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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2020

DELIVERED ON : 05.03.2020

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.1895 of 2020
and WMP.Nos.2224 and 2225 of 2020

A.Namassivayam .. Petitioner
Vs.

- 1.Union of India,
Represented by Joint Secretary (UT),
Ministry of Home Affairs,
North Block, New Delhi-110 001.
- 2.Advisor (UT),
Union Territories Division,
Ministry of Home Affairs,
North Block, New Delhi-110 001.
- 3.The Administrator / Lieutenant Governor,
Raj Niwas, Puducherry.
- 4.The Chief Secretary-cum-Secretary to
the Council of Ministers,
Chief Secretariat,
Government of Puducherry,
Goubert Avenue,
Puducherry-605 001.
- 5.The Director,
Head of Department,
Local Administration Department,
No.16, Suffren Street,
Puducherry-605 001.
- 6.The Secretary to Assembly,
Puducherry Legislative Assembly,
Victor Simonel Street, White Town,
Puducherry-605 001.
- 7.The Under Secretary to Government,
Local Administration Department,
No.16, Suffren Street,
Puducherry-605 001.



8.Dr.Kiran Bedi,
The Administrator,
Raj Niwas,
Puducherry.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring the scheme of selection process as formulated by the 8th respondent and emanating from the impugned communication of 1st respondent herein through the 2nd respondent dated 18.12.2019 culminating into impugned order of the 3rd respondent in No.LGS/SEC/2019 dated 20.12.2019 followed by impugned Advertisement in No.13533/LAS/A2/2009-20 dated 06.01.2020 issued by the 7th respondent as published in Hindu Newspaper, Nationwide Edition on 07.01.2020, as arbitrary, ultra-vires and unconstitutional and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.Sathish Parasaran, Senior Counsel
assisted by Mr.P.Dineshkumar

For Respondents: Mr.G.Rajagopalan,
Additional Solicitor General
assisted by
Mr.K.Sreenivasamurthy,
Senior Central Govt. Panel Counsel
for R1 & R2

Mr.A.L.Somayaji, Senior Counsel
assisted by
Mr.V.Chandrasekar for R3 & R8

Mrs.N.Mala,
Addl. Govt. Pleader (Pondicherry)
for R4 & R5
Mr.J.Jagan for R6

O R D E R

M.SATHYANARAYANAN, J.

The stand-off between democratically elected Government of Union Territory of Puducherry [in short 'UTP'] and the Lieutenant Governor and Administrator of UTP, has once again reached the portals of this Court in the form of this litigation.

2. The writ petitioner is the Minister for Local Administration Department and Public Works Department of the Government of Puducherry and he has filed this Writ Petition to declare that the scheme of selection process as formulated by the 8th respondent, namely Dr.Kiran Bedi, The Administrator [in official capacity as the 3rd respondent] and emanating from the impugned communication of the 1st respondent through the order of the 2nd respondent dated 18.12.2019, which resulted in the impugned order of the 3rd respondent dated 20.12.2019, followed



by the impugned Advertisement dated 06.01.2020, issued by the 7th respondent, as published in certain News Dailies dated 07.01.2020, as arbitrary, ultra-vires and unconstitutional.

3. The matter in issue pertains to setting aside the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as State Election Commissioner [in short 'SEC'] done by UTP and issuing an advertisement calling for applications to fill up the said post.

4. The petitioner, in the affidavit filed in support of this Writ Petition would aver among other things that at the instance of the respondents 1 to 5, unconstitutional attempt has been made to displace the lawfully appointed SEC in contravention of the Constitutional Scheme and statutory framework with a malafide intention of delaying the Local Body Elections for UTP and also in defiance of the mandate of the Hon'ble Supreme Court. The petitioner would further aver that the said unconstitutional attempt is engineered with an evil design of conferring one Thiru G.Theva Neethi Dhas with the office of SEC and the qualifications enumerated are tailor-made in such a way so as to accommodate him. According to the petitioner, the present case is a product of another act of the 3rd respondent / Administrator, who has also been arrayed in her individual capacity as the 8th respondent herein, of running parallel Government ignoring the elected Government.

5. As regard the Locus Standi of the petitioner to file this Writ Petition, it is averred that the "Local Government" is a "State Subject" placed under Entry 5 of List II of Schedule VII of the Constitution of India and it relates to administration of Local Body including Elections and it comes within the domain of the Local Administration Department and the petitioner, being in-charge of the said department, is primarily responsible for the disposal of the business of that department as per Rule 6(2) of the Rules of Business of Government of Puducherry, 1963 [in short 'Business Rules'].

6. The petitioner, dealing with factual aspects, would state that Local Body Government of UTP comprised of 5 Municipalities, 10 Commune Panchayats comprising of 98 Village Panchayats in three blocks and election to the said bodies is overdue since 2011 and the office of SEC remains vacant since 31.05.2015.

7. The Hon'ble Supreme Court of India, in the judgment dated 08.05.2018 made in Civil Appeal Nos.4994 - 4995 of 2018 [The Chief Secretary, Government of Puducherry v. J.Anandalakshmi], has directed the 4th respondent to complete the delimitation exercise insofar as Panchayats and Municipalities are concerned within a period of four weeks from the date of the order and once it is complete, the elections to the Municipalities and Panchayats will be notified immediately and held in accordance with the Constitutional and statutory provisions concerned and further pointed out that no further delay can be brooked and it will be open for any party to come



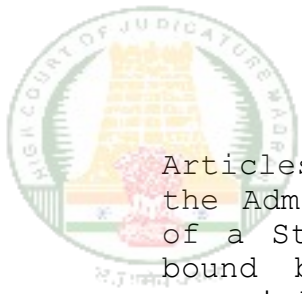
back to the Court, in case the needful is not done within the strict time-line fixed by it and further made it clear that on no account the election process will be stalled after delimitation is complete.

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8. Accordingly, the Council of Ministers, vide Resolution No.2018/M.30/196 dated 25.05.2018, had approved the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC and it was forwarded to the 3rd respondent on 31.05.2019, in compliance with the Business Rules. However, the 3rd respondent directed that delimitation of Municipal / Commune Panchayat / Village Panchayat Wards shall be concluded at first instance in terms of the above cited order of the Hon'ble Supreme Court and accordingly, the delimitation process was carried out and concluded and a notification to that effect was also issued in G.O.Ms.No.49 and 50 dated 07.03.2019 by the Government of Puducherry and thereafter, the files relating to the appointment of SEC was once again forwarded to the third respondent.

9. The petitioner would further state that the 3rd respondent, upon receipt of the said file, had stated that the decision of the Cabinet was not approved for appointment of SEC and after indicating so, had formulated Scheme for appointment of SEC by prescribing qualification for the said post by constituting Selection Committee through notings in the file. It has also been directed by the 3rd respondent that the selection of SEC shall be made by the Selection Committee comprising of the Chief Secretary of UTP, representatives from the Ministry of Home Affairs [MHA] and Ministry of Panchayat Raj of the Government of India. The 3rd respondent, while prescribing qualification for SEC, had adopted the qualifications prescribed under Model State Commissioner (Conditions of Service) Bill as circulated by the Ministry of Panchayat Raj of the Government of India.

10. It is the stand of the petitioner that such acts on the part of the 3rd respondent, apart from suffering on account of lack of jurisdiction, also runs contrary to the existing Rules in force as on date relating to the appointment of SEC and also invited the attention of this Court to Section 9-A of the Puducherry Village & Commune Panchayats Act, 1973 and Section 15-A of the Puducherry Municipalities Act, 1973, which provides that Elections to Local Bodies shall be conducted by SEC to be appointed by the 3rd respondent. The petitioner, on the legal plea, made a submission that the subject "Local Government" is a State Subject, falling under List II of the Constitution of India and therefore, exercise of the said function by the 3rd respondent had to be necessarily executed under the aid and advise of the Council of Ministers, as contemplated under Section 44 of Government of Union Territories Act, 1963 and such a decision has been taken by the Council of Ministers in approving the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC and as such, by operation of Section 44 of Government of Union Territories Act, 1963, it is binding upon the 3rd respondent more particularly in the absence of any valid reference to the President based on the difference of opinion.



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Articles 243-L and 243-ZB of the Constitution of India places the Administrator of a Union Territory on par with the Governor of a State and therefore, the 3rd respondent is expected to be bound by the aid and advise of the Council of Ministers, especially with regard to the functions enumerated under Part-IX of the Constitution of India.

11. The petitioner would further aver that in furtherance of the directions of the 2nd respondent, the 4th respondent, vide communication dated 06.07.2019, addressed to the 1st respondent, has sought for nomination of representatives for constitution of Selection Committee as directed by the 3rd respondent and it falls short of trappings of a valid reference and even assuming so, in the absence of any direction for suspension of decision of Council of Ministers by the Administrator, there cannot be any impediment to give effect to the decision of the Council of Ministers in accordance with the Rules and advertisement has also been issued in News Dailies inviting applications for selection to the post of SEC.

12. The Legislative Assembly also took cognizance of the said developments and unanimously resolved to make the above said unconstitutional process redundant by nullifying the impugned advertisement dated 08.07.2019 and it has also called upon the Council of Ministers to proceed further with Local Body Elections in tune with their earlier decision, especially on the choice of appointing Thiru T.M.Balakrishnan I.A.S. (Retd.) and the resolution of the Legislative Assembly was also communicated by the 6th respondent, vide communication dated 22.07.2019.

