REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11887 Of 2018
(arising out of SLP (C) No. 8249 of 2018)

K. LAKSHMINARAYANAN ...APPELLANT(S)

VERSUS

UNION OF INDIA & ANR. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.11888 Of 2018
(arising out of SLP (C) No. 8224 of 2018)

S. DHANALAKSHMI ...APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

Leave granted.

These two appeals have been filed against the common

judgment of Madras High Court dated 22.03.2018 by which the writ petitions filed by the appellants questioning the nominations made by the Central Government in exercise of power under Section 3(3) of the Government of Union Territories Act, 1963 (hereinafter referred to as "Act, 1963"), to the Legislative Assembly of Union Territory of Puducherry has been dismissed.

2. The background facts leading to filing of the writ petitions giving rise to these appeals are as follows:-

2.1 Part VIII of the Constitution of India dealing with the Union Territories was amended by Constitution (Fourteenth Amendment) Act, 1962 by inserting Article 239A, which provides for "creation of local Legislatures or Council of Ministers or both for certain Union Territories." Article 239A provided that Parliament, may by law, create for the Union Territory of Pondicherry, 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. After the above Constitutional amendment

inserting Article 239A, the Parliament enacted Government of Union Territories Act, 1963 to provide for Legislative Assembly and Council of Ministers for certain Union Territories and for certain other matters.

2.2 At the time of commencement of Act, 1963, there were large number of Union Territories, which were to be governed by the Act, 1963. Gradually, several Union Territories were upgraded to the status of a State and as on date, the definition of Union Territories under Section 2(h) defines “Union Territory” as the Union Territory of Puducherry. Section 3 of the Act, 1963 provides for Legislative Assemblies for Union territories and their composition. According to Section 3(2), the total number of seats in the Legislative Assembly of the Union territory to be filled by persons chosen by direct election shall be thirty and as per Section 3(3), the Central Government may nominate not more than three persons, not being persons in the service of Government, to be members of the Legislative Assembly of the Union territory.

2.3 Election for filling thirty seats in the Legislative

Assembly of Puducherry was held in the year 2016. Indian National Congress, who bagged fifteen out of thirty seats with support of DMK and one independent candidate has formed the Government in Puducherry. Writ Petition (C) No. 16275 of 2017 as K. Lakshminarayanan Vs. Union of India & Anr. was filed in the Madras High Court praying for a writ of mandamus forbearing the respondents from in any manner nominating or filing up the nominated seats of Members for the Puducherry Legislative Assembly except with the consultation and choice of the elected Council of Ministers. The writ petition was filed on 27.06.2017. The Government of India, Ministry of Home Affairs had issued a notification on 23.06.2017 nominating Shri V. Saminathan, Shri K.G. Shankar and Shri S. Selvaganabathy as members of the Legislative Assembly of the Union Territory of Puducherry. An application for amendment was filed in the writ petition praying for quashing the notification dated 23.06.2017. Another Writ Petition (C) No. 18788 of 2017 – S. Dhanalakshmi Vs. Union of India & Ors. Was filed in the Madras High Court praying for following reliefs:-

> "Writ of Certiorarified Mandamus calling for the records on the file of the third respondent relating to the impugned Notification bearing Ref. No. F.No.U-11012/1/2014-UTL dated 23-06-2017 and quash the same and consequently direct the respondents 1 to 3 to nominate the members to the Puducherry Legislative Assembly only with the consultation and choice of the elected Council of Ministers and pass such further or other orders and thus render justice".

2.4 On 13.11.2017, the Secretary of Puducherry Legislative Assembly communicated the decision of the Speaker of the Legislative Assembly that the nominated members could not be recognised as members of the Assembly, having been appointed in contravention of the Constitution and the Act, 1963. The communication dated 13.11.2017 was challenged by three nominated members by filing three separate writ petitions being Writ Petition Nos. 29591, 29592 and 29593 of 2017. All the writ petitions, i.e. Writ Petition No. 16275 of 2017, Writ Petition No. 18788 of 2017 and Writ Petitions No. 29591, 29592 and 29593 of 2017 were heard and decided by Division Bench of Madras High Court vide its judgment dated 22.03.2018. The Writ Petition Nos. 16275 of 2017 and 18788 of 2017 challenging the notification dated

23.06.2017 has been dismissed, whereas the Writ Petition Nos. 29591, 29592 and 29593 have been allowed. Two separate but concurring judgments have been delivered by Division Bench of Madras High Court. Operative portion of the judgment delivered by Justice M. Sundar, with which judgment, Chief Justice expressed absolute agreement, was to the following effect:-

> "W.P. No. 16275 of 2017 filed by the Whip and W.P. No. 18788 of 2017 filed by PIL petitioner are dismissed. Writ petitions, being W.P. Nos. 29591 to 29593 of 2017 filed by nominated MLAs are allowed. Considering the nature of the matter and in the light of the trajectory this litigation has taken, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

2.5 Against the aforesaid Division Bench judgment of Madras High Court dated 22.03.2018, only two appeals have been filed, one by K. Lakshminarayanan and other by S. Dhanalakshmi challenging the judgment of Division Bench by which Writ Petition No. 16275 of 2017 has been dismissed and another appeal has been filed against the judgment of Division Bench in Writ Petition No. 18788 of 2017 by which writ petition was dismissed. In so far as judgment of Division

Bench in Writ Petitions Nos. 29591, 29592 and 29593 of 2017 filed by three nominated MLAs, by which their writ petitions were allowed quashing the decision of the Speaker dated 23.11.2017, no appeals have been filed.

3. We have heard Shri Kapil Sibal and Shri Salman Khurshid, learned senior counsel appearing for the appellants. We have heard Shri K.K. Venugopal, learned Attorney General for the Union of India. Shri Ranjit Kumar, learned senior counsel has been heard for the respondents.

