

(Special One Day Session-11th September, 2002)

Obituary References

The House paid homage to the former Vice President of India, Shri Krishna Kant. The Members also observed two minutes silence as a mark of respect towards the departed leader and the victims of the rail accident involving Rajdhani Express in Bihar, road accident in Delhi cantonment and in memory of the tragedy which took place a year ago at the World Trade Center, New York on 11th September 2001.

Paper laid on the table

The Assembly Secretary laid a copy of ‘The Delhi Sales Tax on Right to Use Good Act, 2002(Delhi Act No. 13 of 2002)’ assented to by the Lieutenant Governor on 23rd July, 2002 and notified on 3rd September, 2002

Discussion on a matter of Public Interest (Motion Under Rule 107)

The following motions on matters of public importance under Rule 107 was discussed by the House:-

1. Motion moved by the Chief Minister:

“ This House expresses its deep anguish and concern over the unilateral action taken by the Ministry of Home Affairs, Government of India vide its letter of July 25, 2002 and order of August 29, 2002-

i. This House notes that the Ministry of Home Affairs, Government of India vide its letter of July 25, 2002 (No. U- 11013/12/95-UTL) has indicated that the Central Government has decided that the word ‘Government’ in relation to NCT of Delhi should not be defined as ‘Government of the NCT of Delhi’ as it introduces a new and independent legal entity not known in the Constitution. Moreover it may lead to an impression that there is a government other than the Central Government for the NCT of Delhi.

ii. This House further notes that the Ministry of Home Affairs, Government of India vide its order of August 29, 2002 (No. U-11013/2/2002-UTL) has conveyed the decision of the President to amend the Transaction of Business of the Government of the NCT of Delhi Rules, 1993 –

ii.a. in rule 23-

i. For the opening words “The following classes of proposals or matters shall be submitted to the Lieutenant Governor”, the following shall be substituted, namely: -

“The following classes of proposals or matters shall essentially be submitted to the Lieutenant Governor”

ii. after clause (v), the following clause shall be inserted, namely :-

“(va) matters on which the Lieutenant Governor is required to make orders under any law or instrument in force”.

ii.b. In sub-rule (1) of rule 55 of the said rules: -

- i. For the word “Bill” appearing in the opening portion, the words “legislative proposal” shall be substituted;
- ii. For clause (a), the following clause shall be substituted, namely:-

“(a) If introduced in a Bill form and enacted by the Legislative Assembly, is required to be reserved for the consideration of the President under the proviso to sub-clause (c) of clause (3) of article 239AA or, under the second proviso to section 24 of the Act, as the case may be;”

The House condemns this decision of the Home Ministry taken without consulting the popularly elected Delhi Government. This House is of the view that these orders are in total violation of all democratic traditions and harmonious relations between the Center and the States. This House resolves that there can be only one definition of the government for legislative and any other purpose and this is the ‘Government of the National Capital Territory of Delhi’. Moreover, amendment of rules 23 & 55(1) cannot take away what the Constitution (69th Amendment) Act and the Government of National Capital Territory of Delhi Act, 1992 have sought to give to the people of Delhi. This House therefore resolves that the above two unilateral orders aimed at curtailing the powers of a duly elected popular government should in the first instance be immediately withdrawn by the Central Government.

II. The Legislative Assembly takes note of the special provision made by the Constitution of India vide the 69th Amendment Act. Article 239 AA of the constitution gives Delhi the special status as the National Capital Territory of Delhi. This is reinforced as the reference to Delhi from Article 240 – “Power of President to make regulations for certain Union Territories” – has also been removed. It is an undisputed fact that the National Capital Territory of Delhi is a legal creation of the Constitution and enjoys a special status. This House resolves that this special status of the Government of NCT of Delhi has to be recognized, accepted and respected by the Central Government.

III. The Legislative Assembly takes cognizance of the fact that constitutionally the Lt. Governor of Delhi is entrusted with three and only three reserved powers i.e. powers with respect to Entries 1,2 and 18 of the State List and the directly related Entries 64-66 of the same List (Art. 239 AA [3][a]), Constitution of India). This spirit of the Constitution is reiterated in the Government of NCT of Delhi Act, 1992 and the Transaction of Business Rules, 1993 and as amended in 1998. Any exercise of powers beyond the aforesaid limited three subjects by any amendment to any rule is directly violative of the Constitution of India and hence *ultra vires*. This House resolves that in respect of transferred subjects the Lt. Governor should act only on the aid and advice of the Council of Ministers.

IV. The Legislative Assembly takes note of the fact that as per Rule 45 of the Transaction of Business Rules the Lieutenant Governor shall in respect of matters connected with ‘Police’, ‘Public Order’ and ‘Land’ exercise his executive functions to the extent delegated to him by the President, in consultation with the Chief Minister, if it is so provided under any order issued by the President under Article 239 of the Constitution. This Constitution with the Chief Minister as envisaged in the Rules is mandatory. In the absence of this consultation the decision making process in respect of these subjects is devoid of the advice of the elected representatives. This House resolves that such mandatory consultation on reserved subjects should take place and the Lt. Governor and the Central Government should without fail give due consideration to the views of the elected Government in the spirit of democracy.”

2. Motion moved by The Minister of Urban Development :

“This House expresses its resolve that Government of NCT of Delhi be granted Statehood by bringing about major institutional and structural reforms based on broad consensus to empower the citizens of Delhi

through their elected representatives to provide good city governance befitting the National Capital of our country.”

After combined discussion, the Motions were put to vote separately. The Members of the BJP walked out in protest against the Motion of the Chief Minister as a mark of protest. However, they voted in favour of the second Motion moved by the Minister of Urban Development.

The House was adjourned *sine-die* thereafter.



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