13. The petitioner would further state that consequent upon the said resolution of the Legislative Assembly, the Council of Ministers has sought for Status Report on the appointment of SEC and it was submitted by the Local Administration Department, vide memorandum dated 22.07.2019 and upon receipt of the same, the Council of Ministers, in order to give effect to the resolution of the Legislative Assembly, has passed a resolution reiterating their earlier decision of appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC and directed implementation of the said decision forthwith in line with the Business Rules and also directed the Local Administration Department to withdraw it's advertisement dated 08.07.2019.

14. The Government of Puducherry, vide order in G.O.Ms.No.14/A4/LAS/2019 dated 23.07.2019, had appointed Thiru.T.M.Balakrishnan, I.A.S. (Retd.) as SEC for a period of three years and it was also published in Government Gazette dated 23.07.2019 and such appointment is also in consonance with Rules 6(2) and 16(2) of the Business Rules. Thiru T.M.Balakrishnan took charge as SEC with effect from 23.07.2019 and his pay and allowances were also notified by the Department of Local Administration, vide order dated 30.08.2019.

15. SEC, after assumption of office, took further steps and expedited the election process by appointing District Election Officers (DEO) and Regional Election Officers (REO), vide



notification dated 03.12.2019 and the same was also published in Government Gazette dated 05.12.2019. SEC also appointed Commissioner of Municipalities and Commissioners of Commune Panchayats as Electoral Registration Officers, vide notification dated 09.12.2019 and a publication to that effect was also given in Government Gazette on 10.12.2019 and on such appointments, the process for preparation of Electoral Rolls had also commenced, as evidenced from the circular of SEC dated 12.12.2019.

16. The petitioner would further state that while much progress has been made after the appointment of SEC, the 1st respondent, in reply to the communication of the Chief Secretary of the Government of Puducherry dated 06.07.2019, sought for nomination of representatives from the Ministry of Home Affairs and the Ministry of Panchayat Raj towards constitution of Selection Committee, vide communication through the 2nd respondent dated 18.12.2019 and also made a request that selection of SEC shall be made through All India Advertisement and by the Selection Committee headed by the 4th respondent and the terms of reference of such Committee be finalized by the 3rd respondent.

17. The 3rd respondent, taking advantage of the communication of the first respondent dated 18.12.2019, has passed an order dated 20.12.2019, nullifying the appointment of Thiru T.M.Balakrishnan as SEC by declaring the relevant order in G.O.Ms.No.14/A4/LAS/2019 dated 23.07.2019 as null and void abinitio and further directed the 4th respondent to be the head of Selection Committee and to proceed with and conclude the process of selection of SEC. Accordingly, the 7th respondent has issued the impugned advertisement dated 06.01.2020, published in News Dailies on 07.01.2020 inviting applications for appointment for the post of SEC.

18. The petitioner points out that the incumbent SEC, namely Thiru T.M.Balakrishnan has already assumed charge and currently performing his duties by expediting elections to Local Bodies and in terms of Proviso to Articles 243K(1) and 243ZA of the Constitution of India read with Section 9-A of the Puducherry Village and Commune Panchayats, 1973 and Section 15-A of the Puducherry Municipalities Act, 1973, SEC cannot be removed from his office except in the like manner or on the like grounds as Judge of an High Court. It is also the specific stand of the petitioner that the said acts were done by the 3rd / 8th respondent only to accommodate Thiru G.Theva Neethi Dhas and the said act bristles with malafides and arbitrariness on the part of the 8th respondent in favour of a person, who had chequered history.

19. The petitioner also points out the initiatives done by the 3rd / 8th respondent to retain Thiru G.Theva Neethi Dhas as Advisor and despite the 1st respondent permitted retention as Consultant for a fixed period in tune with General Financial Rules, 2017, in clear deviation of the said instructions, the 8th respondent has appointed him as Advisor and it is one of the



instances as to the bias and favouritism on the part of the 8th respondent in favour of a person. It is also brought to the notice of this Court during the course of arguments in this writ petition that a challenge has also been made to the appointment of Thiru G.Theva Needhi Dhas by filing a writ petition and the same is pending.

20. Mr.Sathish Parasaran, learned Senior Counsel assisted by Mr.P.Dinesh Kumar, learned counsel appearing for the petitioner made the following submissions:

- The Government of Union Territories Act, 1963 [Central Act No.20 of 1963] was enacted by the Parliament.
 - Section 2(1)(a) of the said Act defines "Administration" and it means the administration of the Union territory appointed by the President under Article 239 of the Constitution.
 - Section 2(1)(h) defines "Union Territory" and it means the Union Territory of Puducherry.
 - Section 3 of Part II speaks about Legislative Assemblies.
 - Section 18 speaks about Extent of Legislative Power and as per Sub-Section (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 such matters is applicable in relation to Union Territories".
 - As per Sub-Section (2) to Section 18, "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".
- Part IV of the The Government of Union Territories Act, 1963 deals with Council of Ministers and as per proviso to Section 44(1), "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".
- Section 46 deals with Conduct of Business and as per Sub-Section (2), "Save as otherwise provided in this Act, all executive action of the Administrator, whether taken on the advise of his Ministers or otherwise, shall be expressed to be taken in the name of the Administrator".
- Article 243K of the Constitution of India deals with Election to the Panchayats and proviso to Article 243K(2)



says that SEC shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the SEC shall not be varied to his disadvantage after his appointment.

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- Reliance has been placed to Sub-Section (1) to Section 44 of the The Government of Union Territories Act, 1963 and a submission was made that "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 to which the Legislative Assembly of the Union territory has power to make laws....." and further drawn the attention of this Court to Section 9-A of the Puducherry Village & Commune Panchayats Act, 1973 and Section 15-A of the Puducherry Municipalities Act, 1973, which speaks about elections of Municipal Councillors and Election to Panchayats respectively and since the decision to appoint Thiru T.M.Balakrishnan, I.A.S., (Retd.) as SEC was on account of the decision of the Council of Ministers unanimously and subsequently, reiterated by unanimous resolution of the Legislative Assembly as to the said appointment, the 3rd respondent is bound to act on the aid and advise of the Council of Ministers and it is not open to the 3rd respondent to take an independent decision by nullifying the appointment of SEC and resorting to selection process on her own whims and fancies.
- The learned Senior Counsel appearing for the petitioner further points out that "Local Government" falls under Entry 5 of List-II of VII Schedule of the Constitution of India and it falls within the domain of the Legislative Assembly and since the executive power of the petitioner being coextensive with that of the Legislative Assembly would also extend to matters pertaining to the Local Body, including conduct of Elections, the appointment of SEC, namely Thiru T.M.Balakrishnan, I.A.S. (Retd.) was wholly regular and proper and also in consonance with Business Rules, more particularly Rules 6(2) and 16(2).
- Part IX and IX A of the Constitution of India are made applicable to Union Territories under Articles 243L & 243ZB of the Constitution of India and in the light of the said Articles, the Administrator / Lieutenant Governor is treated on par with the Governor of a State and as such, the Administrator can neither function on her own discretion nor can dissent to the aid and advise of the Council of Ministers and in the event of difference of opinion shall refer it to the President of India under Section 44 of the Government of Union Territories Act, 1963 and in utter disregard to the Constitution and Statutory provisions, the 3rd respondent / 8th respondent acted on her own whims and fancies and it is not the first time the 3rd / 8th respondent had indulging in such kind of exercise and it has become the practice to do so.



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- The learned Senior Counsel appearing for the petitioner would submit that Article 239-A of the Constitution of India speaks about creation of local Legislatures or Council of Ministers or both for certain Union Territories, which include Union Territory of Puducherry also and further submits that as per Article 240, the President of India is having power to make Regulations for the peace, progress and good Government of the Union Territory.
- The learned Senior Counsel appearing for the petitioner has also invited the attention of this Court to the Minutes of the Council of Ministers held on 25.05.2018, which also dealt with the appointment of SEC and specifically drawn the attention to Paras 243 to 251 and would submit that files relating to appointment of Thiru T.M.Balakrishnan as SEC may be directed to be submitted to the 3rd respondent for approval. The Chief Secretary to the Union Territory of Puducherry / 4th respondent has placed the files to the 3rd respondent for conducting Local Body Elections as per the judgment of the Hon'ble Supreme Court.
- The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to various notices especially notings of the Lieutenant Governor which is available at Page No.21 of the typed set of papers, wherein the 3rd respondent was not inclined to recommend / approve the appointment of Thiru T.M.Balakrishnan as SEC and formulated own procedure for such an appointment by applying the Model State Commissioner (Conditions of Service) Bill as circulated by the Ministry of Panchayat Raj of the Government of India, which has not been followed by the said Ministry in respect of appointment of SECs in other Union Territories with a further direction for the Constitution of a Committee headed by the Chief Secretary to the Government of Union Territory of Puducherry, representatives from the Ministry of Home Affairs and Panchayat Raj for scrutiny of the applications and suggested the names of the competent authority for approval with time limit.
- The learned Senior Counsel appearing for the petitioner, attacking the said notice, would submit that the 3rd respondent without even getting approval of the said decision, directed communications of the said decision to the Ministry of Home Affairs and Ministry of Panchayat Raj for necessary action and it was the 3rd respondent, who sent a communication dated 06.07.2019 to the Secretary of Ministry of Panchayat Raj and Additional Secretary of Union Territory of Puducherry informing the decision of the 3rd respondent with a request to nominate representatives and also sent one more communication dated 26.04.2019 pointing out the time limit fixed by the Hon'ble Supreme Court and taking note of the said communication, the 1st respondent has sent a communication dated 18.12.2019 requesting the Government of Union Territory of Puducherry to select SEC through transparent and fair process in the form of



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inviting applications through All India Advertisements and selection will be made through Selection Committee headed by Chief Secretary of the Government of Puducherry and the position of terms of reference be finalized by the 3rd respondent.

