



OFFICE OF THE CHIEF ELECTORAL OFFICER, DELHI  
OLD ST. STEPHEN'S COLLEGE BUILDING, KASHMERE GATE, DELHI-110006

Email ID- [sveep.delhiceo@gmail.com](mailto:sveep.delhiceo@gmail.com)

File No. F.7/CEO/SVEEP/Misc/Court/2019/  
CD- 000535678

48670-701

Dated: 13/6/19

To

The District Election Officer ( <b>North West</b> ), Office of the DC(NW), Kanjhawala, Delhi.	The District Election Officer ( <b>South</b> ), Office of the Dy. Commissioner, BDO Office, MB Road, Saket, New Delhi
The District Election Officer ( <b>North East</b> ), DSIIDC Complex, Nand Nagri, Delhi	The District Election Officer ( <b>Central</b> ), Old Employment Exchange Building, 14, Darya Ganj, New Delhi-110002
The District Election Officer ( <b>South West</b> ), Old Terminal Tax Building, Kapashera, Delhi-110037	The District Election Officer ( <b>East</b> ), I&F Department Complex, A Block, LM Bandh, Shastri Nagar, Delhi
The District Election Officer ( <b>West</b> ), Old Middle School Building Complex, Rampura, Delhi	The District Election Officer ( <b>New Delhi</b> ), 12/1, Jam Nagar House, Shahjahan Road, New Delhi
The District Election Officer ( <b>North</b> ), Office of the District Magistrate (North), Near Shardhanand College, GT Karnal Road, Alipur, New Delhi-110010	The District Election Officer ( <b>Shahdara</b> ), O/o The DEO/DC (Shahdara), DSIIDC Complex, Nand Nagri, Delhi
The District Election Officer ( <b>South East</b> ), O/o The DEO/DM(South East), Old Gargi College, Lajpat Nagar-IV, New Delhi-110024	

Sub: Judgment of the Constitution Bench of Hon'ble Supreme Court of India in Civil Appeal No. 2357 of 2017 and connected matters - reg.

Sir/Madam,

I am directed to forward herewith a copy of Letter dated 03-06-2019 received from O/o Minister of Food and Civil Supplies Environment and Forests and Election, New Delhi for information and further necessary action as deemed fit at your end.

This issues with the prior approval of the Competent Authority.

Yours faithfully,

Encl: As above

(CHARANJIT SINGH)  
ELECTION OFFICER(SVEEP)

Copy to :

1. The SDM(Election), All Eleven Districts, Delhi
2. All Branches at CEO,Headquarter, Delhi
3. The SSA (IT) with the request to upload under the link "**Court Cases**" on the website of the Department.

212/c

OFFICE OF THE MINISTER OF FOOD & CIVIL SUPPLIES  
ENVIRONMENT & FORESTS AND ELECTION  
8<sup>th</sup> FLOOR, A WING, DELHI SECRETARIAT, NEW DELHI - 110002.

No.F/MoFSEF&E/2019/ 1021-1025

Dated: 03-06-19

To

- 1 The Pr. Secretary (Env.)  
Govt. of NCT of Delhi,  
6<sup>th</sup> level, Wing,  
Delhi Secretariat,  
New Delhi -110002
- 2 The Commissioner  
Food & Civil Supplies,  
Govt. of NCT of Delhi,  
K-Block, Vikas Bhawan,  
I.P. Estate, New Delhi-110002
- 3 The Chief Electoral Officer,  
Old St. Stephen's College Bld.,  
Kashmere Gate,  
Delhi.

*Sp. CEO - H 26/C90*  
*03/6/19*

*2*  
*4/6/19*

Sub: - Judgment of the Constitution Bench of Hon'ble Supreme Court of India in Civil Appeal No. 2357 of 2017 and connected matters - reg.

Sir,

Kindly find enclosed herewith U.O. No.2580-85/175 dated 31.5.2019 enclosing alongwith letter no. 4334-36 dated 20<sup>th</sup> July, 2018 of Hon'ble Minister (Law) and U.O. No.Secylaw/1629 dated 10.5.2019 of Pr. Secretary (Law, Justice and L.A.), received in this office on 3.6.2019, on the above noted subject, for necessary action.

