before the reorganisation of the States. The Bill seeks to confer necessary legislative power on Parliament to enact laws for this purpose through a new article 239A which follows generally the provisions of article 240 as it stood before the reorganisation of the States.

NEW DELHI; LAL BAHADUR.
The 25th August, 1962.
THE CONSTITUTION (FOURTEENTH AMENDMENT)
ACT, 1962
[28th December, 1962.]

An Act further to amend the Constitution of India

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:-

1. Short title.-This Act may be called the Constitution (Fourteenth Amendment) Act, 1962.

2. Amendment of article 81.-In article 81 of the Constitution, in sub-clause (b) of clause (1), for the words "twenty members", the words "twenty-five members" shall be substituted.

3. Amendment of the First Schedule.-In the First Schedule to the Constitution, under the heading "II. THE UNION TERRITORIES", after entry 8, the following entry shall be inserted, namely:-

"9. Pondicherry: 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."

4. Insertion of new article 239A.-After article 239 of the Constitution, the following article shall be inserted, namely:-

"239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories.-(1) Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry-

(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."

5. Amendment of article 240.-In article 240 of the Constitution, in clause (1),-

(a) after entry (d), the following entry shall be inserted, namely:-

(e) Pondicherry:";

(b) the following proviso shall be inserted at the end, namely:-

"Provided that when any body is created under article 239A to function as a Legislature for the Union territory of Goa, Daman and Diu or Pondicherry, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature.".

6. Amendment of the Fourth Schedule.-In the Fourth Schedule to the Constitution, in the Table,-

(a) after entry 20, the entry

"21. Pondicherry1" shall be inserted;

(b) for the figures "225", the figures "226" shall be substituted.

7. Retrospective operation of certain provisions.-Section 3 and clause (a) of section 5 shall be deemed to have come into force on the 16th day of August, 1962."

32. A perusal of the Objects and Reasons stated above shows that with the ratification of the Treaty of cession between the Governments of India and France on 16.08.1962, the French establishments of Pondicherry, Karikal, Mahe and Yanam, became territories of the Indian Union. It had been proposed to create a Legislature and Council of Ministers in the Union Territory of Pondicherry. Article 239-A of the Constitution of India is as follows:-

"Article 239A of Constitution of India
"Creation of local Legislatures or Council of Ministers or both for certain Union Territories"

(1) Parliament may by law create for the Union territory of Pondicherry -

(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."

33. By the said Article, the Parliament may create (a) a body elected; (b) a body partly nominated and partly elected to function as Legislature for the Union Territory or (c) a Council of Ministers; and (d) both.

34. This effectively means that a body can be created with elected members, nominated members or Council of Ministers can be created or both can be created. Clarification of this is given in Article 240 of the Constitution of India. Article 240 of the Constitution of India is as follows:-

"Article 240 in The Indian Constitution

Power of President to make regulations for certain Union territories-

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

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Pondicherry;

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

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

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

35. A careful reading of Article 240 of the Constitution of India indicates that it would come into effect only when a body, as has been stipulated under Article 239(A)(1)(a) is not functioning. However, when a body is created under Article 239-A to function as a Legislature then, the President may not make any regulations for the peace, progress and good Government of that Union Territory. The President may however, during the period when the Legislature remains suspended, make regulations.

36. A conjoint reading of both the Articles brings us to the conclusion that for the Union Territory of Puducherry, a body can be created by the Parliament under Article 239-A of the Constitution and that body can function as a Legislature for the Union Territory of Puducherry. This Legislature may consists of elected members or elected and nominated members, and a Council of Ministers.

37. The term 'Council of Ministers' is referred under Article 74, wherein, the Council of Ministers are to aid and advise the President, and again in Article 163, wherein, the Council of Ministers are to aid and advise the Governor. In Article 74, it has been stated that the Council of Ministers will have the Prime Minister at the Head and in Article 163, it had been stated that the Council of Ministers will have the Chief Minister as the Head. Needless to point out that these Councils of Ministers will be from and amongst the Legislature of the Union Government or that particular State. Similarly, the Council of Ministers referred in Article 239-A can only be from and amongst the elected members, nominated members of the

body which is to function as the Legislature for the Union Territory of Puducherry. The power and functions of the elected members /nominated members will be specified by the law. The law in this case is the Government of Union Territories Act 1963.