4. Shri Kapil Sibal challenging the nominations made by the Central Government has raised various submissions. Shri Sibal submits that the Government of Puducherry has vital interest in the constitution of the Assembly, since it enjoys the confidence of Legislative Assembly and accountable to the people. The Government of Puducherry cannot be a stranger in the nominations made to the Assembly. He submits that nominations of the members of the Assembly must emanate from the Government of Puducherry and should have concurrence of the Government. It was open for the Central Government to adopt any fair procedure for nominating the members. The nominees could have been originated from Government of

Puducherry. The President could have asked the names from the Government of Puducherry. He submits that let this Court decide on a valid procedure, which is to be adopted while making nominations by Central Government in the Legislative Assembly of Puducherry. He further submits that there has been at least six occasions when elected Government of Puducherry was consulted before nominating the members in the Legislative Assembly by the Central Government. In the year 2001, when Lieutenant Governor without consulting the Government of Puducherry forwarded the names for nomination to the Assembly, objection was raised by the Government of Puducherry and the proposed list of nominated members was referred back to the Lieutenant Governor for lack of consultation with the elected Government. He submits that earlier incidents when the Government of Puducherry was consulted before nomination has taken shape of a constitutional convention, which is nothing but a constitutional law to be followed by all concerned. He submits that while making nominations vide notification dated 23.06.2017, the above constitutional convention has not been followed, which renders the nomination illegal and unsustainable. He further submits that in the counter affidavit filed by the Union of India before the High Court,

it was stated that Lieutenant Governor has not sent any nominations to the Central Government and Central Government on its own has made nominations under Section 3(3) of the Act, 1963. Shri Kapil Sibal submits that the expression "Central Government" as occurring in Section 3(3) of the Act, 1963 has not been correctly understood by the High Court. He submits that according to the definition given under Section 3(8) of the General Clauses Act, 1897, the Central Government means the President and include in relation to the administration of a Union Territory, the administrator thereof. It is submitted that the President has framed Rules of Business of the Government of Puducherry, 1963, Rule 4 of which Rules is relevant for the present case. It is submitted that as per the Business Rules, it is the administrator, who was required to make nominations that too after consultation of Council of Ministers. Shri Sibal refers to Rule 4(2) and Rule 48 of the Business Rules to buttress his submission. It is submitted that the nomination to Legislative Assembly is fully covered by expression "remaining business of the Government" as occurring in Rule 4(2). Therefore, Rule 4(2) read with Chapter IV of the Rules of Business, cover the entire gamut of executive power exercisable by the President under Article 239 of the Constitution. Since Section 3(3) of the Act, 1963

refers to “Central Government”, thereby indicating exercise of power in terms of Article 239 of the Constitution, Rule 4(2) read with Chapter IV of the Rules of Business of the Government of Puducherry would apply. Therefore, the power to nominate members under Section 3(3) of the Act, 1963 has to necessarily involve the administrator acting in accordance with Chapter IV.

5. Shri Sibal further submits that in event interpretation is accepted that the Government of Puducherry has no role to play in the nominations of members to Legislative Assembly, it is de-establishing cooperative federalism. It is submitted that federalism has been recognised as a basic feature of the Constitution and it is Government, which is democratically formed and reflect the will of the people and responsible to the Legislature, who has to initiate and concur in the members to be nominated in the Legislative Assembly. In the representative democracy, the Government is not a stranger to the process of nomination. One more submission which has been pressed by Shri Sibal is that even though nominated members may have right to vote in the proceedings of Assembly there are two exceptions to such right of vote, i.e., (i) voting on budget, and (ii) voting on no-confidence motion against the Government. He submits that nominated members shall have no

right to vote in above two subjects. Shri Kapil Sibal has further very candidly in his submission, stated that he is not pursuing the challenge to Section 3(3) of the Act, 1963 nor he is carrying further the submission made before the High Court on the ground of eligibility of members, who have been nominated in the Legislative Assembly. Shri Sibal has placed reliance on various judgments of this Court, which shall be referred to while considering the submissions in detail.

6. Shri K. K. Venugopal, learned Attorney General replying the submissions of Shri Sibal submits that the Union Territory is a Territory of a Union in which Central Government can nominate unless the Constitution or law provides for any consultation of Government of Puducherry. According to Article 239, it is the President, who has to administer Union Territory. Lieutenant Governor, who is an administrator appointed by the President to administer the Union Territory of Puducherry, govern the Union Territory as per instructions and directions of the President. Neither Lieutenant Governor nor Legislative Assembly can assert themselves in governing the Union Territory. The Act, 1963 is a law framed by Parliament in exercise of power under Article 239A of the constitution. The powers and functions of the Legislative Assembly are such as specified in the Act, 1963. The

provision empowering nominations in the Legislative Assembly by the Central Government in no manner affect the principle of federalism or cooperative federalism. The Act, 1963 or any Constitutional provision does not provide for any consultation of Government of Puducherry for making nomination in the Legislative Assembly by the Central Government. There are large number of Constitutional provisions, which provide for consultation, whereas no Constitutional provision provide for consultation of Government of Puducherry in making nomination by Central Government nor any such right of consultation, is decipherable from the Act, 1963. Reading consultation in nomination shall upset the Constitutional balance. Appellants want to read the word "consultation" in Section 3(3) of Act, 1963, which has been consciously withheld. When the provisions of Act, 1963 indicate a primacy of Central Government, the submission that nomination should be made with the concurrence of Government of Puducherry is wholly unfounded. The Union Territory of Puducherry is wholly subservient to the President.