- It is the vehement and forceful submission of the learned Senior Counsel appearing for the petitioner that the concept underlying federalism have been given a complete go-by by the respondents 1 to 3 and overlooking the unanimous resolution of the Council of Ministers and also reiterated by the unanimous resolution of the Legislative Assembly, the powers sought to be usurped by means of administrative instructions, overlooking the Constitutional mandate and statutory provisions and once again reiterated that the third respondent, who is also arrayed as 8th respondent in her individual capacity, by repeated acts of interference, is interfering with the conduct of administration and thereby prevented the democratic elected Government in performing his duties and responsibilities for the welfare of the people and it is high time that such acts should be put to an end and prays for appropriate orders.

The learned Senior Counsel appearing for the petitioner, in support of his submissions, placed reliance upon the Constitution Bench decision of the Hon'ble Supreme Court in State (NCT of Delhi) v. Union of India and Others [(2018) 8 SCC 501].

21. Mr.G.Rajagopalan, learned Additional Solicitor General appearing for the respondents 1 and 2 made the following submissions:

- Section 46 of the Government of Union Territories Act, 1963 speaks about conduct of business and as per Sub-Section(2) of Section 46, "Save as otherwise provided in this Act, all executive actions of the Administrator, whether taken on the advice of his Ministers or otherwise, shall be expressed to be taken in the name of the Administrator"
- As per Sub-Section (3) of Section 46, "Orders and other instruments made and executed in the name of the Administrator, shall be authenticated in such manner as may be specified in rules to be made by the Administrator.....".
- Attention of this Court was invited to the typed set of documents filed by the petitioner and a submission was made that Local Administration Department of the Government of Puducherry has published a Gazette Notification in G.O.Ms.No.14/AR/LAS/2019 dated 23.07.2019 as to the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC for UTP in pursuance of Section 9-A of the Puducherry Village and Commune Panchayats Act, 1973 and Section 15-A of the Puducherry Municipalities Act, 1973 and it is also indicated that his service will be governed by the provisions of the Election Commissioner of the Union Territory of Puducherry (Conditions of Service and Tenure



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of Office) Rules, 1994 and admittedly, a Gazette Notification has been published by the Under Secretary to Government (Local Administration), Government of Puducherry and the order of the 3rd respondent under Section 46(2) of the Government of Union Territories Act, 1963 have not been adhered to or complied with.

- The learned Additional Solicitor General has drawn the attention of this Court to Section 9-A of the Puducherry Village and Commune Panchayats Act, 1973 which speaks about Elections to Panchayats and would submit that Sub-Section (1) of Section 9-A, "the superintendence, direction and control of the preparation of electoral rolls for and the conduct of, all elections to the panchayats shall be vested in the Election Commission consisting of an Election Commissioner to be appointed by the Administrator" and as per Sub-Section (2) of Section 9-A, "Subject to the provisions of any law made by the Legislative Assembly of the Union Territory, the conditions of service and tenure of office of the Election Commissioner shall be such as the Administrator may by rule determine" and admittedly, the order appointing Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC has not been done in the name of the Administrator / Lieutenant Governor and no approval has also been accorded.
- It is also pointed out that though the Government Gazette notification dated 23.07.2019 also speaks about Section 15-A of the Puducherry Municipalities Act, 1973 which deals with Election to Municipal Councils and the said provision says that "The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the municipal councils shall be vested in the Election Commission consisting of an Election Commissioner appointed under Section 9A of the Puducherry Village and Commune Panchayats Act, 1973", invocation of Sections 9-A and 15-A of the respective Acts would not come to the aid of the petitioner for the reason that approval of the appointment shall be done in the name of the Administrator / Lieutenant Governor and admittedly, it has not been done.
- The learned Additional Solicitor General has further invited the attention of this Court to the Election Commissioner of the Union Territory of Pondicherry (Conditions of Service and Tenure of Office) Rules, 1994 and would submit that the said Rules came to be framed in exercise of powers conferred by Sub-Section (2) of Section 9A of the Pondicherry Village and Commune Panchayats Act, 1973 and a notification was also issued to that effect by the Administrator framing the said Rules and it deals with conditions of service and has not spoken anything as to the manner/procedure to be followed as to the said appointment and in the absence of any specific statutory provisions/rules/regulations with regard to the qualification and mode of selection, the Administrator / Lieutenant Governor is entitled to prescribe the said

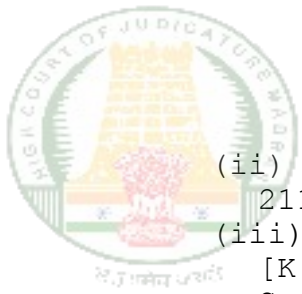


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qualification and in this regard, the Lieutenant Governor has also passed an order dated 01.07.2019 and seeking clarification the 4th respondent has also sent a communication dated 26.04.2019 to the Additional Secretary, Union Territory Ministry of Home Affairs, New Delhi, who in response to the same, has sent a communication dated 18.12.2019 requesting the Government of UTP to select the SEC through a transparent, competitive and fair process and the composition of terms of reference of the Selection Committee to select the SEC may be finalized by the 3rd respondent and accordingly, the 3rd respondent has passed the impugned order dated 20.12.2019 nullifying the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as void abinitio with a further direction as to the composition and terms of reference of the Selection Committee and it cannot be faulted with.

- It is also argued by the learned Additional Solicitor General that Section 50 of the Government of Union Territories Act, 1963 speaks about Relation of Administrator and his Ministers to President and it says that "Notwithstanding anything in this Act, the Administrator and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President" and the Ministry of Home Affairs acting on behalf of the President had sent the above cited communication dated 18.12.2019 and in compliance of the same only, the 3rd respondent had acted and in the absence of any challenge to the vires of the said provision, challenge made by the petitioner in this writ petition is per se unsustainable.
- It is also argued by the learned Additional Solicitor General that in terms of the Pondicherry Authentication (Orders and Other Instruments) Rules, 1963, the orders and other instruments made and executed in the name of the Administrator shall be authenticated by certain officials, the details of which have been given in Rule 2 and the order appointing Thiru T.M.Balarkrishnan, I.A.S. (Retd.) as SEC has not been approved and came to be issued without the authentication of the 3rd respondent and further that vide impugned order, the said appointment came to be declared as void abinitio.

In sum and substance it is the submission of the learned Additional Solicitor General that in the light of various legal provisions, rule position coupled with the factual aspects, the writ petition is per se not maintainable and even on merits, it deserves dismissal and prays for dismissal of this writ petition. The learned Additional Solicitor General, in support of his submissions, placed reliance on the following decisions:



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(ii) Registrar, High Court of Madras v. R.Rajiah [(1988) 3 SCC 211];

(iii) Order dated 30.04.2019 made in W.P.No.28890 of 2017 [K.Lakshminaryanan v. Union of India, represented by the Secretary to Government, Ministry of Home Affairs, New Delhi].

22. Mr.A.L.Somayaji, learned Senior Counsel assisted by Mr.V.Chandrasekar, learned counsel appearing for the respondents 3 and 8 made the following submissions:

- The decision rendered by a Constitution Bench of the Hon'ble Supreme Court of India in State (NCT of Delhi) v. Union of India and Another [(2018) 8 SCC 501] have no application to the case on hand for the reason that it dealt with Article 239-AA of the Constitution of India and drawn the attention of this Court to various paragraphs and would submit that facts and legal issues dealt with by the Hon'ble Apex Court in the above cited decision only pertains to NCT of Delhi and the ratio decided in the said decision have no application to the case on hand at all.
- The appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC done by the Government of Puducherry was not open/transparent and the order of his appointment has neither been approved nor authenticated by the 3rd respondent.
- The Election Commissioner of the Union Territory of Pondicherry (Conditions of Service and Tenure of Office) Rules, 1994 did not contain any provision as to the qualification and the manner of appointment and in the absence of any statutory rule, it can be filled up by administrative instructions.
- The 4th respondent had sought for clarification in this regard, vide communication dated 06.07.2019 addressed to the Secretary, Ministry of Panchayat Raj and Additional Secretary, Union Territory Ministry of Home Affairs, New Delhi, followed by yet another communication dated 26.04.2019 and in response to the said communication, the Advisor (Union Territory) has sent a communication dated 18.12.2019 requesting the Government of UTP to select SEC through transparent, competitive and fair process and the composition and terms of reference of the Selection Committee to select the SEC may be finalized by the 3rd respondent and following the Model Rules, the 3rd respondent directed issuance of All India Advertisement prescribing qualifications and it is also open to the present incumbent namely, Thiru T.M.Balakrishnan to apply for the said post and the adoption of fair and transparent manner for the process of selection cannot be faulted with as against the secret manner in which Thiru T.M.Balakrishnan was appointed as SEC.
- The 3rd respondent had exercised the said power under Section 9A of the Puducherry Village and Commune



Panchayats, 1973 read with Rule 3 of the The Election Commissioner of the Union Territory of Pondicherry (Conditions of Service and Tenure of Office) Rules, 1994.