38. The Government of Union Territories Act 1963 (Act 20/1963) had come into effect on 10.05.1963. The Act is to provide for Legislative Assemblies and Councils of Ministers for certain Union Territories and for certain other matters. In this Act, the following are the definitions:-

"2. Definitions and interpretation.

(1) In this Act, unless the context otherwise requires,-

(a) "Administrator" means the administrator of the Union Territory appointed by the President under Article 239".

39. It is seen that the 'Administrator' is the Administrator appointed by the President under Article 239. Under Article 239, the Administrator is appointed with such designation. For the Union Territory of Puducherry, that designation is Lieutenant Governor.

40. Part -II of the Government of Union Territories Act, 1963 provides for Legislative Assemblies. It is provided that the total number of members chosen by Direct election shall be 30 and the total number of nominated members shall not be more than 3. Section 18 is with respect to the extent of the Legislative Power. This is as follows:-

" Extent of Legislative Power

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."

41. It is seen that the members of the Legislative Assembly can make laws for any of the matters mentioned in the State List or in the Concurrent List in the Seventh Schedule of the Constitution. Section 33 provides for the Rules of Procedure. It is as follows:-

"33. Rules of procedure.-(1) The Legislative Assembly of the Union territory may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business: Provided that the Administrator shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President, make rules- (a) for securing the timely completion of financial business; (b) for regulating the procedure of, and the conduct of business in, the Legislative Assembly in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the Union territory; (c) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of the functions of the Administrator in so far as he is required by this Act to act in his discretion. (2) Until rules are made under sub-section (1), the rules of procedure and standing orders with respect to the Legislative Assembly of the State of Uttar Pradesh in force immediately before the commencement of this Act in the Union territory shall have effect in relation to the Legislative Assembly of that Union territory subject to such modifications and adaptations as may be made therein by the Administrator: "

42. It is seen that the members of the Legislative Assembly may make rules for regulating its procedure and conduct of its business. It is however provided that the Administrator, after consultation with the Speaker and with the approval of the President may make rules for any Financial Matter for any Bill for Appropriation of Monies out of the Consolidated Funds.

43. In the instant case, a decision whether to supply free food grains or to grant subsidy through DBT cash method, is a

Financial Matter and it requires Appropriation of Money from the Consolidated Fund of the Union Territory. It is also to be noted that in this case, the Council of Ministers had passed a resolution to increase the quantity of rice from 20 kgs to 30 kgs. The additional financial burden is a Financial Matter and the additional financial burden can be made only when there is Appropriation of Monies out of the Consolidated Fund of the Union Territory. In such matters, Section 33 provides that the Administrator may make rules after consultation with the Speaker and with the approval of the President. Therefore, the premise which is now established is that when any issue is brought before the Administrator which deals with financial matters, or with Appropriation of Monies of the Consolidated Fund of the Union Territory of Puducherry, then, after consultation with the Speaker and with the approval of the President, the Administrator shall make Rules.

44. Part IV of the Government of Union Territories Act 1963 relates to Council of Ministers. Section 44 is as follows:-

"44. Council of Ministers.-(1) There shall be a Council of Ministers in each Union territory with the Chief Minister at the head to aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union territory has power to make laws except in so far as he is required by or under this Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions:

Provided that, in case of difference of opinion between the Administrator and his Ministers on any matter, the Administrator shall refer it to the President for decision and act according to the decision given thereon by the President, and pending such decision it shall be competent for the Administrator in any case where the matter is in his opinion so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary: 1 * * * * 2 * * *
* * (3) If and in so far as any special

responsibility of the Administrator is involved under this Act, he shall, in the exercise of his functions, act in his discretion. (4) If any question arises as to whether any matter is or is not a matter as respects which the Administrator is by or under this Act required to act in his discretion, the decision of the Administrator thereon shall be final. (5) If any question arises as to whether any matter is or is not a matter as respects which the Administrator is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Administrator thereon shall be final. (6) The question whether any, and if so what, advice was tendered by Ministers to the Administrator shall not be inquired into in any court. "

45. This is the central provision raised in this Writ Petition and surrounding which all the learned Senior Counsels have advanced arguments. This is the provision under which the Council of Ministers had forwarded their resolution for supply of free rice through PDS to the third respondent and this is the provision under which the third respondent had expressed her differences and this is the provision under which the difference of opinion was referred to the President and this is the provision under which a decision was received from the President. This Section has therefore got to be dissected.