7. Shri K.K. Venugopal further submits that Council of Ministers of Government of Puducherry is a Agency devised by President of India. Section 50 of Act, 1963 gives absolute power to the President to issue any direction to the

Administrator and his Council of Ministers. It is submitted that there is no kind of any limit in the extent of power as envisaged under Section 50. Shri Venugopal referred to various other statutes where provisions envisaged for issuing directions by Central Government or other authorities. He submits that in various statutory provisions, directions are hedged by several conditions and in some of the statutes consultation is also envisaged.

8. Shri Ranjit Kumar, learned senior counsel appearing for nominated MLAs submits that the Constitution itself provides that Legislative Assembly of Union Territory of Puducherry shall be partly elected and partly nominated and Parliament enacted Act, 1963, for both the elected and non-elected members. He further submits that Section 14 of the Act, 1963 which deals with disqualification of members, does not contemplate that if nomination is made without consultation of Legislative Assembly, the members will be disqualified. Hence, non-consultation with Council of Ministers of Legislative Assembly cannot be treated to be as any disqualification.

9. Shri Ranjit Kumar further submits that Section 33 provides that the Legislative Assembly of the Union territory may make rules for regulating and conducting its business.

Similarly, Section 46 provides that the President shall make the rules for allocation of business to the Ministers and for the more convenient transaction of business. He submits that both the rules framed under Act, 1963 as well as Section 36, there is no rule providing consultation of the Council of Ministers or Chief Minister before making any nomination in the Legislative Assembly by the Central Government.

10. He further submits that Legislative Assembly has no power to make any law to regulate nomination to be made in the Assembly. It is only the Parliament who is empowered to make law under Article 239A regulating constitution of the Legislative Assembly. When the legislative power is not there with the Union Territory of Puducherry, no executive power can be exercised by the Legislative Assembly of the Puducherry. He further submits that power of nomination which shall flow from law making power unless Article 239A and legislative power will be co-extensive with the executive power.

11. Shri Kapil Sibal in his rejoinder submission replying the submissions of learned Attorney General as well as Shri Ranjit Kumar, submits that the appellants are questioning the procedure adopted by Central Government for nomination. He further reiterates that Central Government under Section 3(3)

of Act, 1963 is to mean the President who in turn delegated his power to its Administrator, thus, nomination has to emanate from Administrator who is to Act on the advise of the Council of Ministers. He submits that the Rules of Business framed by the President are Rules of Business both under Article 239 as well as under Section 44 and under Section 46 of the Act, 1963, hence, the Rules of Business relate to entire executive functions of the Government of Puducherry.

12. Learned counsel for the parties in support of their respective submissions have relied on various judgments of this Court which shall be referred to while considering the submission in detail.

13. From the submissions raised by the learned for the parties and the materials on record following are the main issues which arise for consideration in these appeals:

(1) Whether the expression “Central Government” as occurring in Section 3(3) of the 1963 Act means the Administrator, hence, it is the Administrator who has to exercise the power of nomination that too on the aid and advise of the Council of Ministers of the Union Territory of Puducherry?

(2) Whether the nomination in the Legislative Assembly of the Puducherry is the business of the Government which has

to be transacted in accordance with Rule 4 sub-Rule (2) read with Rule 48 of the Rules of Business of the Government of Puducherry, 1963. As per which Rule the Administrator was required to consult either Council of Ministers or Chief Minister before discharging his functions under Rule 4(2)?

(3) Whether nomination of Central Government in the Legislative Assembly without concurrence of Government of Union Territory of Puducherry violates principles of Federalism and co-operative Federalism?

(4) Whether there is a constitutional convention to consult the Government of Puducherry before making any nomination by the Central Government on the strength of the fact that on six earlier occasions when the nominations were made, the Central Government has consulted the Government of Puducherry before making nominations?

(5) Whether the Central Government while exercising its power of nomination under Section 3(3) of 1963 Act is obliged to consult the Council of Ministers/Chief Minister of Government of Union Territory of Puducherry and the nomination by Central Government can only be made with the concurrence of the Government of Puducherry?

(6) Whether recommendations made by the Madras High Court in so far as recommendations made in paragraph 5(iv) of the impugned judgment is concerned, are unsustainable and not in accordance with law?

(7) Whether the nominated members in the Legislative Assembly shall have no voting right in two matters, i.e., (i) budget and (ii) no- confidence motion against the Government?

Issue No.1

14. The submission made by Shri Sibal is that the expression "Central Government" used under Section 3(3) of the Act, 1963 means the administrator. In consequence, he contends that the power of nomination in the Legislative Assembly of Puducherry is to be exercised by the administrator on the aid and advise of the Council of Ministers of Union Territory of Puducherry. The Act, 1963 does not define the expression "Central Government". The provision of General Clauses Act, 1897 had to be looked into to find out the definition of the expression "Central Government". Section 3(8) of the General Clauses Act, 1897 defines the expression "Central Government". The

relevant portion of Section 3(8) is as follows:-

> "3(8) "Central Government" shall,--
>
> (a) ……
>
> (b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,--
>
> (i) ……
>
> (ii) ……
>
> (iii) in relation to the administration of a Union territory, the administrator thereof acting within scope of the authority given to him under article 239 of the Constitution;