- The Legislative Assembly cannot be termed as a Competent Authority under Section 330 of the Puducherry Village and Commune Panchayats, 1973 for the reason that in terms of the Government of Union Territories Act, 1963 read with Rules of Business of Government of Puducherry, 1963, the Administrator and the Central Government represented by the Ministry of Home Affairs have integrated role to play and the provisions of the Act also contemplates that consent of the 3rd respondent for introduction and assent after passing of the Act in the Legislative Assembly or resorting for consideration of the President of India.
- The point put forward by the petitioner as to the subject matter falls in List II and as such, the petitioner, being the Minister for Local Administration Department, is having competence to make such an appointment by giving effect to the resolution of the Council of Ministers is per se unsustainable for the reason that despite the orders passed by the Hon'ble Supreme Court of India, there was some delay in finalizing the delimitation of Wards and attention of this Court was also invited to file notings of the State Election Commissioner dated 26.05.2019 wherein in Paragraph No.7 having noted certain discrepancies of major / minor process in the delimitation orders, had also brought to the knowledge of the Secretary, Local Administration Department and sought their confirmation if deemed fit in consultation with the Government to proceed to initiate necessary action for taking procedure and Panchayat Elections based on the delimitation orders as notified on 07.03.2019 and it was the Council of Ministers responsible for the delay in conducting Local Body Elections.
- The contention put forward by the petitioner as to the difference of opinion between the Government and the 3rd respondent as to the appointment of SEO, the 3rd respondent, being the Appointing Authority under Section 9-A of the Puducherry Village and Commune Panchayats Act, 1973, has thought fit to adopt open/transparent and fair procedure in the selection and appointment of SEC and accordingly, passed an order dated 04.07.2019 and the 5th respondent also sought clarification through two communications and in pursuance to the response of the Ministry of Home Affairs dated 18.12.2019, followed by an order of the 3rd respondent dated 20.12.2019, All India Advertisement came to be issued and it cannot be faulted with and that apart, in the light of the factual circumstances, it cannot be said that there was difference of opinion between the Government and the 3rd respondent.

- Section 50 of the Government of Union Territories Act, 1963 has a residuary power and in the light of the Non-Obstante Clause, it cannot be construed that the Central Government



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can arrogate all powers unto itself and by placing reliance upon the said provision, it is contended by the petitioner that Democratically Elected Government of Puducherry is having power and authority to select and appoint SEC and the said stand taken by the petitioner is quite contrary to Section 239A of the Constitution of India for the reason that a body has been created to function as Legislative Assembly and Council of Ministers and in terms of Section 3 of the Government of Union Territories Act, 1963, executive power of the Council of Ministers is co-extensive with that of the Legislative powers.

- Section 18 of the Government of Union Territories Act, 1963 also makes it clear that subject to the provisions of the Act everything should follow and Section 44 of the Act also give discretionary powers to the 3rd respondent in matters relating to judicial and quasi judicial functions under any Law.
- Both under the Government of Union Territories Act, 1963 and Rules of Business of Government of Puducherry, 1963, matters be referred to the Central Government for approval and Rule 56(2) of the Business Rules also makes it clear that the Administrator may raise Questions of Law etc.
- It is also brought to the knowledge of this Court by the learned Senior Counsel appearing for the 3rd respondent that subsequent to the impugned order, the Hon'ble Chief Minister of the Government of Puducherry has passed an order dated 03.01.2020 and the 5th respondent was directed not to follow the directions of the 3rd respondent dated 20.12.2019, which has been declared illegal with a further direction to act as per the Puducherry Village and Commune Panchayats Act / Panchayats Municipalities Act and the Constitution of India for the reason that the Legislative Assembly of UTP is a body created by Ordinary Law under Article 239A of the Constitution and it cannot be equated with the Legislative Assembly created by the Constitution and it is also governed by the provisions of the Government of Union Territories Act, 1963 and the decision of the Council of Ministers as well as Legislative Assembly are merely opinion/recommendation and it is for the Central Government to take a call.
- Election Commissioner of the Union Territory of Pondicherry (Conditions of Service and Tenure of Office) Rules, 1994 do not provide for qualification, selection and mode of appointment and so also the Principal Acts, namely Puducherry Village and Commune Panchayats Act, 1973 as well as Pondicherry Municipalities Act, 1973 and only after getting the concurrence / approval of the Central Government, the 3rd respondent had acted further and it cannot be faulted with for the reason that rule position has been adhered to and that apart, one cannot be faulted for having resorting to open / transparent and fair selection process.



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- Lastly as to the appointment of Thiru.G.Theva Needhi Dhas, as Officer on Special Duty is concerned, the said appointment has been done after getting the concurrence of the Central Government and the said person did not apply for the post of SEC on the earlier occasion and as such, introducing his name in order to tarnish the name of the Constitutional functionary, namely 3rd respondent, is also not in good taste.

Therefore, the learned Senior Counsel appearing for the 3rd respondent prays for dismissal of this writ petition with exemplary costs. The learned Senior Counsel appearing for the 3rd respondent, in support of his submissions, placed reliance upon the following decisions:

- (i) State (NCT of Delhi) v. Union of India and Another [(2018) 8 SCC 501]
- (ii) K.Lakshminarayanan v. Union of India [2018 SCC Online 2730]

23. In response to the said submission, Mr.Sathish Parasaran, learned Senior Counsel appearing for the petitioner reiterated his earlier submissions and would further add that the decision rendered by the Constitution Bench of the Hon'ble Supreme Court in State (NCT of Delhi) v. Union of India and Another [(2018) 8 SCC 501] have full application to the case on hand and whatever little power given to the Government of Puducherry is sought to be taken away by the 3rd respondent in the form of impugned order and would further add that after Thiru T.M.Balakrishnan, I.A.S. (Retd.) assumed office, it started moving in right directions and it has been set at nought by autocratic behaviour of the 3rd respondent, who also started interfering with the day-to-day functioning and running of the administration by the Elected Government of Puducherry and prays for allowing of this writ petition.

24. This Court paid it's anxious consideration and best attention to the rival submissions and also perused and considered the entire materials placed before it as well as took note of the decisions relied on by the respective learned Senior Counsel appearing for the parties.

25. The following questions arises for consideration in this writ petition:

- (1) Whether the impugned order of the 3rd respondent dated 20.12.2019 is in consonance with the relevant Constitutional and Statutory provisions referred to, governing the administration of UTP ?
- (2) Whether the proceedings resulted in the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC by the Local Administration Department of the Government of Puducherry dated 30.08.2019, is sustainable ?



Question No.(1)

26. Let this Court look into the factual aspect and legal position.

26.1. In D.Gobalousamy and another v. The Union Territory of Pondicherry and others [AIR 1970 Madras 419 (DB)], validity / vires of Section 6 of the Pondicherry Civil Courts Act, 1966 came up for consideration. The Division Bench of Court, in the said decision, has also considered the scope of Article 239-A read with Article 248 and Schedule VII, List I, Entry 97 of the Constitution of India as well as Section 18 of the Government of Union Territories Act, 1963 and it is relevant to extract the following portions of the said judgment:

"(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 a Union Territory or any part thereof.

While investing the Legislative Assembly of a Union Territory with power to make laws with respect to matters enumerated in the State and Concurrent Lists, the overriding power of Parliament under Article 246 (4) is indicated by Section 18 (2) of the Act. It is provided by the sub-section that even after the Legislative Assembly is created for a Union Territory, Parliament shall possess paramount power of legislation with respect to any matter for a Union Territory or part thereof.

Manifestly, acting under Article 239-A of the Constitution Parliament, creating a Legislative Assembly for a Union Territory, can invest it with such powers and functions as by law it chooses to specify. Now, under Section 18 of Act XX of 1963, Parliament has invested the Legislative Assembly of Pondicherry with power to make laws with * respect to any of the matters enumerated in the ' State ' and ' Concurrent ' Lists of the Seventh Schedule to the Constitution. Entry 3 of the State List in the VII Schedule covers legislation with respect to administration of Justice, constitution and organisation of all Courts except the Supreme Court and the High Court, officers and servants of the High Court, procedure in rent and revenue Courts and fees taken in all Courts except the Supreme Court. It is admitted that the topic of legislation of the impugned Pondicherry Civil Courts Act falls under Entry 3 of the State List. Indubitably, if the Pondicherry Legislative Assembly has power to enact laws with respect to matters in the State List, it has the requisite legislative power to pass the Civil Courts Act now impugned. To confine the powers of legislation with reference to Union Territories to Parliament alone, is to wholly ignore the Constitution 14th Amendment Act. When Parliament, pursuant to the power vested in it under the Constitution, provided by law a Legislative Assembly for the Union Territory of



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Pondicherry and invested the Legislature with certain legislative powers, it is a misconception to refer to such investiture of legislative power as abdication by Parliament of its power of legislation under Article 246 (4). Nor can the due exercise by Parliament of its power under Article 239-A be referred to as unconstitutional delegation. The legislative power of Parliament to enact Act XX of 1963 and particularly Section 18 therein is unassailable. It is found in Article 239-A read with Article 248 and Entry 97 of the Union List. The several provisions in the Constitution have to be read harmoniously and, the significant provision, Clause (2) of Article 239-A has to be kept in mind. By virtue of the clause, even if a law made by Parliament creating local Legislature for a Union Territory and investing it with legislative power ' contains provisions which amends or has the effect of amending the Constitution ', any such law shall not be deemed to be an amendment of the Constitution for the purpose of Article 368, It is pertinent in this context to refer also to Section 21 of Act XX of 1963 which deals with inconsistencies between laws made by Parliament and those made by legislative Assembly. Section 21 reads ::

If any provision of law made by the Legislative Assembly of a Union Territory is repugnant to any provision of law made by Parliament, then, the law made by Parliament, whether passed before or after the law made by the Legislative Assembly of the Union Territory, shall prevail and the law made by the Legislative Assembly of the Union Territory shall, to the extent of the repugnancy, be void.

Explanation.--For the purposes of this section, the expression " law made by Parliament" shall not include any law which provides for the extension to the Union Territory of any law in force in any other part of the territory of India or any law made before the commencement of this Act, in relation to any matter with respect to which the Legislative Assembly of the Union Territory has power to make laws.