Yours faithfully,

Encl.: As Above.

*3/6/19*

Secretary to Minister  
(F&S, Env. & Forests & Election)

Copy for kind information to: -

1. Addl. Secretary to Hon'ble Chief Minister, Delhi, Delhi Sectt., I.P. Estate, New Delhi.
2. Secretary to Hon'ble Minister (Law), 8<sup>th</sup> Level, A-Wing, Delhi Sectt., I.P. Estate, New Delhi.

*726/Sp. CEO*  
*3.6.19*  
*E.O (Succp)*

*579/Eo(Sveeb)*  
*6/6/19*

*3/6/19*  
*6/6/19*

*Sp. Secy*

OFFICE OF THE MINISTER OF LAW & JUSTICE, TRANSPORT,  
ADMINISTRATIVE REFORMS, INFORMATION & TECHNOLOGY AND  
REVENUE

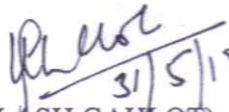
GOVERNMENT OF NCT OF DELHI  
8<sup>TH</sup> LEVEL, 'A' WING DELHI SECRETARIAT,  
NEW DELHI - 110001.

It has been noted that the files of different departments are shuttling between the department concerned, Law Department, Finance Department etc. on account of different interpretations being placed upon the requirement of prior approval/concurrence of Hon'ble Lt. Governor in various matters. The matter was earlier clarified by the undersigned vide my Note No.4334-36 dated July 20, 2018 (Copy enclosed).

Vide Judgement dated 04.07.2018 by the Constitution Bench of Hon'ble Supreme Court in Civil Appeal No.2357 of 2017 and connected matters, it has been clearly laid down that the Lt. Governor is bound by the aid and advice of the Council of Ministers in all matters except three reserved subjects i.e. Public Order, Police and Land. However, all such decisions need to be communicated to the Hon'ble Lt. Governor.

In the light of the above, there should not normally be any scope for mis-interpretation as the judgement of Hon'ble Supreme Court is very clear. However, I find that many departments continue to interpret the same differently. In this context, observations of Pr. Secretary (Law) in file bearing C.D. No.064541141 may be relevant (copy enclosed). Though the matter relates to appointment of Counsels in District Courts, observations in para 88 are of general relevance.

All the Hon'ble Ministers are requested to go through the above observations and bring the same to the knowledge of the departments under their control.

  
31/5/19  
(KAILASH GAHLOT)  
MINISTER (LAW)

1. Hon'ble Deputy C.M. / Minister (Finance)
2. Minister (Health, Inds, PWD, UD, Power, Home & I&FC).
3. Minister (Labour, Employment, Development & GAD)
4. Minister (Food & Supply, Environment, Forest, & Election)
5. Minister (Gurdwara Elections, SC&ST, Social Welfare & Cooperative Societies).

U.O.No. 2580-85/175

Dated: 31/05/19

Copy to:-

To Addl. Secretary to Hon'ble CM for kind information of the Hon'ble C.M.

Diary No. 62/vip  
Office of the Minister  
Food & Civil Supply  
Environment & Forest and Election  
Govt. of NCT of Delhi  
I.P. Estate, New Delhi-110002  
Dt: 03/6/19

210/C

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
DEPARTMENT OF LAW, JUSTICE & LEGISLATIVE AFFAIRS,  
8TH LEVEL, C-WING, DELHI SECRETARIAT, I.P. ESTATE,  
NEW DELHI - 110 002

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Please find enclosed copy of observations dated 10.05.2019 of undersigned in file bearing CD No.064541141 relating to appointment of Counsels in District Courts Delhi, which is self explanatory. The same may kindly be brought to the notice of Hon'ble Minister (Law) for his kind perusal.

  
(Sanjay Garg)

Principal Secretary (Law, Justice and I.A.)