15. In Section 3(8)(b) Central Government has been defined as to "mean the President". The next phrase used after the semi-colon is "and shall include". The definition of Central Government given in Section 3(8) is a restrictive and exhaustive definition. When the definition uses the word "mean the President", the clear intention is that Central Government is the President, the next phrase "and shall include in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution" has been added with a purpose and object. Article 239 of the Constitution provide that save as otherwise provided by Parliament by law, every Union territory shall be

administered by the President acting, to such extent as he thinks fit, through and administrator to be appointed by him with such designation as he may specify. As per definition of Section 3(8)(b)(iii) administrator shall include in the definition of Central Government when in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution. Thus, the administrator will be Central Government when he acts within the scope of the authority given to him under article 239. Under Article 239, Rules of Business have been framed as noticed above, which has been brought on record as Annexure P1 to Civil Appeal of K. Lakshminarayanan. Executive functions of the administrator as contemplated by Rule 4(2) read with Rule 48 shall include a variety of the executive functions, which he is authorised to discharge. The executive functions may include: (i) the business of executive functions in relation to the subjects on which Legislative Assembly of the Union Territory of Puducherry is entitled to make law; (ii) the executive functions entrusted to the Government of Puducherry, to be exercised in the name of the administrator, entrusted/delegated under any Parliamentary law; (iii) functions to be discharged by administrator under any special

or general order issued by the President of India; (iv) functions to be discharged by administrator under the instructions issued by the Central Government from time to time. A perusal of the Rules of Business, which have been framed under Article 239 as well as Section 46 of the Act, 1963 does not expressly indicate that in so far as power of nomination to be exercised by the Central government under Section 3(3), the administrator or Government of Puducherry has been authorised or delegated any function in the above regard. No order of the President or Central Government has been brought on the record on the basis of which it can be concluded that with regard to right of a nomination to be exercised by the Central Government under Section 3(3) of Act, 1963, any function has been delegated, authorised or instructed to the administrator. The definition of Central Government given under Section 3(8)(b)(iii), which mean the President cannot be given a go bye to rely on the next expression "shall include" the administrator. The context of subject has to be looked into while finding out as to whether in context of Section 3(3), the Central government shall mean the President or the administrator.

16. This Court had occasion to interpret the definition clause in **Jagir Singh and Others Vs. State of Bihar and**

Others, (1976) 2 SCC 942. In the above case, the Court was considering the definition of expression "owner" as defined in Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. In para 11 of the judgment, the definition has been extracted, which is to the following effect:-

> "**11.** The expression "owner" is defined in the Bihar Act in Section 2(d) thereof as follows:
>
> > " 'Owner' means the owner of a public service motor vehicle in respect of which a permit has been granted by a Regional or State Transport Authority under the provisions of the Motor Vehicles Act, 1939 and includes the holder of a permit under the said Act in respect of a public service motor vehicle or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner."

17. The definition of owner in the Bihar Act also used two expression, first 'Owner' means the owner of a public service motor vehicle and second and includes the holder of a permit under the said Act in respect of a public service motor vehicle or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner. The provisions of Maharashtra Tax on Goods (Carried by Road) Act, 1962 and other Acts were also under consideration. In Maharashtra Act, the "operator" means

any person whose name is entered in the permit as the permit holder or any person having the possession or control of such vehicle. It was contended before the Court that words "or any person for the time being in charge of such vehicle" in the definition of "owner" indicate that the transport or booking agencies which would take the public service motor vehicle on hire would be owners within the definition of the word without being permit holders in respect of these public service motor vehicles. The contention to read definition in particular manner was rejected by this Court. In paragraph Nos. 19 and 21, following has been held:-

> **"19.** The definition of "owner" repels the interpretation submitted by the petitioners that the definition means not only the owner who is the permit holder but also a booking agency which may be in charge of the vehicle without being a permit holder. The entire accent in the definition of owner is on the holder of a permit in respect of the public service motor vehicle. It is the permit which entitles the holder to ply the vehicle. It is because the vehicle is being plied that the passengers and consignors of goods carried by that vehicle become liable to pay not only fare and freight to the owner but also tax thereon to the owner. The words "or any person for the time being in charge of such vehicle or responsible for the management of the place of business of such owner" indicate that the permit holder will include any person who is in charge of such vehicle of the permit holder or any person who is responsible for the management of the place of business of such owner. The owner cannot escape the liability by stating that any person is for the time being in charge of such vehicles, and, therefore, such person is the owner and not the permit holder.

> **21.** The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner."

18. It is further relevant to notice that definition clause in Section 3 of the General Clauses Act, 1897 begins with the expression "In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context". Thus, all definitions given under Section 3 are subject "unless there is anything repugnant in the subject or context". Thus, the subject or context has to be looked into to apply the definition given in Section 3(8)(b). This Court in **Jagir Singh (supra)** has also held that while interpreting the definition clause, the context, the collocation and the object of words relating to such matter has to be kept in mind while interpreting the meaning intended to be conveyed by the use of the word under a circumstance. In paragraph No. 20 following has been laid down:-

> **"20.** The general rule of construction is not only to look at the words but to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning according to

> what would appear to be the meaning intended to be conveyed by the use of the words under the circumstances. Sometimes definition clauses create qualification by expressions like "unless the context otherwise requires"; or "unless the contrary intention appears"; or "if not inconsistent with the context or subject-matter". "Parliament would legislate to little purpose," said Lord Macnaghten in *Netherseal Co*. v. *Bourne (1889) 14 AC 228*, "if the objects of its care might supplement or undo the work of legislation by making a definition clause of their own. People cannot escape from the obligation of a statute by putting a private interpretation on its language." The courts will always examine the real nature of the transaction by which it is sought to evade the tax."