The second limb of the Explanation to Section 21 answers the contention that the impugned Pondicherry Act XII of 1966 in general and Section 6 of the Act in particular are violations of related existing law of the Centre with reference to Pondicherry.

4. It is next urged that Article 239-A empowers Parliament to create by law a body to function as a Legislature for a Union Territory only with such constitution power and functions, as may be specified in the law, but that Section 18 of Act XX of 1963 invests a Legislative Assembly thus created with power to make laws in respect of any matter enumerated in the State List and Concurrent List of the VII Schedule in so far as any such matter is applicable to a Union



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Territory. The argument is that, when all the topics of legislation under the State List and Concurrent Lists are given to a Legislative Assembly thus created, it is not a specification of powers which is what Article 239-A provides for. Learned Counsel would contend that Parliament, under Article 239-A, is expected to select particular topics of legislation from the Lists and invest the Legislative Assembly of a Union Territory legislative power with respect to them only and not to delegate power of legislation over all the topics in the Lists. According to Counsel, to specify certain power, is not to grant power wholesale or in general. We are unable to appreciate the force of this contention. As we have indicated supra, under Article 246 there is no distribution of legislative power to a Legislative body of a Union Territory. Legislative powers are found scheduled under three different Lists, ' Union ', ' State ' and ' Concurrent ' Lists. What Article 239-A plainly provides is that the law, which creates a legislative body, should itself mention the powers of the legislative body. The law itself must define its constitution, powers and functions. Webster's New 20th Century Dictionary gives the following meanings to the word ' Specify ':

to mention, describe, or define in detail; to state definitely; to include as an. item in a set of specifications; to state explicitly as a condition.

There is no limitation on Parliament under Article 239-A, that in mentioning or defining the powers of the legislative body which the Parliament has created, it should not vest the body with all powers it could but should select and invest the body with some only of the topics for legislation. The petitioners seek to read in Section 18 of Act XX of 1963 an infraction of the Constitution for which there is no warrant. It follows that the argument that Section 18 of Act XX of 1963 is beyond the powers of Parliament under Article 230-A is devoid of merits, and the Pondicherry Civil Courts Act, Act XII of 1966, is a valid enactment within the legislative competency of the Legislative Assembly of Pondicherry."

26.2. In *J.Fernandes & Co. v. The Deputy Chief Controller of Imports & Exports and Others* [AIR 1975 SC 1208], a writ petition was filed under Article 32 of the Constitution of India for a Mandamus directing the respondent therein to cancel four orders mentioned in the petition and to issue quota certificate to the petitioners in respect of their past imports. It was contended on behalf of the petitioners that six traders have been granted licences under the old law by the Portuguese Government, and whereas it was not done in favour of the petitioners and as such, it was in violation of Article 14 of the Constitution of India. The Hon'ble Supreme Court, while



repelling the said contention, had also considered the scope of Goa, Daman and Diu (Administration) Act, 1962 as well as Articles 73(1)(a), 239(1), 240 and 246(4) of the Constitution of India and as regards the powers of the Central Government to issue executive directions, it is relevant to extract paras 23 and 24 of the said judgment:

"23. The directions issued by the Central Government are impeached by the petitioner to be in violation of Articles 239 and 240 of the Constitution. Under Article 1(3)(c) of the Constitution, Goa, Daman and Diu became part of the territory of India by acquisition. Goa, Daman and Diu became a Union Territory on and from the date of their acquisition by the Government of India. Under Article 239(1) a Union Territory shall be administered by the President acting through an Administrator. Article 240 empowers the President to make regulations for the peace, progress and good Government of the Union Territory. In the present case no Presidential Regulation was relied on by either side.

24. Parliament has power under Article 246(4) to make laws with respect to any Union Territory. The executive power of the Union under Article 73 (1) (a) shall extend to the matters with respect to which Parliament has power to make laws. The Union Government has, therefore, power to issue executive directions to the Administrator of a Union Territory. So long as there is no conflict between a direction issued by the Central Government and a Presidential Regulation made under Article 240, the Administrator of a Union Territory is bound to carry out the orders and directions given by the Central Government. The decision of this Court in *Shamsher Singh v. State of Punjab & Anr.*(1) is that the powers conferred on the President by Article 239 are to be exercised by him on the aid and advice of the Cabinet. Therefore, the directions issued by the Central Government are valid because of the combined effect of Article 73 and article 246 which confers power on the Union executive to exercise powers in respect of matters with respect to which Parliament has competence to make laws."

26.3. The Hon'ble Supreme Court of India in the order dated 08.05.2018 made in Civil Appeal Nos.4994 - 4995 of 2018 (referred supra), wherein challenge was made by the Chief Secretary, Government of Puducherry against the judgments dated 22.04.2015 and 10.07.2015, by which the appellant therein was directed by June 15, 2015 as an outer time limit to complete delimitation and hold elections immediately thereafter. The Hon'ble Supreme Court of India, while disposing of the Civil Appeals, had directed the fourth respondent to complete the delimitation exercise insofar as Panchayat and Municipal Elections are concerned, within a period of four weeks from the date of the order and once it is complete, the elections to the Municipalities and Panchayats will be notified immediately and also to be held in accordance with the constitutional and



statutory provisions concerned. It was further indicated in the said order that no further delay can be brooked, and it will be open for any party to come back to this Court in case the needful is not done within the strict time limit fixed by this Court and also made it clear that on no account will the elections process be stalled after delimitation is complete. Accordingly, the Local Administration of the Government of Puducherry has issued a Gazette Notification dated 07.03.2019, in and by which the 3rd respondent / Administrator had ordered reservation of seats for Backward Class and Scheduled Castes in Municipal Councils and also reservations of seats for Backward Class and Scheduled Tribes in Panchayats at all levels.

27. The Local Administration Department, vide Gazette Notification dated 07.03.2019, in terms of powers conferred under Section 16(1) read with Section 9 of the Puducherry Municipalities Act, 1973, in and by which the 3rd respondent / Lieutenant Governor had passed orders regarding delimitation for the purpose of conduct of elections to the Municipal Councils in UTP. Similar notifications were also issued on the very same day under Section 12(1) read with Section 11 of the Puducherry Village and Commune Panchayats Act, 1973 regarding delimitation for the purpose of elections to the Commune Panchayats and Village Panchayats.

28. The Council of Ministers, in the meeting held on 25.05.2018, has passed Resolution No.2018/M-39/197, resolving to approve the name of Thiru.T.M.Balakrishnan, Former Secretary to Government of Puducherry as SEC. The Hon'ble Chief Minister of the Government of Puducherry, addressed a communication dated 31.10.2018 to the 3rd respondent as to the resolution by the Cabinet for appointment of Thiru T.M.Balakrishnan as SEC and also indicated that though the related file was sent, it has not been approved so far and in the light of the fact that it is a Cabinet decision, the 3rd respondent is expected to abide the decision without delay and without raising frivolous queries.

29. In the typed set of documents filed on behalf of the respondents 3 and 8, file notings of the 3rd respondent dated 04.07.2019 is available and the 3rd respondent having found that the recommendation of the Cabinet resolving to appoint Thiru T.M.Balakrishnan as SEC is based on a very restrictive criteria i.e., only those I.A.S. Officers who served UTP in the past, observed that the recommendation is not in tune with the spirit of the rules and it was further observed that there was no open and transparent method followed in the process of recommendation and therefore, not approved the appointment of Thiru T.M.Balakrishnan as SEC. In the very same file noting, it was directed that applications be invited among persons, who have or are in an All India Service or in any civil service of the State (U.T. of Puducherry) or in a civil post under the State (U.T. of Puducherry) Government for not less than 25 years, having knowledge and experience in conducting elections and the source of the said qualification is also indicated as Model State Commissioner (Conditions of Service) Bill, circulated by the Ministry of Panchayat Raj dated 17.05.2007. It was further



observed that Thiru.T.M.Balakrishnan is at liberty to apply, if he is eligible and for suggesting the name, a Committee headed by Chief Secretary to Government, Puducherry and representatives from Ministry of Home Affairs and Ministry of Panchayat Raj, Government of India will scrutinize the applications received and suggest a name to the competent authority for approval and the said exercise should be completed within 4 weeks and after discussing the same with the 4th respondent, indicated the eligibility to apply for the post of SEC and passed an order inviting applications from eligible persons through open advertisement.

30. It is to be noted at this juncture that under normal circumstances, the above said communication should have been forwarded to the Ministry of Home Affairs, New Delhi for getting approval of the said recommendation and however, the 3rd respondent has straight away passed an order inviting applications to fill up the said post and however, it came to be ratified, vide letter/communication of Advisor (UT), Ministry of Home Affairs dated 18.12.2019.

31. The appointment of Thiru T.M.Balakrishnan as SEC in pursuant to the resolution of the Council of Ministers, was also published in the form of Gazette Notification and even prior to that, there is file notings of the 3rd respondent dated 01.07.2019, which is made available in the typed of documents filed on behalf of the petitioner, wherein the 3rd respondent was directed as to the communication of the said decision to the 1st respondent and the Ministry of Panchayat Raj for necessary action and it was followed by the above said file notings dated 04.07.2019.