Secretary to Hon'ble Minister (Law)

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U.O. No.Secylaw/1629

Dated : 10.05.2019

209/C

-: 31/N :-

**A. Appointment of Counsels in District Courts:**

77. WPC No. 3223/19 titled Bharat S. Kumar Vs. Hon'ble Lt. Governor and Anr. is coming up for hearing before Hon'ble High Court on 14.05.2019.

78. This issue is pending since long due to difference in opinion of Principal Secretary (Law) and of Hon'ble Minister (Law) of Govt. of NCT of Delhi. The view taken earlier by this office was that in view of the Constitution Bench judgment dated 04.07.2018 and judgment of Hon'ble Supreme Court dated 14.02.2019 (Govt. of NCT of Delhi Vs. Union of India) file should go for approval to Hon'ble Lt. Governor before issuance of notification. On the other hand, Hon'ble Minister (Law) has taken a view that in view of the Constitution Bench judgment dated 04.07.2018, file is not required to be sent to Hon'ble Lt. Governor and Govt. of NCT of Delhi is competent to issue notification.

79. Perused the judgment of Hon'ble High Court dated 04.08.2016 in WPC No. 588/15 & Ors. titled Govt. of NCT of Delhi Vs. Union of India & Ors., judgment of Constitution Bench of Hon'ble Supreme Court dated 04.07.2018 and judgment of Hon'ble Supreme Court dated 14.02.2019 in Civil Appeal No. 2357 of 2017 titled Govt. of NCT of Delhi Vs. Union of India. Also perused 69<sup>th</sup> amendment of the Constitution i.e. Article 239AA, GNCTD Act 1991 and TBR, 1993.

80. The Constitution Bench of Hon'ble Supreme Court in Appeal No. 2357 of 2017 in its judgment dated 04.07.2018 has decided the issue which essentially pertains to the powers conferred on the Legislative Assembly of the National Capital Territory of Delhi and the executive power exercised by the elected Government of NCT of Delhi.

81. The various important observations made by the Constitution Bench of Hon'ble Supreme Court in Para-263 to 268 are as follows:-

*263. We have referred to the relevant rules of TBR, 1993 which require that the Lieutenant Governor has to be apprised and kept in the loop of the*

various proposals, agendas and decisions taken by the Council of Ministers. However, a careful perusal of these rules nowhere suggests that the communication to the Lieutenant Governor is to obtain his concurrence or permission. The TBR, 1993 simply reflect the scheme envisaged for the governance of NCT of Delhi wherein just as an administrator in other UTs has to be apprised, likewise the Lieutenant Governor in Delhi is also to be informed and notified about the business being conducted.

264. The idea behind the aforesaid rules is just to keep the Lieutenant Governor notified of the proposals, agendas and decisions so that he is acquainted with the business carried out by the Council of Ministers. The said view is evident from the various rules which employ the words 'send a copy thereof to the Lieutenant Governor', 'forwarded to the Lieutenant Governor', 'submitted to the Lieutenant Governor and 'cause to be furnished to the Lieutenant Governor'.

265. Thus, the irresistible conclusion is that the Council is only required to communicate and inform its various proposals, agendas and decisions to the Lieutenant Governor so as to keep him apprised and to enable him to scrutinize the said proposals, agendas and decisions in order to exercise his powers as bestowed upon him under clause (4) of Article 239AA of the 1991 Act read with Rule 50 of the TBR, 1993.

266. It has to be clearly stated that requiring prior concurrence of the Lieutenant Governor would absolutely negate the ideals of representative governance and democracy conceived for the NCT of Delhi by Article 239AA of the Constitution. Any view to the contrary would not be in consonance with the intention of the Parliament to treat Delhi Government as a representative form of government.

267. The said interpretation is also in tune with our constitutional spirit which ensures that the voice of the citizens does not go unrecognized while making laws and this is only possible if the agency enacting and enforcing the laws comprises of the elected representatives chosen by the free will of the citizens. It is a well recognized principle of a true democracy that the power shall not remain vested in a single person and it is absolutely essential that the ultimate say in all matters shall vest with the representative Government who are responsible to give effect to the wishes of the citizens and effectively address their concerns.

