

Understanding the Constitutional Implications: Delhi Govt vs. LG - How the GNCTD Ordinance Nullifies the Supreme Court Judgment
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Introduction

The Hon'ble Supreme Court of India, in a recent judgment of the Government of NCT of Delhi V. Union of India, gave formal judicial recognition to the legislative and executive powers of the National Capital Territory of Delhi over the functioning of Civil Services in the National Capital Territory. The Union Government, in a bid to give itself superior power over the National Capital Territory, promulgated an ordinance titled National Capital Territory of Delhi (Amendment) Ordinance 2023 which has led to the nullification of the judgment passed by the Hon'ble Apex Court.

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Analysis Of The Constitutionality Of The Ordinance

One of the major features of the amendment is that the Lieutenant Governor has been given a primary role in the matters of effective control over the civil servants in the territory including transfers and postings of officers of the Delhi Cadre. This has led to a reversal of the judgment of the Hon'ble Supreme Court which gave greater power to the elected government over control of services. This situation has led to a legislative overruling of the

judgment of the Hon'ble Supreme Court.

The phenomenon of legislative overruling is not new and has been made permissible in certain cases. For instance, legislative overruling can be made permissible by alteration of the legal basis upon which the judgment has been passed or the issues upon which the adjudication has been done.

Secondly, the legislature can also be permitted to amend the flaws which are present in the judgment in order to rectify the errors. However, a mere declaration in contravention of the judicial order cannot validly overrule, override, or revise a judicial decision.

The supreme power of interpreting and adjudicating the provisions of law exists with the Hon'ble Supreme Court which has also been highlighted in various judgments of the Hon'ble Supreme Court and it has also been pertinently pointed out that the legislature does not possess any power to nullify or override any judgment of a court constituted as per the provisions of the law and give its own interpretation. Any interpretation given otherwise than the powers of the legislature shall be deemed to be invalid and the interpretation of the court shall prevail.

Effect Of The GNCTD Ordinance Upon The Judgment Of Apex Court

The ordinance, even though promulgated by the executive, is an instance of legislative power and therefore attracts the provisions of legislative overruling.

The ordinance seeks to insert section 3A in the already existent section 3 of the act which gives the ultimate powers to the legislative assembly over any court, judgment, or order in matters of making laws as per section 239AA of the Constitution of India except matters enlisted in Entry 41 of List II of the Seventh Schedule of the Constitution. This provision specifically overrides the Constitutional bench Judgment which has bestowed the powers upon the NCT government over the matters pertaining to services.

Secondly, the category of "Services" does not fall under the exemption list of 239AA(3)(a) which includes public order, police, and land, and therefore the Delhi Government has the executive control and power over the subject. The ordinance cannot and does not amend Article 239AA(3)(a) of the Constitution and therefore only the judgment is being declared ineffective instead of its legal backing which is an illegal exercise. This has also violated the doctrine of separation of powers since the judiciary has stood overruled by the legislature without following the due process of law and the procedure established by it.

The spirit of the judgment has also been negated and disturbed by the legislature through the ordinance which has also led to the faltering of the basic standpoints and cornerstones of the constitution which are democracy and federalism. The constitution has provided an elected government for the national capital territory of Delhi and the court has also observed that the best interests of democracy and federalism can only be fulfilled once the elected government enjoys effective control over the "services" in its territory.

In 2018, the Hon'ble Supreme Court held that in the case of the NCT of Delhi, both the Parliament and the Union Territories enjoy the power to make laws on the state list also. Therefore, the power of parliament and its existence has been given due legitimacy and authority here but the basis of the ordinance is such that the power has been absolutely transferred away from the hands of the government of NCT of Delhi and the judgment has also been overridden.

Conclusion

The GNCTD ordinance is a clear example of a violation of the doctrine of Separation of Powers and has classically portrayed how legislative overreach cannot be accepted as per the law of the land. In case the elected government is deprived of control over the civil servants and administration of the territory, this would lead to a lack of accountability and control and would also lead to a lacuna in the implementation of policies through the executive agencies.

The colourable exercise of power, as done through the ordinance has breached the constitutional provisions through a thousand cuts and therefore the nullification of the Supreme Court judgment is invalid and contrary to the law.

FAQs

Who has the authority to declare any parliamentary law as unconstitutional if it violates the scope of fundamental rights?

If a law made by Parliament or the state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such a law invalid or ultra vires.

Can Constitution be amended by ordinance?

Even if one house of Parliament is not in session, the President can pass an ordinance to amend the constitution of India.

Can the ordinance be challenged in Court?

Supreme Court in RC Cooper vs. Union of India (1970) held that the President's decision to promulgate ordinance could be challenged on the grounds that 'immediate action' was not required, and the ordinance had been issued primarily to bypass debate and discussion in the legislature.

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