46. According to Section 44, there shall be a Council of Ministers in each Union Territory. For the Union Territory of Puducherry, there is a Council of Ministers. The petitioner is the Chief Minister of the Union Territory of Puducherry. He is the Head of the Council of Ministers. The Council of Ministers as a body had passed a resolution on 06.06.2016. This resolution was as follows:-

" CIVIL SUPPLIES:

Resolution No.2016/M.01/02: Increase in free rice quota from 10 kgs to 20 kgs.

It is resolved to approve the proposal in principle. The required funds will be made available in the budget. The Administrative Department will implement the decision with effect from 1st August, 2016."

47. This resolution meandered through its own course. Consequent to the resolution, G.O.Ms.No. 2 Civil Supplies and Consumer Affairs was passed on 04.07.2016 and was published in the Gazette of Puducherry. The said Notification was called the Puducherry Free Supply of Rice, Edible Oil and Essential Food Grains every Month to all Ration Card Holders (Amendment) Rules 2016. By the said notification, the free supply of 10 kgs of rice and 5 kgs of Wheat to every month to all Ration Card holders was substituted by "free supply of rice, edible oil and other essential food grains every month to all Ration Card Holders". Thus, the quantity of rice to be supplied was not notified in the Gazette.

48. Rule 5 of the Notification provided as follows:-

"5. Nature of Assistance.- Rice, edible oil and other essential food-grains shall be supplied to each Cardholders free of cost for every month at the quantity as fixed by the Government from time to time."

49. It is thus seen that rice and other essential food grains were resolved to be supplied free of cost every month at the quantity as fixed by the Government from time to time. The quantity was not determined in the Notification. It was to be determined by the Government from time to time. Thereafter, it had been provided as follows:-

"Initially, the Government will supply 20 kgs of rice every month commencing from August 2016 at free of cost to all the Ration Card holders of Union territory of Puducherry."

50. It had been further provided that initially the Government will supply 20 kgs of rice every month from August 2016, free of cost to all the Ration Card holders of Union Territory of Puducherry. In the counter affidavit of the third respondent, it had been stated that the third respondent had requested to exclude from the scheme, the Income Tax Assesseees, Senior Central and State Governments Officers holding Group - 'A' and 'B' posts and Dealers registered under the Goods and Service Tax Department with huge turnover.

51. In the counter affidavit, it had been further specifically stated that the third respondent had made notings

in this respect on 20.08.2016, 16.06.2017, 26.07.2017, 06.10.2017, 15.12.2017, 10.01.2018, 16.04.2018. It had been further stated that if all the Card holders are included then the number of persons, who will actually be benefited and who fall under AAY / BPL families / priority households would actually decrease. A tabular column had also been provided in the counter affidavit. However, in the absence of any conclusive proof of the statistics provided in the said tabular column, I am not inclined to express any view on that aspect. The claim of the third respondent to exclude Income Tax Assesses, 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.

52. The Council of Ministers again convened a meeting on 07.06.2019 and a further resolution in this regard was passed:-

"CIVIL SUPPLIES AND CONSUMER AFFAIRS
DEPARTMENT

Resolution No.2018/M.38/270: continuation of distribution of free rice in kind. Kind only under the free rice scheme, rather than transfer equivalent amount of cash into the bank account of the beneficiaries concerned (DBT)."

53. It is thus seen that there are two resolutions of the Council of Ministers. One on 06.06.2016 and the other on 07.06.2019. Both the resolutions were by the Council of Ministers. The meeting on 06.06.2016 was attended by the following members:-

1. Thiru. V.Narayanasamy, Hon'ble Chief Minister.
2. Thiru A.Namassivayam, Hon'ble Minister
3. Thiru Malladi Krishna Rao, Hon'ble Minister
4. Thiru M.Kandasamy, Hon'ble Minister
5. Thiru MOHF Shajahan, Hon'ble Minister
6. Thiru R.Kamalakaran, Hon'ble Minister.