268. A conjoint reading of the 1991 Act and the TBR, 1993 formulated in pursuance of Section 44 of the 1991 Act divulges that the Lieutenant Governor of Delhi is not a titular head, rather he enjoys the power of that of an administrator appointed by the President under Article 239AA. At the cost of repetition, we may reiterate that the constitutional scheme adopted for the NCT of Delhi conceives of the Council of Ministers as the representatives of the people on the one hand and the Lieutenant Governor as the nominee and appointee of the President on the other, who are required to function in harmony within the constitutional parameters. In the said scheme of things, the Lieutenant Governor should

*not emerge as an adversary having a hostile attitude towards the Council of Ministers of Delhi, rather he should act as a facilitator.*

82. The Constitution Bench of Hon'ble Supreme Court and Hon'ble Supreme Court in Civil Appeal No. 2357 of 2017 decided on 14.02.2019 has observed that the provisions of GNCTD Act as well as Transaction of Business Rules are to be kept in mind being of seminal importance.

83. The position of law has to be understood before and after the 69<sup>th</sup> amendment of the Constitution, when Article 239AA was introduced giving special status to Delhi and GNCT of Delhi Act, 1991 was enacted. In Constitution Bench judgment dated 04.07.2018, the Hon'ble Supreme Court has specifically observed interpreting clause (4) of Article 239AA of the Constitution that relevant Rules of TBR 1993 requires that Hon'ble Lt. Governor has to be apprised and kept in loop of various proposals, agendas and decision taken by Council of Ministers. The idea behind these rules is just to keep Hon'ble Lt. Governor notified with the proposals, agendas and decisions so that he is acquainted with the business carried out by the Council of Ministers and requiring prior concurrence of Hon'ble Lt. Governor would absolutely negate the ideals of representative governance and democracy conceived for the NCT of Delhi by Article 239AA of the Constitution.

84. The Transaction of Business Rules have been made by the President u/s 44 of the GNCT of Delhi Act. The executive powers though vests in the Central Government through the Hon'ble Lt. Governor but the allocation of business to a Minister is the decision of the Hon'ble Lt. Governor on the aid and advice of the Council of Ministers. Hence, it is the decision of the Central Government i.e. Hon'ble Lt. Governor itself. Once a decision is taken by the Minister, it is deemed to be taken by the Hon'ble Lt. Governor and has to be implemented. It is also for this reason that after amendment of the Constitution by inserting Article 239AA and enactment of GNCT of Delhi Act the situation has changed. The executive power, prior to this constitutional development, which was exercisable by the Central

Government / Hon'ble Lt. Governor is now exercisable by the Council of Ministers / Minister.

85. In *Shamsher Singh Vs. State of Punjab* (1974 2 SCC 831) it was observed by the Hon'ble Supreme Court that decision of any Minister or officer under the Rule of Business made under any of the two Articles i.e. Article 77(3) and 166(3) is the decision of the President or Governor respectively. Further in *Gullapali Nageshwra Vs. Andhra Pradesh State Road Transport Corporation* (1959 AIR 308), the Hon'ble Supreme Court has observed that a State Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions; the Governor made rules enabling the Minister in charge of particular department to dispose of cases before him and also authorizing him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department.

86. The essence of the Constitution Bench judgment dated 04.07.2018 of the Hon'ble Supreme Court and the judgment dated 14.02.2019 in Civil Appeal No. 2357 of 2017 is that except the matters excluded in Article 239AA, regarding remaining matters the GNCT of Delhi will have legislative and executive powers which are conjoint to each other. In view of the aforesaid, primacy needs to be given to the 69<sup>th</sup> amendment of the Constitution in place of the notification dated 04.08.1953. Moreover, the provision of Rule 23(v)(a) of the TBR does not apply to this case, as there is no limitation on the power of the Minister to take decision on the subject matter of the instant case under CPC or any other law or any other instrument.