32. In the interregnum, the Local Administration Secretariat, Government of Puducherry, vide notification dated 23.07.2019, had appointed Thiru T.M.Balakrishnan as SEC for UTP for a period of 3 years with effect from the date he takes over charge or till he attains the age of 68, whichever is earlier and his services will be governed by the provisions of the Election Commissioner of the Union Territory of Puducherry (Conditions of Service and Tenure of Office) Rules, 1994 and it was followed by a Gazzette Notification dated 23.07.2019 and accordingly, Thiru T.M.Balakrishnan assumed charge as SEC on 23.07.2019. The Local Administration Secretariat, Government of Puducherry, vide order dated 30.08.2019 had also fixed his emoluments.

33. SEC also put up a note dated 21.08.2019 stating that jobs as to the fresh delimitation exercise is a time consuming and onerous process and also found that on a cursory perusal of the same revealed certain discrepancies of major and minor nature in the delimitation orders which have already been brought to the notice of the Local Administration Department dated 06.08.2019 and also requested for orders as to confirmation whether he can proceed and initiate necessary action to conduct the Municipal and Panchayat Elections, based on the Delimitation Orders, as notified on 07.03.2019 or not? SEC also issued a notification dated 03.12.2019, appointing 4 persons as District Election Officers for Puducherry, Karaikal,



Mahe and Yanam Regions and it was also published in Gazette Notification on 05.12.2019. SEC has also done similar exercise by issuing notification dated 09.12.2019 appointing officers designated as Electoral Registration Officers for Commune Panchayats in exercise of powers conferred under Section 17(2) of the Pondicherry Village and Commune Panchayats Act, 1973 read with Rule 2(d) of the Pondicherry Village and Commune Panchayats (Registration of Electors) Rules, 1974 and Rule 5 of the Pondicherry Village and Commune Panchayats (Registration of Electors) Amendment Rules, 2002 and the said notification was also gazetted.

34. Pursuant to the above cited note orders of the 3rd respondent dated 04.07.2019, 4th respondent sent a communication dated 06.07.2019 to the Secretary, Ministry of Panchayat Raj, New Delhi and Additional Secretary (UT), Ministry of Home Affairs, New Delhi, informing the views of the 3rd respondent as to the criteria fixed for inviting applications to fill up the post of SEC and therefore, made a request to nominate representatives from the said Ministry and it was followed by yet another communication of the 4th respondent dated 26.04.2019 addressed to the Additional Secretary, Ministry of Home Affairs, New Delhi, inviting the attention of the said official as to the time line fixed by the Hon'ble Supreme Court of India in C.A.Nos.4994 - 4995 of 2018 (cited supra) and also invited that there seems to be a general indifference to the holding of the Local Body Elections and in the light of the time line fixed, any delay may result in contempt of the orders passed and therefore, requested for their intervention for ensuring compliance of the said order.

35. The Advisor (UT), Ministry of Home Affairs (Pondicherry), Government of India, vide communication dated 18.12.2019 had requested UTP to select SEC through a transparent, competitive and fair process, where the applications are invited through an All India Advertisement and the selection is made through the Selection Committee headed by Chief Secretary Puducherry for the time completion of the election process and the composition of terms of reference of the Selection Committee to select SEC may be finalized by the 3rd respondent. The 3rd respondent, in terms of the said communication, has issued the impugned order dated 20.12.2019 and it is also followed by the impugned Advertisement issued by the Local Administration Secretariat of UTP, signed by the Under Secretary therein. Thus, the order of the 3rd respondent dated 20.12.2019 and the consequential advertisement are put to challenge in this writ petition.

36. Office of the Chief Minister, Puducherry, sent a Note File signed by the Chief Minister, Puducherry 07.07.2019, having taken note of the Note Orders of the 3rd respondent and had noted that the Cabinet decision on appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC was based on the wisdom of the Cabinet and in case where the Cabinet decision is not acceptable to the 3rd respondent, she can at her best only send the case to President and in the absence of any Act or Rules



concerning the subject matter on "Local Bodies", the 3rd respondent cannot independently have her own delegated legislations such as rules, conditions, orders, bylaw etc.

37. The Law Officer of the Law Department of UTP, in his Note Order dated 22.07.2019 also reiterated that in case of difference of opinion, in terms of Rule 51 of the Rules of Business of the Government of Puducherry, 1963 read with Section 44 of the Government of Union Territories Act, 1963, the matter shall be referred to the Government of India for the final decision of the Hon'ble President of India and it has also been reiterated by this Court in the order dated 30.04.2019 made in W.P.No.28890 of 2017 [V.Lakshminarayanan v. Union of India and Others].

38. The Council of Ministers, in the meeting held on 22.07.2019 has taken note of the acts of the 3rd respondent and reiterated it's earlier decision to appoint Thiru T.M.Balakrishnan as SEC and further directed the Local Administration Department to withdraw the Advertisement issued on 08.07.2019 and yet another decision was passed in the Legislative Assembly on 22.07.2019 and also directed the Local Administration Department to implement the Cabinet decision immediately. The petitioner herein, in his capacity as Minister for Local Administration Department, UTP has also passed a note order dated 23.07.2019 directing the Under Secretary to the Government, Local Administration Department, UTP to issue order of appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC as decided by the Cabinet. The Hon'ble Chief Minister of Government of Puducherry has also passed an order dated 03.01.2020, wherein relevant provisions of the Constitution has been referred to and passed an order directing the 4th respondent not to follow the directions of the 3rd respondent dated 20.12.2019, which is declared as illegal henceforth and to act as per the Puducherry Village and Commune Panchayats Act / Puducherry Municipalities Act and the Constitution of India.

39. Thus, the continuous acrimony between the elected Government of Puducherry and the 3rd respondent resulted in the present litigation.

40. One Mr.K.Lakshminarayanan filed W.P.No.28890 of 2017 against the official respondents, which include the 3rd respondent in official capacity [in her individual capacity as the 6th respondent] to quash the order of the Under Secretary to Government, Ministry of Home Affairs, Government of India, New Delhi dated 27.01.2017 and the order of the Director (ANL), Ministry of Home Affairs, Government of India, New Delhi dated 16.06.2017, in as much as they vest powers on the 4th respondent in violation of the Business Rules, 1963. The writ petition was entertained and counters affidavits were filed. The learned Single Judge had allowed the writ petition with some observations and directions, vide order dated 30.04.2019. It appears that challenge was made to the said order before the Hon'ble Supreme Court. The Hon'ble Apex Court had initially entertained the Special Leave Petition and later on disposed of the same granting liberty to challenge the said order by way of



appeal and accordingly appeal was filed, heard and orders were reserved. Therefore, this Court is not in a position to refer and follow the order dated 30.04.2019 made in W.P.No.28890 of 2017 rendered by a Single Judge of this Court.

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41. Part II of the Government of Union Territories Act, 1963 speaks about Legislative Assemblies and Section 3 speaks about Legislative Assembly for each Union Territory and also the position in the form of elected members and nominated members. Part IV of the said Act deals with Council of Ministers and Section 44(1) says that Council of Ministers in each Union Territory with the Chief Ministers at the head to aid and advise the Administrator in 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 and the proviso to Section 44(1) also speaks about the methodology to be followed in case of difference of opinion between the Administrator and his Ministers on any matter.

42. It is also argued by the learned Senior Counsel appearing for the petitioner that the Council of Ministers took unanimous decision to appoint Thiru T.M.Balakrishnan as SEC and the 3rd respondent, just acting opposite to that, formulated her own procedure by drawing inspiration from the Model State Commissioner (Conditions of Service) Bill and admittedly, it has not been culminated into an Act and not even followed in respect of other Union Territories and in the light of her acts ordering the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC and passing orders as to the constitution of Committee to select and appoint SEC is per se illegal against the Constitution as well as Statutes and it also amounts to difference of opinion and in all fairness, the 3rd respondent ought to have referred it to His Excellency, The President of India for his decision. Rule 50 of the Rules of Business of the Government of Pondicherry, 1963 also deals with the said aspect. Under the said Rule, the Government of Puducherry issued a notification dated 01.07.1963 in exercise of powers conferred by Sub-Section (3) of Section 46 of the Government of Union Territories Act, 1963 and in supersession of the existing orders, the Administrator makes the Rules called the Pondicherry Authentication (Orders and other Instruments) Rules, 1963 and it is relevant to extract Sub-Rule (2):

"2. The orders and other instruments made and executed in the name of the Administrator shall be authenticated, -

(a) by the signature of the Chief Secretary, a Secretary including the Secretary to the Administrator, a Deputy Secretary or an Under Secretary in any of the departments of the Government or by any officer conferred with ex-officio status of a Secretary, Joint Secretary, Deputy Secretary or Under Secretary in any of the departments of the Government.;



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(b) in the case of orders and other instruments relating to the Finance Department by the Budget Officer of the Finance Department, Pondicherry; and

(c) in the case of orders and other instruments relating to the Legislative Assembly Department, by the Editor of Debates of the Legislative Assembly Department, Pondicherry."

43. Section 44(1) of the Government of Union Territories Act, 1963 is akin to Article 166 of the Constitution of India.

44. No doubt, Council of Ministers have unanimously resolved to appoint Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC and files were forwarded to the 3rd respondent for passing appropriate orders and the 3rd respondent having noted that selection was not approved, has declared the said order as null and void and passed Note Orders dated 01.07.2019 and 04.07.2019 respectively and in response to the letter of the 4th respondent dated 26.04.2019, the Advisor (UT), Government of Puducherry, sent a communication dated 18.12.2017 accepting the views / acts of the 3rd respondent.