54. The meeting on 07.06.2019 was also attended by the same members, namely,

1. Thiru. V.Narayanasamy, Hon'ble Chief Minister.
2. Thiru A.Namassivayam, Hon'ble Minister
3. Thiru Malladi Krishna Rao, Hon'ble Minister
4. Thiru M.Kandasamy, Hon'ble Minister
5. Thiru MOHF Shajahan, Hon'ble Minister
6. Thiru R.Kamalakaran, Hon'ble Minister.

55. In the meeting on 07.06.2019, the Council of Ministers had reiterated the decision to continue distribution of free rice in kind under the free rice scheme rather than transfer cash into the bank account of the beneficiaries. This decision was taken by the Cabinet. At this stage, the argument advanced by the learned Senior Counsel for the fourth respondent has to be addressed. The learned Senior Counsel stated that the resolution was by the Assembly. The resolution by the Assembly was on 06.09.2019. This was subsequent in fact on the very next day to the opinion expressed by the third respondent differing with the resolution passed by the Cabinet. The opinion of the third respondent was on 05.09.2019. The resolution by the Assembly was on 06.09.2019. The third respondent was advised by the Council of Ministers to act according to their resolution, namely to supply rice in kind rather than transfer cash by DBT method. This resolution was on 06.06.2016 and was again reiterated on 07.06.2019 after a period of three years.

56. In the counter affidavit filed by the third respondent, it had been very specifically stated that the Council of Ministers in their meeting held on 12.09.2017, had discussed the draft Puducherry Food Security Rules 2017 and the third respondent had accorded approval on 20.10.2017 with slight modifications. These rules were also notified in the Gazette of Puducherry bearing No. 62 dated 26.10.2017. The final rules were approved by the third respondent on 12.01.2018 and was called the Puducherry Food Security Rules, 2017. It was notified in the Extraordinary Gazette of Puducherry bearing No.1 dated 17.01.2018. These rules were framed pursuant to the reminders of the Central Government to frame specific Food Security Rules under Section 10 read with Section 40 of the National Food Security Act 2013 (NFSA). Under Rule 5 of Puducherry Food Security Rules 2017, it had been provided as follows:-

"5. Implementation of Direct Benefit Transfer - Food subsidy shall be transferred to the Bank Account of the entitled households as per the provision of Cash Transfer of Food Subsidy Rules, 2015."

57. The resolutions referred above to supply rice were circulated to various departments including the Finance Department for approval. Finally it arrived at the desk of the third respondent. The third respondent noted her opinion with respect to the resolution passed by the Cabinet on 07.06.2019. The entire opinion is extracted below:-

"

Governor

651. I have carefully considered the resolution passed by the Cabinet in their meeting held on 07.06.2019.

652. Vide my notings at page 121-122/nf ante, I had accorded approval to adopt DBT as the mode of distribution from 2019-20 onwards for the reasons given in my notings.

653. The DBT mode completely eliminates pilferages and quality issues and it offers the freedom of choice to the beneficiaries to buy quality food grains from the open market for consumption. There will be saving on transportation and other managerial costs, which eventually may result in reduction in the cost of the UT Scheme. The funds directly released to the beneficiaries will be utilized by them within the geographical limits of the Union Territory, thus helping the local economy.

654. Further, there is no fresh justified reason to re-visit my approval for DBT from the financial year 2019-20 onwards.

655. In view of the difference of opinion between me and the Council of Ministers, a reference has been sent to MHA along with file (in original) for a decision, in terms of the provisions of Government of Union Territories Act, 1963 read with the Rules of Business of Government of Pondicherry, 1963.

656. Until we receive a decision from the MHA, the benefit under the Union Territory free rice scheme will be released to the beneficiaries by DBT mode only, in the scale as already being given and as per the availability of funds in the budget.

[Dr.KRIAN BEDI]
LIEUTENANT GOVERNOR"

58. A reading of the same shows that the third respondent reiterated her earlier approval to adopt DBT as the mode of distribution from the financial years 2019-2020.

59. The decision (2018) 8 SCC 501 [State (NCT of Delhi) Vs. Union of India and another, has been relied on by the learned Senior Counsel for the petitioner. The Hon'ble Supreme Court in paragraph No. 284.2 had occasion to observe as follows:-

"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."