87. As discussed by Hon'ble Supreme Court in Constitution Bench judgment the meaning of "aid and advice" employed in Article 239AA(4) has to be construed to mean that Hon'ble Lt. Governor is bound by

-: 35/N :-

the aid and advice of Council of Ministers and this position holds true so long as the Hon'ble Lt. Governor does not exercise his power under the proviso to clause (4) of Article 239AA.

88. In view of the aforesaid observations made by Hon'ble Supreme Court, the prior concurrence of Hon'ble Lt. Governor is not required in notifying various proposals. However, as per the law settled by Hon'ble Supreme Court, Hon'ble Lt. Governor is required to be kept informed with respect to all the decisions taken by Council of Ministers. The Hon'ble Lt. Governor can exercise the powers provided under Article 239AA(4) proviso thereafter. Therefore, notification of panel Advocates can be issued but till Model Code of Conduct is in operation, same be kept pending.

89. Copy of this note is being sent to Hon'ble Minister (Law) and Hon'ble Lt. Governor for information. Copy of the same may also be placed in file CD No. 064547098 for apprising the same to Sh. Rahul Mehra, Standing Counsel and Sh. Gautam Narayan, Addl. Standing Counsel.



Sanjay Garg  
Pr. Secretary (LJ&LA)

AS(6)

No. 4334-36.

July 20, 2018

**Judgment of the Constitution Bench of Hon'ble Supreme Court of India  
in Civil Appeal No. 2357 of 2017 and connected matters - Reg.**

1. The Constitution Bench of Hon'ble Supreme Court of India pronounced its judgment in Civil Appeal No. 2357 of 2017 and connected matters on 04/07/2018. It has been clearly laid down in the said judgment that the Lt Governor is bound by the aid and advice of the Council of Ministers/ democratically elected Govt of NCT of Delhi in all matters except the three reserve subjects i.e. Public Order, Police and Land. The democratically elected Govt of NCT of Delhi is duty bound to keep the Lt Governor informed about the decisions taken.

2. It is expected that all senior and responsible officers of Govt of NCT of Delhi would have perused and assimilated this landmark judgment by now.

3. There is a difference in the interpretation of the democratically elected Govt of NCT of Delhi and the Lt Governor/ Ministry of Home Affairs, Govt of India in so far as the control of 'Services' is concerned. This matter is now before the regular bench of Hon'ble Supreme Court of India, and is likely to be decided shortly.

4. However, there is no difference in interpretation regarding the matters within the legislative competence of the Legislative Assembly of Delhi. Hon'ble Lt Governor has himself agreed that concurrence of Lt Governor is not required in such matters.

Copy of letter dated 06/07/2018 received from Hon'ble Lt Governor is enclosed. Paragraph 4 may be referred in the above context.

5. In light of the above facts, it is reiterated that concurrence of Lt Governor is not required for matters within the legislative competence of the legislative assembly of Delhi. Such decisions only need to be communicated to the Lt Governor.

6. Any suggestion / insistence on part of any officer of Government of NCT of Delhi to obtain prior approval of the Hon'ble Lt Governor or to send the file to his

Contd....2/-

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office before the decision is taken shall not only be contrary to the law laid down by the Hon'ble Supreme Court of India but shall also be devoid of any support from the interpretation of the judgment by the Lt Governor / MHA. All officers are directed to follow the law laid down by the Constitution Bench of the Hon'ble Supreme Court of India without fail.

*Kailash*  
20/7/18  
( KAILASH GAHLOT )  
MINISTER (LAW)

To

Secretaries to all Ministers with request to bring it to the notice of their Hon'ble Minister and endorse copy of this communication to all Pr. Secretaries / Secretaries / HODs under the charge of their Minister.

Copy to :-

1. Pr. Secretary to LG, Raj Niwas, Delhi-110054.
2. Additional Secretary to CM, Delhi Sectt., I.P. Estate, New Delhi.
3. So to CS for kind information of CS