45. A Division Bench of this Court in the decision in D.Gobalously and Another v. Union Territory of Puducherry [AIR 1970 Madras 419] (cited supra) had dealt with the scope of Article 239-A read with Article 248 of the Constitution of India and in Para 2 observed that "When Parliament in pursuant to the powers conferred in it under the Constitution, provided by law a Legislative Assembly for the Union Territory of Pondicherry and invested the Legislature with certain legislative powers. It is a misconception to refer to such investiture of legislative power as abdication by Parliament of its power of legislation under Article 246(4) The legislative power of Parliament to enact Act XX of 1963 and particularly Section 18 therein is unassailable." In para 4, the Division Bench of this Court observed that "There is no limitation on Parliament under Article 239-A, that in mentioning or defining the powers of the legislative body which the Parliament has created and it should not vest the body with all powers it could but should select and invest the body with some only of the topics for legislation..... It follows that the argument that Section 18 of the Act XX of 1963 is beyond the powers of Parliament under Article 239-A is devoid of merits".

46. In Shri Shiv Kirpal Singh v. Shri V.V.Giri [1970 (2) SCC 567] relied on by the learned Senior Counsel appearing for the respondents 3 and 8, one of the issues arose was "Whether the elected members of the Legislation Assemblies of the Union Territories were entitled to be included in the electoral college for the election of the President ?" and while answering the same, the Hon'ble Apex Court held that "members of Legislatures created for Union Territories under Article 239-A cannot be held to be members of Legislative Assemblies of States and therefore, rightly excluded from the electoral college" and in para 242 of the said judgment, the Hon'ble Apex Court had elaborately dealt with the said issue and observed that "In the



case of Union Territories, the provision for Legislatures is contained in Article 239A, but that article does not mention that any House of the Legislature created for any of the Union Territories will be known as as Legislative Assembly. All that that article says down is that Parliament may, by law, create a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union Territory. Such a Legislature created by Parliament is not a Legislative Assembly as contemplated by Article 168 or Article 54. Members of Legislatures created for Union Territories under Article 239-A, cannot, therefore, rightly excluded from the electoral college...."

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

48. It is also profitable to quote the decision of the Hon'ble Apex Court in K.Lakshminarayanan v. Union of India [2018 SCC Online 2730]. Facts of the said case would disclose that K.Lakshminarayanan had questioned the nominations made by the Central Government in exercise of powers under Section 3(3) of the Government of Union Territories Act, 1963 and the challenge had ended in dismissal and therefore, two SLPs were filed and entertained and converted as Civil Appeals. In para 56 of the said judgment, the Hon'ble Apex Court has dealt with federal issue and had also dealt with the issue "Whether nominations made by the Central Government without concurrence of the Government of Union Territory of Puducherry is sustainable?" and proceeded to give the following findings:

"56. The principle of federalism as adopted in the constitution of India are well settled as noticed above. The submission, which needs to be answered in the present case is as to whether the federal principles as ingrained in the Constitution are in any manner sacrificed in the present case, i.e., by nominations made by Central Government without concurrence of the Government of Union Territory of Puducherry. Article 239A by which creation of local Legislatures or Council of Ministers or both for certain Union Territories was provided by the Constitution (Fourteenth Amendment) Act, 1962 empowering the Parliament by law, to create for the Union Territory of Puducherry, a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union Territory, or a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law. The Constitution, thus, by Article 239A has empowered the Parliament to create Legislature for the Union Territory by law with such constitution, powers and functions as may be specified in the law. Thus, it is the Constitution itself, which is empowering Parliament to provide by law for Constitution of Union Territory. Further, the Legislature as a body



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contemplated by Article 239A is a body, whether elected or partly nominated and partly elected. Thus, the Constitution provision itself contemplate creation of Legislature whether elected or partly nominated and partly elected. When the Constitution itself empowers the Parliament to frame law to create a body, which may be partly nominated and partly elected and Section 3 of the Act, 1963, which provide for thirty seats to be filled up by persons chosen by direct election and three seats by nominations made by the Central Government, we fail to see that how the law made by Parliament or nominations made by Central Government breaches the principles of federalism. The Constitution of Legislative body for Union Territory being entrusted to the Parliament by Constitution and there being no indication in the Constitutional provision or provisions of the Act, 1963 that said nomination has to be made with concurrence of Government of Union Territory of Puducherry, we fail to see any substance in the argument of Shri Kapil Sibal that by nominations made by Central Government, federal principles or principle of cooperative federalism has been violated. The concept of federalism itself envisages distribution of power between Union and States. It is further to be noticed that Union Territories are not States. These Union Territories, ordinarily, belong to the Union (i.e. the Central Government) and therefore they are called 'Union Territories'. That is why they are governed under the administrative control of the President of India. That is the clear purport behind Article 239. However, to a limited extent, the power of the Union is diluted with respect to Puducherry vide Article 239A. At the same time, this constitutional provision, i.e. Article 239A. With regard to the Union Territory of Puducherry itself envisages the constitution of Legislative Council partly by nomination and partly by election. Further, specific authority to nominate in the Legislative Council has been conferred by law i.e. under Section 3 to the Central Government. Thus no breach of federal principles are made out and the submission on the basis of breach of federal principles in nomination by the Central Government is unfounded."

49. In T.M.Kannian v. Income Tax Officer, Pondicherry and Another [AIR 1968 SC 637], challenge was made to the vires of Taxation Laws (Extension to Union Territories) Regulation No.3 of 1963 and it was argued that the President has no power to promulgate regulations under Article 240 of the constitution of India and challenge made in this regard before the High Court had ended in dismissal and therefore, it was taken up before the Hon'ble Apex Court by way of appeal and the Hon'ble Apex Court, in the said decision, has traced the history of UTP and also taken note of Articles 239A and 240 of the Constitution of India and it is relevant to extract the following paragraphs:



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"4. Parliament has plenary power to legislate for the Union territories with regard to any subject. With regard to Union territories there is no distribution of legislative power. Article 246(4) enacts that "Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List." In R.K. Sen v. Union [(1953) AC 594] it was pointed out that having regard to Art. 367, the definition of "State" in s. 3 (58) of the General Clauses Act, 1897 applies for the interpretation of the Constitution unless there is anything repugnant in the subject or context. Under that definition, the expression "State" as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956 "shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory." But this inclusive definition is repugnant to the subject and context of Art. 246. There, the expression "State" means the State specified in the First Schedule. There is a distribution of legislative power between Parliament and the legislatures of the States. Exclusive power to legislate with respect to the matters enumerated in the State List is assigned to the legislatures of the States established by Part VI. There is no distribution of legislative power with respect to Union territories. That is why Parliament is given power by Art. 246(4) to legislate even with respect to matters enumerated in the State List. If the inclusive definition of "State" in s. 3(58) of the General Clauses Act were to apply to Art. 246(4), Parliament would have no power to legislate for the Union territories with respect to matters enumerated in the State List and until a legislature empowered to legislate on those matters is created under Art. 239A for the Union territories, there would be no legislature competent to legislate on those matters; moreover, for certain territories such as the Andaman and Nicobar Islands no legislature can be created under Art. 239A, and for such territories there can be no authority competent to legislate with respect to matters enumerated in the State List. Such a construction is repugnant to the subject and context of Art. 246. It follows that in view of Art. 246(4), Parliament has plenary powers to make laws for Union territories on all matters. Parliament can by law extend the Income-tax Act, 1961 to a Union territory with such modifications as it thinks fit. The President in the exercise of his powers under Art. 240 can make regulations which have the same force and effect as an Act of Parliament which applies to that territory. The President can therefore by regulation made under Art. 240 extend the Income-tax Act, 1961 to that territory with such modifications as he thinks fit.

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5. The President can thus make regulations under Art. 240 with respect to a Union territory occupying



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the same field on which Parliament can also make laws. We are not impressed by the argument that such overlapping of powers would lead to a clash between the President and Parliament. The Union territories are centrally administered through the President acting through an administrator. In the cabinet system of Government the President acts on the advice of the Ministers who are responsible to Parliament.

6. The proviso to Art. 240(1) lays down the condition for the cesser of power of the President to make regulations under Art. 240(1). The power of the President to make regulations for the Union territory of Goa, Daman and Diu or Pondicherry ceases when a legislature for the territory is created with effect from the date appointed for the first meeting of the legislature. But until such a legislature is created, the President retains his full power to make regulations for those territories. The proviso does not act as a fetter on the general power of the President to make regulations for the Union territory while no legislature for that territory is brought into existence. The proviso does not enact, as is suggested by the petitioners, that the power of the President is confined to making laws with respect to the matters enumerated in the State List and the Concurrent List. The argument is that a legislature created under Art. 239A can be authorised to pass laws with respect to those matters only and having regard to the proviso to Art. 240(1) the President's power to make regulations under Art. 240 is similarly circumscribed. As a matter of fact, the Government of Union Territories Act, 1963 created local legislatures for the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry and s. 18 of the Act conferred on those legislatures power to make laws for those territories with respect to the matters enumerated in the State List or the Concurrent List. Assuming that the local legislature created under Art. 239A can be authorised to make laws with respect only to the matters enumerated in the State List or the Concurrent List, it does not follow that the power of the President to make regulations under Art. 240 is so limited. By the express words of Art. 240, the President can make regulations for the peace, progress and good government of the specified Union territories. Any regulation so made may repeal or amend any Act made by Parliament and applicable to that territory. When promulgated by the President the regulation has the same force and effect as an Act of Parliament applicable to that territory. This general power of the President to make regulations extends to all matters on which Parliament can legislate. It may be recalled that Art. 239A and the proviso to Art. 240(1) were inserted by the Constitution (Fourteenth Amendment) Act. Under Art. 240 as it stood after the Constitution (Seventh Amendment) Act and before the enactment of the Constitution



52. It is very pertinent to point out at this juncture that under Sub-Section(1) of Section 9A of the Puducherry Village and Commune Panchayats Act, 1973, "The superintendence, direction and control of the preparation of electoral rolls for and the conduct of, all elections to the panchayats shall be vested in the Election Commission consisting of an Election Commissioner to be appointed by the Administrator." and Sub-Section (2) of Section 9A says that "Subject to the provisions of any law made by the Legislative Assembly of the Union Territory, the



conditions of service and tenure of office of the Election Commissioner shall be such as the Administrator may by rule determine." [Emphasis supplied]

53. As already pointed out, Election Commissioner of the Union Territory of Puducherry (Conditions of Service and Tenure of Office) Rules, 1994 do not prescribe the manner of selection and appointment of SEC and in the light of the gap left in the Statutory Rule, it can always be filled up by way of administrative instructions and precisely, the 3rd respondent has done so after getting approval of the Ministry of Home Affairs (UT), Government of India, New Delhi / 1st respondent herein, which is the nodal agency and also acts for and on behalf of His Excellency, President of India.