60. Further when dealing with an opinion of the Lieutenant Governor in that case, which differed from the advise given by the Council of Minister, the Hon'ble Supreme Court further observed in paragraph No. 474 as follows:-

"The Lieutenant Governor has the authority to take action which is warranted by emergent circumstances until the President has taken a decision. But before recourse is taken to the proviso, the Lieutenant Governor must make every effort with the Minister or, as the case may be, the Council of Ministers to resolve a matter of difference."

[Emphasis Supplied]

61. In this case, very regrettably, it appears that not even a fleeting thought had swept across the mind of the third respondent to attempt to make an effort, even a small effort to resolve the matter of difference with either the petitioner or with the Council of Ministers with intend to bring about an amicable solution which might have saved the ex-chequer of this costly legal proceedings.

62. It is however seen that a direct conflict and difference of opinion had arisen between the resolution of the Council of Ministers and the opinion of the third respondent.

63. This Court even while exercising jurisdiction under Article 226 of the Constitution of India can never examine the

merits/demerits of the two different proposals. This Court can never and shall never substitute itself either as the petitioner / Chief Minister / Council of Ministers or as the third respondent. They are independent authorities created under the Constitution. Though in the Affidavit filed in support of the Writ Petition, the petitioner has given various reasons why it is preferable to supply free rice to the Card holders and joining issue, the third respondent had, in her counter affidavit given various reasons why DBT (Cash) method is better, this Court should never and does not, in the instant case examine the two methods and give an opinion on either one as that would be exceeding jurisdiction. That would mean giving up the robe of a Judge and wearing the apparels of a Chief Minister / Lieutenant Governor. This Court certainly does not want to give up its robe as a Judge and alternatively wear the apparels of those authorities. Therefore, very consciously, I am not entering into any discussion as to whether the supply of free rice through PDS is a better option or not and also whether transfer of DBT (Cash) method is a better option or not. Both the authorities have their respective justifications for their respective opinions. This Court should never and does not enter into any discussion on such policy decisions by both the authorities and cannot even attempt to examine whether this method is better or that method is better. Therefore, no opinion is given on the two methods.

64. I have emphasised this aspect because all the learned Senior Counsels, who argued placed specific reliance on the comparative benefits of both the schemes. I am not prepared to be drawn to fall into that web and examine which scheme is better. Such a discussion will be beyond the realm of an order examining an Administrative Order under Article 226 of the Constitution of India. The correctness or otherwise of any Administration Order can never be examined by any Court of law. It is the procedure adopted to arrive at such final decision which, alone, can be examined in judicial review.

65. Suffice to point out, the Council of Ministers preferred to supply free rice. The third respondent had preferred DBT (Cash) method.

66. Under Section 44 of the Government of Union Territories Act 1963, the Council of Ministers shall aid and advise the Administrator in the examination of his functions in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws. The power to make laws are with respect to the items enumerated in the State List or in the Concurrent list of the Seventh Schedule of the Constitution.

67. It had been argued by the learned Senior Counsel for

the petitioner that this decision whether to supply rice or to transfer cash by direct transfer is not a subject matter which comes under the Government of Union Territories Act 1963. None of the Senior Counsels addressed arguments on the lists contained in the seventh schedule. To the limited extent into which this Court can therefore examine the List. List II of the State List in schedule - 7 relates to production, supply and distribution of goods subject to the provisions of entry 33 of List III. List III relates to Concurrent List. Item 33 relates to production, supply and distribution and would include supply and distribution of (a); (b) Food stuffs including edible oil, seeds and oil; (c); (d); and (e)

68. Therefore the issue whether food grains are to be supplied is a subject matter in which the Legislature has the power to make law. Under Section 33, the Administrator, as stated above shall after consultation with the Speaker and with the approval of the President make rules relating to Financial Matters. Thus, both, the resolution for providing rice by the Council of Ministers and the suggestion by the third respondent to transfer cash under DBT scheme fall under the provisions of the Government of Union Territories Act 1963.