19. Another judgment of this Court in **Black Diamond Beverages and Another Vs. Commercial Tax Officer, Central Section, Assessment Wing, Calcutta and Others, (1998) 1 SCC 458** is also relevant in the present context. In the above case, this Court had occasion to consider the definition of "Sale price" as occurring in Section 2(d) of West Bengal Sales Tax Act, 1954. The definition has been quoted in paragraph No.5 of the judgment, which is to the following effect:-

> "**5.** The 1954 Act generally provides for levy of a single-point tax at the first stage on commodities notified under Section 25 of that Act. On the other hand, the 1941 Act is a general statute providing for multipoint levy of sales tax on commodities not covered by the 1954 Act. Sub-clause (*d*) of Section 2 of the 1954 Act reads as follows:
>
> > "2. (*d*) 'sale-price' used in relation to a dealer *means* the amount of the *money consideration* for the sale of notified commodities manufactured, made or processed by

> him in West Bengal, or brought by him into West Bengal from any place outside West Bengal, for the purpose of sale in West Bengal, less any sum allowed as cash discount according to trade practice, but *includes* any sum charged for containers or other materials for the packaging of notified commodities;"

20. The above definition also contain two expression means and include. The first part of the definition defines the meaning of the word 'sale-price' as the amount of the *money consideration* for the sale. This Court held that interpretation of the first part of the definition is in no way control or affect the other part of the definition and include other part. In paragraph Nos. 7 and 8, following has been laid down:-

> **"7.** It is clear that the definition of "sale price" in Section 2(*d*) uses the words "means" and "includes". The first part of the definition defines the *meaning* of the word "sale price" and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which "includes" certain other things in the definition. This is a well-settled principle of construction. *Craies on Statute Law* (7th Edn., 1.214) says:
>
> > "An interpretation clause which extends the meaning of a word does not take away its ordinary meaning…. Lord Selborne said in *Robinson* v. *Barton-Eccles Local Board* AC at p. 801:
> >
> > > 'An interpretation clause of this kind is *not meant to prevent* the word

> receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act … to be applied to something to which it would not ordinarily be applicable.' "
>
> (emphasis supplied)

Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning.

8. In view of the above principle of construction, the first part of the definition of sale price in Section 2(*d*) of the 1954 Act must be given its own meaning and the respondent's counsel is therefore right in urging that the first part of Section 2(*d*) which is similar to the first part of Section 2(*p*) in the Rajasthan Sales Tax Act, 1954, must be given the same meaning given to similar words in *Hindustan Sugar Mills* v. *State of Rajasthan, (1978) 4 SCC 271*. What the said meaning is we shall consider separately. If, therefore, by virtue of *Hindustan Sugar Mills case* the first part is to be interpreted as bringing within its natural meaning the "freight charges" then the contention for the appellants that like "packaging charges" these "freight charges" must have also been specifically included in Section 2(*d*) cannot be accepted."

21. Thus, it is clear that the definition of Central Government, which means the President is not controlled by the second expression "and shall include the administrator". The ordinary or popular meaning of the word "the President" occurring in Section 3(8)(b) has to be given and the second part of the definition shall not in any way control or affect the first part of the definition as observed above. In the

definition of Central Government, an administrator shall be read when he has been authorised or delegated a particular function under the circumstances as indicated above. No statutory rules or any delegation has been referred to or brought on record under which the administrator is entitled or authorised to make nomination in the Legislative Assembly of the Union Territory of Puducherry. Thus, in the present case, the definition of Central Government, as occurring in Section 3(3) of the Act, 1963 has to be read as to mean the President and not the administrator. The issue is answered accordingly.

Issue No.2

22. Relying on Rule 4(2) of the Rules of Business of the Government of Puducherry, 1963 (hereinafter referred to as "Rules of Business") read with Rule 48 it is contended that business of Government in the nominations in the Legislative Assembly is covered by Rule 4(2), hence, Administrator is required to consult Council of Ministers or the Chief Minister before taking any decision. The Rules of Business have been framed by the President in exercise of the powers conferred by Article 239 and the proviso to Article 309 of the Constitution, Section 46 of the Act, 1963 and all other powers

enabling the President in this regard. In the Rules of Business, Rule 2(f) means: "the Government of Puducherry". Rule 3 provides that the business of the Government shall be transacted in accordance with these Rules. Rule 4 on which reliance has been placed by Kapil Sibal is to the following effect:

> "4. (1) The business of the Government in relation to matters with respect to which the Council is required under section 44 of the Act to aid and advise the Administrator in the exercise of his functions shall be transacted and disposed in accordance with the provisions of Chapter III.
>
> (2) The remaining business of the Government shall be transacted and disposed of in accordance with the provisions of Chapter IV.
>
> (3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2), prior reference in respect of the matters specified in chapter V shall be made to the Central Government in accordance with the provisions of that Chapter."

23. Rule 4(1) refers to the business of the Government in relation to matters with respect to which the Council is required under Section 44 of the Act to aid and advise the Administrator in exercise of his functions. Section 44(1) of the Act, 1963 is as follows:

> "44. **Council of Ministers.**—(1) There shall be a Council of Ministers in each Union territory with the Chief Minister at the head to aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union territory has power to make laws except in so far as he is required by or

> under this Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions:
>
> Provided that, in case of difference of opinion between the Administrator and his Ministers on any matter, the Administrator shall refer it to the President for decision and act according to the decision given thereon by the President, and pending such decision it shall be competent for the Administrator in any case where the matter is in his opinion so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.
>
> a[x x x x]
>
> b[x x x x]"

24. Section 44(1) relates to functions "in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws. There may be other functions of the Government of Puducherry which do not pertain to functions in relation to matters with respect to which Legislative Assembly of Puducherry has power to make laws. For example, under any Parliamentary law with respect to which Legislative Assembly of Union Territory has no power to make laws, any power delegated to the State Government is authorised or delegated under the Parliamentary laws to exercise any function.

25. Rule 4(2) obviously refers to "the remaining business of the Government", which is not covered by Rule 4(1). Rule 48 of the Rules of Business refers to sub-(2) of Rule 4. Rule 48 is as follows:

> "48. In regard to any matter referred to in sub-rule (2) of rule 4 and in respect of which no specific provisions has been made in the foregoing rules in this Chapter, the Administrator may, if he deems fit either consult his Council or the Chief Minister, before exercising his powers or discharging his functions in respect of that matter."