54. The order of appointment of Thiru T.M.Balakrishnan, I.A.S., (Retd.) as SEC is also not authenticated in terms of Section 44(1) and 46(2) of the Government of Union Territories Act, 1963 and the said provision also give leverage to the 3rd respondent and that apart, necessary authentication as per the Pondicherry Authentication (Orders and Other Instruments) Rules, 1963, have not been obtained by the Government of UTP. Section 15-A of the Puducherry Municipalities Act, 1973 also says that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the municipal councils shall be vested in the Election Commission consisting of an Election Commissioner appointed under Section 9A of the Puducherry Village and Commune Panchayats Act, 1973.

55. In the considered opinion of this Court, Section 9A of the Puducherry Village and Commune Panchayats Act, 1973 and 15-A of the Puducherry Municipalities Act, 1973 have not been complied with for the reason that the said order of appointment is not authenticated. The 3rd respondent, vide G.O.Ms.No.14/A4/LAS/2019 dated 23.07.2019 also does not say as to the said authentication, but merely referred to the file notings dated 23.07.2019.

56. In the considered opinion of the Court, the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC is not in consonance with the statutory provisions.

57. There is nothing wrong in going for a transparent procedure as to the selection and appointment of SEC as mooted out by the 3rd respondent and approved by the 1st respondent and the said acts are also in consonance with Articles 239A and 240 of the Constitution of India in the light of various pronouncements cited supra.

58. The learned Senior Counsel appearing for the petitioner has also placed heavy reliance upon the Constitution Bench decision of the Hon'ble Supreme Court in State (NCT of Delhi) v. Union of India and Others [(2018) 8 SCC 501]. The Hon'ble Supreme Court, in the said decision, has dealt with the Scheme under Article 239AA of the Constitution of India and also the Government of Union Territories Act, 1963 in Paras 373 and 374



and in para 442 also referred to the decision in Devji Vallabhbai Tandel v. Administrator of Goa, Daman & Diu [(1982) 2 SCC 222] and extracted the observations made in para 14 of the said decision as well as Clause 4 of Article 239AA of the Constitution of India. The Hon'ble Chief Justice of India, in para 284.12 observed that "The status of NCT of Delhi is sui generis, a class apart, and the status of the Lieutenant Governor of Delhi is not that of a Governor of a State, rather he remains an Administrator, in a limited sense, working with the designation of Lieutenant Governor." There is also a concurrent verdict of Hon'ble Mr. Justice Ashok Bhushan, J. A though consideration of the said decision, in the considered opinion of this Court, have no application to the facts of this case and infact, in Paras 604.1 to 604.6 observed that the Union Territory of Delhi is not a State and is different from other Union Territories and with regard to the said position also, the verdicts authored by other Hon'ble Judges are concurrent. Though the decision has dealt with Article 239AA of the Constitution of India, it is relevant to extract the following paragraphs of the said judgment in the light of difference of opinion between two high ranking Constitutional Functionaries:

284.2. In a democratic republic, the collective who are the sovereign elect their law-making representatives for enacting laws and shaping policies which are reflective of the popular will. The elected representatives being accountable to the public must be accessible, approachable and act in a transparent manner. Thus, the elected representatives must display constitutional objectivity as a standard of representative governance which neither tolerates ideological fragmentation nor encourages any utopian fantasy, rather it lays stress on constitutional ideologies.

284.3. Constitutional morality, appositely understood, means the morality that has inherent elements in the constitutional norms and the conscience of the Constitution. Any act to garner justification must possess the potentiality to be in harmony with the constitutional impulse. In order to realise our constitutional vision, it is indispensable that all citizens and high functionaries in particular inculcate a spirit of constitutional morality which negates the idea of concentration of power in the hands of a few.

284.6. Ours is a parliamentary form of Government guided by the principle of collective responsibility of the Cabinet. The Cabinet owes a duty towards the legislature for every action taken in any of the Ministries and every individual Minister is responsible for every act of the Ministry. This principle of collective responsibility is of immense significance in the context of "aid and advice". If a well-deliberated legitimate decision of the Council of Ministers is not given effect to due to an attitude to differ on the part of the Lieutenant Governor, then the concept of collective responsibility would stand negated."

[Emphasis supplied]



59. Thus, the conclusions of this Court are as follows:

59.1. Appointment of Thiru T.M.Balakrishnan as SEC pursuant to the resolution of the Council of Ministers represented by a body termed as Legislative Assembly, though unanimous, has not been authenticated by the 3rd respondent in terms of Section 44 (1) of the Government of Union Territories Act, 1963, Rule 46(2) of Rules of Business of Government of Puducherry, 1963 read with Pondicherry Authentication (Orders and Other Instruments) Rules, 1963 and as such, the said order of appointment is not made in accordance with law.

59.2. Under Articles 239-A and 240 of the Constitution of India, the President is having power to make any regulation in certain Union Territories which include the Union Territory of Puducherry also. Parliament is also having plenary power to legislate for the Union territories with regard to any subject. The Union Territories are centrally administered through the President, acting through the Administrator. The general power of the President to make regulations extends to all matters on which Parliament can legislate. The decision of the Hon'ble Supreme Court in T.M.Kannian case (cited supra) also reiterated the said legal position.

59.3. State Election Commissioner shall be appointed by the Administrator and the conditions of service and tenure of office of the Election Commissioner shall be such as the Administrator, may by Rule determine [Section 9-A of the Puducherry Village and Commune Panchayats Act, 1973] and admittedly, there are no Rules in place in the Election Commissioner of the Union Territory of Puducherry (Conditions of Service and Tenure of Office) Rules, 1994 as to the qualification and manner of selection of SEC and the 3rd respondent, by drawing inspiration from the Model State Commissioner (Conditions of Service) Bill as circulated by the Ministry of Panchayat Raj of the Government of India, thought fit to go for selection of SEC in a transparent manner, after getting concurrence from the 1st respondent and prescribed the qualification and mode of selection and it was followed by the impugned advertisement and in the light of the reasons assigned above, it cannot be faulted with.

59.4. In terms of proviso to Section 44(1) of the Government of Union Territories Act, 1963, discretion is left with the 3rd respondent / Administrator to refer it to the President of India, in case of difference of opinion and in the light of the present factual situation, it was not difference of opinion and a reading of Section 44 of the Government of Union Territories Act, 1963 as a whole, it vest the 3rd respondent, the discretionary power.

59.5. Therefore Question No.(1) is answered in affirmative and the impugned order of the 3rd respondent is sustainable; as a consequence, Question No.(2) is answered in negative and the proceedings resulted in the appointment of Thiru T.M.Balakrishnan, I.A.S. (Retd.) as SEC are unsustainable.



59.6. The stand-off between the elected Government of UTP and the Lieutenant Governor / 3rd respondent / Administrator had resulted in very many litigations. The repeated stand-off / acrimony between the said two High Constitutional Functionaries may not augur well for the Governance of UTP especially, the people. Both the high ranking Constitutional Functionaries are also aware of the said situation and this Court hope and trusts that whatever be the reasons for difference of opinion, will be resolved amicably.

60. This Court, on a thorough appreciation of factual aspects and legal position, is of the considered view that there is no error apparent or infirmity in the impugned proceedings / order / advertisement.

61. In the result, this Writ Petition is dismissed, subject to above observations. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-)

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Sub Assistant Registrar

To

- 1.The Joint Secretary (UT),
Union of India,
Ministry of Home Affairs,
North Block, New Delhi-110 001.
- 2.Advisor (UT),
Union Territories Division,
Ministry of Home Affairs,
North Block, New Delhi-110 001.
- 3.The Administrator / Lieutenant Governor,
Raj Niwas, Puducherry.
- 4.The Chief Secretary-cum-Secretary to
the Council of Ministers,
Chief Secretariat,
Government of Puducherry,
Goubert Avenue,
Puducherry-605 001.
- 5.The Director,
Head of Department,
Local Administration Department,
No.16, Suffren Street,
Puducherry-605 001.



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6.The Secretary to Assembly,
Puducherry Legislative Assembly,
Victor Simonel Street, White Town,
Puducherry-605 001.

7.The Under Secretary to Government,
Local Administration Department,
No.16, Suffren Street,
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8.Dr.Kiran Bedi,
The Administrator,
Raj Niwas,
Puducherry.

+1 cc to Mr.K.Srinivasamurthy, Advocate,sr.19488

+1 cc to Govt.Pleader, Sr.19790

+1 cc to Mr.V.Chandrasekaran,advocate,sr.19852.

+1 cc to Mr.J.Jayan, Advocate,sr.19457

+1 cc to Mr.P.Dineshkumar,Advocate,sr.19458.

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W.P.No.1895 of 2020