69. When there is a difference of opinion and in this case, there is a direct difference of opinion, Section 44 provides that, the Administrator shall refer it to the President for decision. Accordingly, in the instant case, the third respondent had also referred the matter for decision and has directed the entire file in original to be forwarded to the Ministry of Home Affairs. It must be kept in mind that the Ministry of Home Affairs is the arm through which the President can and shall convey his decisions.

70. The Ministry of Home Affairs had then forwarded the following communication which is impugned in this Writ Petition.

"Seal of	seal of
Office of Chief Secretary	Office of Lt.
Governor	
Puducherry	Puducherry

The Chief Secretary
Government of Puducherry
Chief Secretariat
Puducherry

Dated the Dec. 2019

Sub : Reference under the provision of Section 44(1) of the Government of Union Territories Act 1963, regarding matter of difference of opinion between the Administrator and the Council of Ministers in the

matter of distribution of free rice under Union Territory Scheme.

Sir,

I am directed to refer D.O. Letter No. LGS/DO/235/2019 dated 05.09.2019 on the above subject and to intimate that the matter was examined in this Ministry. Government of Union Territory of Puducherry is advised to continue with DBT (Cash) Scheme in lieu of distribution of free rice under the Puducherry State Free Rice Scheme.

2. This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-
(Jitendra Agrawal)
Advisor (UT)
Tel.No.011-23093008"

71. This order by the Ministry of Home Affairs as communicated to the Chief Secretary, Government of Puducherry has been very seriously questioned and criticized by the learned Senior Counsel for the petitioner.

72. Under Section 44, it had been further provided that any matter in which there is difference of opinion shall be referred to the President for a decision.

73. The learned Senior Counsel for the petitioner stated that the impugned order communicated by the Ministry of Home Affairs cannot be termed as a "decision" since reasons for agreeing with the opinion of the third respondent in comparison with the resolution of the Council of Ministers had not been given in the said order.

74. I respectfully disagree with that contention.

75. The very communication by the Ministry of Home Affairs has the following two crucial words "directed" and "examined". Any final communication, which is communicated, under directions or under orders, would naturally mean that a direction has been issued by the President and any decision by the President can never be questioned. When the matter also refers to the word "examined", it automatically means that every aspect contained in the file forwarded to the Ministry of Home Affairs has been examined. Therefore, I find no infirmity in the order communicated by the Ministry of Home Affairs. It is not for this Court to call for explanations from the Ministry of Home

Affairs as to what were the supervening circumstances which prevailed upon the President to give a decision that the DBT (Cash) scheme must be preferred in lieu of distribution of free rice. The immunity guaranteed under the Constitution is sacrosanct.

76. Section 44 of the Government of Union Territories Act 1963 further provides that when a "decision" has been rendered by the President then, further actions must be only according to the decision given their by the President. This is binding on the Council of Ministers which includes the Chief Minister and also the Lieutenant Governor. All of them, who had taken a oath to abide with the provisions of the Constitution are bound by it.

77. The nature of oath taken by a Member of the Council of Ministry of Union Territory is given in the First schedule to the Government of Union Territories Act 1963. The oath is as follows:-

"Form oath of office for a member of the Council of Ministers of a Union territory.

"I, A.B., do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the Union territory of -----, and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will."

78. This oath has to be upheld by each Member of the Council of Ministers. This oath provides that the Council of Minister shall bare true faith and allegiance to the Constitution of India as by law established and shall do right to all manner of people in accordance with the Constitution and the law.

79. 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. In this connection, the petitioner, who has filed the Writ Petition in his capacity as 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.

80. 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.

81. Primary reliance has been placed by the learned counsel for the petitioner (2018) 8 SCC 501 [State (NCT of Delhi) Vs. Union of India and Another. Even in the said Judgment, it had been very specifically stated that the terms of Administration of Union Territory of Puducherry is different from that of Delhi. This has been emphasised time and again in the said Judgment. In paragraphs 175 to 184, the Hon'ble Supreme Court had examined the interpretation of Article 239 and 239-A of the Constitution of India. The discussion is as follows:-

" O. Interpretation of Articles 239 and 239-A

175. To settle the controversy at hand, it is imperative that we dig deep and perform a meticulous analysis of Articles 239, 239-A, 239-AA and 239-AB all of which fall in Part VIII of the Constitution bearing the heading, "The Union Territories". For this purpose, let us reproduce the aforesaid Articles one by one and carry out the indispensable and crucial task of interpreting them.