26. As per Rule 48 with regard to matters referred to in sub-rule (2) of Rule 4, the Administrator may, if he deems fit, either consult his Council or the Chief Minister, before exercising of his powers or discharging his functions in respect of that matter. But the question which needs to be answered for the present case is as to whether the nomination of a member in the Legislative Assembly of Puducherry is covered by expression "remaining business of the Government". The Government has been defined in Rule 2(f) as "the Government of Puducherry". The Government occurring in Rule 4(2) cannot be stretched to be Central Government. When Section 3(3) of Act, 1963 empowers the Central Government to nominate not more than three persons to the Legislative Assembly of the Union Territory, it is the business of the Central Government to make nominations as per Parliamentary law.

27. The business of the Government as occurring in Rule 4 has to be business which under any law is to be performed by the

Government of Puducherry. Article 239A of the Constitution provides 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 or Council of Ministers or both with such Constitution, powers and functions, in each case, as may be specified in the law.

28. The expression 'law' used in Article 239A(1) is a Parliamentary law. When the Constitution expressly provides that it is the Parliament which may provide by law, constitution of Legislature for the Union Territory, it is the Parliament alone which can provide for constitution of Legislative Assembly for Union Territory under the Act, 1963. Section 3 does provide for constitution of Legislative Assembly for Union Territory with thirty members to be elected members and three members to be nominated by the Central Government. When the Parliamentary law as envisaged by Article 239A provides for the constitution of Legislative Assembly of the Union Territory which also includes nomination, the said constitution which also includes nomination can not be the business of the Government of Puducherry. The nominations of the members to the Legislative Assembly of Puducherry thus can never be covered by expression 'remaining business of the Government' as occurring in Rule

4(2). When Rule 4(2) itself is not attracted in reference to the nomination in the Legislative Assembly, there is no occasion of applicability of Rule 48 that is consultation with the Council of Ministers or the Chief Minister by the Administrator. We, thus, do not find any substance in the submission of Shri Kapil Sibal that nomination in the Legislative Assembly in the Puducherry is the business of the Government of Puducherry and is to be exercised in accordance with Rule 4(2) read with Rule 48. The nomination in the Legislative Assembly in the Puducherry is to be made by the Central Government by virtue of Article 239A read with Section 3(3) of the Act, 1963.

29. Article 77 of the Constitution deals with "conduct of business of the Government of India". Article 77 sub-clause (3) provides that "The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business". In exercise of the power under Article 77(3) the President has made Government of India (Allocation of Business) Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961. Rule 2 and Rule 3 sub-rule (1) of Allocation of Business Rules which are relevant for this case are to the following effect:

"2. Allocation of Business — The business of the Government of India shall be transacted in the Ministries, Departments, Secretaries and Officers specified in the First Schedule to these rules (all of which are hereinafter referred to as "departments").

3. Distribution of Subjects -

(1)The distribution of subjects among the departments shall be as specified in the Second Schedule to these Rules and shall include all attached and subordinate offices or other organisations including Public Sector Undertakings concerned with their subjects and Sub-rules (2), (3) and (4) of this Rule.

xxx xxx xxx xxx
xxx xxx xxx xxx
xxx xxx xxx xxx
xxx xxx xxx xxx."

30. The Second Schedule includes "Ministry of Home Affairs (Grih Mantralaya), which has several departments from A to E. B is "Department of States (Rajya Vibhag). Under heading (III) Union Territories have been mentioned. Under Para 7 sub-clause (b) Union of Territory of Pondicherry is mentioned. Relevant extract of Second Schedule under the Ministry of Home Affairs, Department of States is as follows:

"(III) Union Territories

7. Union of Territories with legislature:

(a) xxx xxx xxx xxx

(b) Union Territory of Pondicherry:

All matters falling within the purview of the

> Central Government in terms of provisions contained in Part VIII of the Constitution in so far as these relate to the Union Territory of Pondicherry and the Government of Union Territories Act, 1963 except all such matters as have been under these rules specifically been assigned to any other Ministry or Department of the Government of India."

31. Para 7(b) expressly provides that all matters falling within the purview of the Central Government in terms of provisions contained in Part VIII of the Constitution in so far as these relate to the Union Territory of Puducherry and the Government of Union Territories Act, 1963 are assigned to the Department of States. Thus, under the Act, 1963 all matters falling within the purview of the Central Government including power of nomination given to the Central Government under Section 3(3) are assigned under the Allocation of Business Rules by the President of India to Ministry of Home Affairs, Department of States. Thus, power under Section 3(3) of Act, 1963 has to be transacted in the Ministry of Home Affairs, Department of States. For Transaction of Business, the President has framed Government of India (Transaction of Business) Rules, 1961. Rule 3 of (Transaction of Business) Rules, 1961 which is relevant is as follows:

> "3. Disposal of Business by Ministries. - Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India

(Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge."

32. Thus, as per Transaction of Business Rules, the matter of nomination in the Legislative Assembly of Puducherry not being a matter in regard to consultation with other departments and submission of the cases to the Prime Minister, the Cabinet and its Committees and the President, the above business is to be disposed of by or under the general or special orders or the directions of the Minister-in-charge that is Home Minister.

33. In view of the foregoing discussion, we are of the clear opinion that nomination in the Legislative Assembly of Puducherry is not the Business of the Government of Puducherry. It is a business of Central Government as per Section 3(3) of Act, 1963 which is to be carried out in accordance with the Government of India (Allocation of Business) Rules, 1961 and Government of India (Transaction of Business) Rules, 1961. The issue is answered accordingly.

Issue No. 3

Whether Principles of Federalism or Cooperative Federalism has been violated in the present case?