176. Article 239 provides for the administration of Union Territories. It reads as follows:

"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."

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

178. Clause (2) thereafter, being a non obstante clause, lays down that irrespective of anything contained in Part VI of the Constitution, the President may appoint the Governor of a State to act as an Administrator of a Union Territory which is adjacent and/or contiguous to the State of which he is the Governor. The Governor of a State who is so appointed as an Administrator of an adjoining UT shall exercise his functions as an Administrator of the said UT independently and Autonomously and not as per the aid and advice of the Council of Ministers of the State of which he is the Governor.

179. In this regard, the Court, in Samsher Singh [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] , has observed thus: (SCC p. 848, para 54)

"54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in Articles to which reference has been made. To illustrate, Article 239(2) states that where a Governor is appointed an Administrator of an adjoining Union Territory he shall exercise his functions as such Administrator independently of his Council of Ministers."

180. Again, the Court, while interpreting Article 239 in Surinder Singh Brar v. Union of India [Surinder Singh Brar

v. Union of India, (2013) 1 SCC 403 : (2013) 1 SCC (Civ) 620] , observed: (SCC pp. 447-48, para 60)

"60. The unamended Article 239 envisaged administration of the States specified in Part C of the First Schedule of the Constitution by the President through a Chief Commissioner or a Lieutenant Governor to be appointed by him or through the Government of a neighbouring State. This was subject to other provisions of Part VIII of the Constitution. As against this, amended Article 239 lays down that subject to any law enacted by Parliament every Union Territory shall be administered by the President acting through an Administrator appointed by him with such designation as he may specify. In terms of clause (2) of Article 239 (amended), the President can appoint the Governor of a State as an Administrator of an adjoining Union Territory and on his appointment, the Governor is required to exercise his function as an Administrator independently of his Council of Ministers. The difference in the language of the unamended and amended Article 239 makes it clear that prior to 1-11-1956, the President could administer Part C State through a Chief Commissioner or a Lieutenant Governor, but, after the amendment, every Union Territory is required to be administered by the President through an Administrator appointed by him with such designation as he may specify. In terms of clause (2) of Article 239 (amended), the President is empowered to appoint the Governor of State as the Administrator to an adjoining Union Territory and once appointed, the Governor, in his capacity as Administrator, has to act independently of the Council of Ministers of the State of which he is the Governor."

181. Now, let us proceed to scan Article 239-A of the Constitution which deals with the creation of local legislatures or Council of Ministers or both for certain Union Territories. It reads as follows:

"239-A. Creation of local legislatures or Council of Ministers or both for certain Union Territories.-(1) Parliament may by law create for the Union Territory of Puducherry -

(a) a body, whether elected or partly nominated and partly elected, to function as a legislature for the Union Territory, or

(b) a Council of Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of Article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution."

182. The aforesaid Article was brought into force by the Constitution (Fourteenth Amendment) Act, 1962. Prior to the year 1971, under Article 239-A, Parliament had the power to create by law legislatures and/or Council of Ministers for the then Union Territories of Himachal Pradesh, Tripura, Manipur, Goa and Daman and Diu. Thereafter, on 25-1-1971, Himachal Pradesh acquired Statehood and consequently, Himachal Pradesh was omitted from Article 239-A. Subsequently, on 21-1-1972, Tripura and Manipur were granted Statehood as a consequence of which both Manipur and Tripura were omitted from Article 239-A.

183. Likewise, with the enactment of the Goa, Daman and Diu Reorganisation Act, 1987 on 30-5-1987, both Goa and Daman and Diu were omitted from Article 239-A. Parliament, under the Government of Union Territories Act, 1963, created legislatures for the then Union Territories and accordingly, even after 30-5-1987, the applicability of Article 239-A stands limited to UT of Puducherry.