34. The Constitution of India is a written Constitution, which came into being after long deliberations by the men of eminence representing the aspirations and culture of our

ancient nation. Before Constitution makers, various Constitutions of the world were there to be looked into, incorporated and relied on. Our Constitution makers have taken best part of the Constitution of different countries including USA, Australia, Germany, Canada and Others. When the draft Constitution was being debated in the Constituent Assembly, one of the relevant issue to be deliberated, pondered upon and decided was the nature of Indian Constitution. Whether Constitution should be one, which is being followed in Federal countries like USA or it should be a Unitary Constitution, was deliberated and pondered. **Dr. B.R. Ambedkar**, Chairman of the Drafting Committee after noticing the characteristics of Unitary Constitution and Federal Constitution categorically stated that draft Constitution is a Federal Constitution. In the deliberation of 04.11.1948, Vol. VII Page 33, following was said by **Dr. B.R. Ambedkar;-**

> "Two principal forms of the Constitution are known to history - one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are:(1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words. Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at

> the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution……..”

35. **Dr. Ambedkar** further said that there are marked differences with the American Federation. He said that all federal systems including the American are placed in a tight mould of federalism. It cannot change its form and shape no matter what are the circumstances. Our draft Constitution can be both Unitary as well as Federal according to time and circumstances. Dealing with the essential characteristics of the Federal Constitution, **Dr. Ambedkar** Said:-

> “……. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and vice versa is a breach of the Constitution and (2) such breach is a justiciable matter to be determined by the Judiciary only…….”

36. It is also relevant to notice that before the Constituent Assembly, complaint was raised by the members that there is too much of centralisation in the Union. Replying the above complaint, **Dr. Ambedkar** clarified that legislative and executive authority, is partitioned between the Centre and the States.

37. **Dr. Ambedkar** in deliberations dated 25.11.1949, Vol. XI

Page 976 said:-

> "There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our constitution. There can be no mistake about it.

38. The nature and character of the Constitution came for consideration before this Court in several Constitution Benches, where this Court noted the fundamental feature of the Constitution of India. A seven-Judge Constitution Bench of this Court in **Special Reference No.1 of 1964, AIR 1965 SC 745** held that essential characteristics of federalism is the

distribution of executive, legislative and judicial authorities among bodies, which are independent of each other.

In paragraph 39, following has been laid down:-

> "**39.** Our legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative supremacy of our legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India. Therefore, it is necessary to remember that though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution."

39. In the landmark judgment of this Court in **Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225** a new dimension was given to the constitutional principles. This Court by majority judgment declared that the basic feature of the Constitution could not be amended by a constitutional amendment. Sikri, C.J. while delivering the majority judgment had held that federal character of the Constitution is one of

the basic structures of the Constitution.

40. Shelat and Grover, JJ. while delivering concurring opinion had also stated that our Constitution has all essential elements of federal structure. In para 486 following was stated: (Kesavananda Bharati case, SCC pp. 408-09)

> "486. The Constitution has all the essential elements of a federal structure as was the case in the Government of India Act, 1935, the essence of federalism being the distribution of powers between the federation or the Union and the States or the provinces. All the legislatures have plenary powers but these are controlled by the basic concepts of the Constitution itself and they function within the limits laid down in it (Per Gajendragadkar, C.J. in Special Reference No. 1 of 196435). All the functionaries, be they legislators, members of the executive or the judiciary take oath of allegiance to the Constitution and derive their authority and jurisdiction from its provisions. The Constitution has entrusted to the judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights (SCR at p. 446). It is a written and controlled Constitution."

41. Again a seven-Judge Bench in **State of Rajasthan v. Union of India, (1977) 3 SCC 592** had an occasion to consider the nature of the Indian Constitution. M.H. Beg, C.J., while delivering majority decision, in para 57 states: (SCC p. 622)

> "57. The two conditions Dicey postulated for the existence of federalism were: firstly, 'a body of countries such as the Cantons of Switzerland, the Colonies of America, or the Provinces of Canada, so closely connected by locality, by history, by race, or the like, as to be capable of bearing, in the eyes of their inhabitants, an impress of common nationality'; and, secondly, absolutely essential to the founding of a federal system is the 'existence of a very peculiar state of sentiment among the

inhabitants of the countries'. He pointed out that, without the desire to unite there could be no basis for federalism. But, if the desire to unite goes to the extent of forming an integrated whole in all substantial matters of Government, it produces a unitary rather than a federal Constitution. Hence, he said, a federal State "is a political contrivance intended to reconcile national unity with the maintenance of State rights". The degree to which the State rights are separately preserved and safeguarded gives the extent to which expression is given to one of the two contradictory urges so that there is a union without a unity in matters of Government. In a sense, therefore, the Indian union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually uplifted. In such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government."

42. Further in para 60 referring to Dr Ambedkar following was stated: (**State of Rajasthan case**, SCC p. 623)

"60. Although Dr Ambedkar thought that our Constitution is federal "inasmuch as it establishes what may be called a Dual Polity", he also said, in the Constituent Assembly, that our Constitution-makers had avoided the "tight mould of federalism" in which the American Constitution was forged. Dr Ambedkar, one of the principal architects of our Constitution, considered our Constitution to be 'both unitary as well as federal according to the requirements of time and circumstances'."

43. A nine-Judge Bench had occasion to elaborately consider the nature of the Constitution of India in **S.R. Bommai v. Union of India, (1994) 3 SCC 1**, Ahmadi, J. referring to

federal character of the Constitution in para 14 following was stated: (SCC pp. 68-69)

> "14. In order to understand whether our Constitution is truly federal, it is essential to know the true concept of federalism. Dicey calls it a political contrivance for a body of States which desire Union but not unity. Federalism is, therefore, a concept which unites separate States into a Union without sacrificing their own fundamental political integrity. Separate States, therefore, desire to unite so that all the member States may share in formulation of the basic policies applicable to all and participate in the execution of decisions made in pursuance of such basic policies. Thus the essence of a federation is the existence of the Union and the States and the distribution of powers between them. Federalism, therefore, essentially implies demarcation of powers in a federal compact."