184. As a natural corollary, the Union Territory of Puducherry stands on a

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

82. In paragraph No. 207, the said Judgment, the position that Delhi has a sui generis status as opposed to the specifically to the Union Territory of Puducherry is reiterated. Paragraph No. 207 is as follows:-

"207. At the outset, we must declare that the insertion of Articles 239-AA and 239-AB, which specifically pertain to NCT of Delhi, is reflective of the intention of Parliament to accord Delhi a sui generis status from the other Union Territories as well as from the Union Territory of Puducherry to which Article 239-A is singularly applicable as on date. The same has been authoritatively held by the majority judgment in NDMC case [NDMC v. State of Punjab, (1997) 7 SCC 339] to the effect that the NCT of Delhi is a class by itself. "

83. In paragraph No. 313 of the said Judgment, it had been stated as follows:-

"313. Article 239-A is enabling. It enables Parliament to enact a law for the Union Territory so as to create a legislature or a Council of Ministers or both. In creating a legislature, Parliament is left free to determine whether the legislative body should be entirely elected or should consist of a certain number of nominated legislators. Parliament, in its legislative power, may decide either to create a legislature or a Council of Ministers. Whether to do so, in the first place, is left to its discretion. Whether one or both of such bodies should be created is also left to the legislative authority of Parliament. If it decides to enact a law, Parliament is empowered to specify the constitutional powers and functions of the

legislature and of the Council of Ministers. While the Constitution provides an enabling provision, the setting up of a legislature, the creation of a Council of Ministers and the ambit of their authority are to be governed by an ordinary law to be enacted by Parliament. Such a law, clause (2) clarifies, would not constitute an amendment of the Constitution under Article 368 even if it were to contain provisions which amend or have the effect of amending the Constitution. Creating democratic institutions for governing Union Territories under Article 239-A was left to the legislative will of Parliament."

84. It is thus clear that in so far as the Union Territory of Puducherry is concerned, only Article 239-A applies only to Puducherry. Article 239-AA applies only to Delhi. Under Article 239-A, an Administrator is appointed by the President. Under Section 44 of the Government of Union Territories Act 1963, the Administrator is to act on the advise of the Council of Ministers. When advise is given by the Council of Ministers and the Administrator prefers to differ from that advise, then, the advise and the difference in opinion must be referred to the President for a decision. That decision is conveyed by the President through the Ministry of Home Affairs. When that decision is conveyed, it is binding on the Administrator. Since it is binding on the Administrator, the Administrator can grant approval only for the decision given by the President. That decision could either be in concurrence with the advise given by the Council of Ministers or in concurrence with the opinion of the Administrator. Even if the President concurs with the advise of the Council of Ministers, the Administrator is bound to act on such advise even though the Administrator had initially differed from such advice. In this case, the President has concurred with the opinion of the Administrator. Therefore, the Administrator can give financial sanction as provided under the Government of Union Territories Act, 1963 only for Appropriation of Funds out of the Consolidated Fund of the Union Territory only in accordance with the decision of the President of India.

85. In this case that decision as conveyed is for DBT transfer (Cash) method. This is binding on all concerned. It is also binding on the petitioner.

86. I am consciously not entering into the discussion whether the Writ Petition is maintainable or not.

87. Suffice to point out that as Chief Minister, the

petitioner must be aware that he is bound by any law enacted under the Constitution and intra vires the Constitution. The Government of Union Territories Act 1963 is intra vires the Constitution and Section 44 provides that a decision of the President is binding in nature. The petitioner cannot argue otherwise.

88. For all the reasons stated above, I am afraid, I am not able to accede to the views expressed by the petitioner herein. The Writ Petition is therefore dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

vsg
To

1. The Secretary to Government
The Union of India
Ministry of Home Affairs
New Delhi.
2. The Advisor (UT)
Ministry of Home Affairs
New Delhi
3. The Administrator of Puducherry
Puducherry.
4. The Assembly Secretary
Puducherry Legislative Assembly
Puducherry

+1 CC to Mr.R. Saravanan, Advocate sr 15266
+1 CC to Mr.V.Chandrasekaran, Advocate sr 15397
+1 CC to Mr.K. Srinivasamurthy, Advocate sr 14919
+1 CC to Mr.P. Ravichander, AGP Pondicherry sr 15323.
+1 CC to Govt. Pleader , Puducherry sr 15400.

W.P.No. 821 of 2020

And

W.M.P.No. 991 of 2020

RJI (CO)
SP(24/02/2020)