Ahmadi, J. further stated that the Constitution of India is differently described, more appropriately as "quasi-federal" because it is a mixture of the federal and unitary elements, leaning more towards the latter.

44. B.P. Jeevan Reddy, J. held that the Founding Fathers wished to establish a strong Centre. In the light of the past history of this Sub-Continent, this was probably a natural and necessary decision. In paras 275 and 276 following was stated:

(**S.R. Bommai case**, SCC pp. 215-17)

> "275. A review of the provisions of the Constitution shows unmistakably that while creating a federation, the Founding Fathers wished to establish a strong Centre. In the light of the past history of this sub-continent, this was probably a natural and necessary decision. In a land as varied as India is, a strong Centre is perhaps a necessity. This bias towards Centre is reflected in the distribution of legislative heads between the Centre and States. All

the more important heads of legislation are placed in List I. Even among the legislative heads mentioned in List II, several of them, e.g., Entries 2, 13, 17, 23, 24, 26, 27, 32, 33, 50, 57 and 63 are either limited by or made subject to certain entries in List I to some or the other extent. Even in the Concurrent List (List III), the parliamentary enactment is given the primacy, irrespective of the fact whether such enactment is earlier or later in point of time to a State enactment on the same subject-matter. Residuary powers are with the Centre. By the 42nd Amendment, quite a few of the entries in List II were omitted and/or transferred to other lists. Above all, Article 3 empowers Parliament to form new States out of existing States either by merger or division as also to increase, diminish or alter the boundaries of the States. …

276. The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States. It is a matter of common knowledge that over the last several decades, the trend the world over is towards strengthening of Central Governments — be it the result of advances in technological/scientific fields or otherwise, and that even in USA the Centre has become far more powerful notwithstanding the obvious bias in that Constitution in favour of the States. All this must put the court on guard against any conscious whittling down of the powers of the States. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle — the outcome of our own historical process and a recognition of the ground realities. This aspect has been dealt with elaborately by Shri M.C. Setalvad in his Tagore Law Lectures “Union and State Relations under the Indian Constitution” (Eastern Law House, Calcutta, 1974). The nature of the Indian federation with reference to its

> historical background, the distribution of legislative powers, financial and administrative relations, powers of taxation, provisions relating to trade, commerce and industry, have all been dealt with analytically. It is not possible — nor is it necessary — for the present purposes to refer to them. It is enough to note that our Constitution has certainly a bias towards Centre vis-à-vis the States [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan3, SCR p. 540]. It is equally necessary to emphasise that courts should be careful not to upset the delicately-crafted constitutional scheme by a process of interpretation."

45. A Constitution Bench in **Kuldip Nayar v. Union of India, (2006) 7 SCC 1,** held that India is not a federal State in the traditional sense of the term and it is not a true federation formed by agreement between various States and it has been described as quasi-federation and similar other concepts.

46. A nine-Judge Constitution Bench in **Jindal Stainless Limited and Another Vs. State of Haryana and Others, (2017) 12 SCC 1** had occasion to consider the nature of federalism in the Indian Constitution while considering the relations between Union and States in reference to part XIII of the Constitution. Dr. T.S. Thakur, Chief Justice of India, as he then was, speaking for the Court noticed the nature of federalism as ingrained in the Constitution. Constitution Bench held that even though our Constitution may not be strictly federal in its character but the significant features of federal Constitution are found in the Indian Constitution.

In Paragraph 32, Constitution Bench laid down as follows:-

"**32.** Whether or not the Constitution provides a federal structure for the governance of the country has been the subject-matter of a long line of decisions of this Court, reference to all of which may be unnecessary but the legal position appears to be fairly well settled that the Constitution provides for a quasi-federal character with a strong bias towards the Centre. The pronouncements recognised the proposition that even when the Constitution may not be strictly federal in its character as the United States of America, where sovereign States came together to constitute a federal Union, where each State enjoins a privilege of having a Constitution of its own, the significant features of a federal Constitution are found in the Indian Constitution which makes it a quasi-federal Constitution, if not truly federal in character and in stricto sensu federal. The two decisions which stand out in the long line of pronouncements of this Court on the subject may, at this stage, be briefly mentioned. The first of these cases is the celebrated decision of this Court in Kesavananda Bharati case15, wherein a thirteen-Judge Bench of this Court, Sikri, C.J. (as his Lordship then was), being one of them talks about whether the Constitution of India was federal in character and if so whether federal character of the Constitution formed the basic feature of the Constitution. Sikri, C.J. summed up the basic feature of the Constitution in the following words: (SCC p. 366, paras 292-94)

> "292. … The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:
>
> (1) Supremacy of the Constitution;
>
> (2) Republican and Democratic form of Government;
>
> (3) Secular character of the Constitution;

(4) Separation of powers between the legislature, the executive and the judiciary;
(5) Federal character of the Constitution.

293. The above structure is built on the basic foundation i.e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

294. The above foundation and the above basic features are easily discernible not only from the Preamble but the whole scheme of the Constitution, which I have already discussed."

To the same effect are the views expressed by Shelat and Grover, JJ. who declared that the federal character of the Constitution is a part of its basic structure."

47. In **Jindal Stainless Ltd. (supra)**, one of us (Ashok Bhusha,J) has also expressed views on the form of the Indian Constitution, which was the same as expressed by majority opinion. In Paragraph 944, following was held:-

"**944.** The law declared by this Court as noted above clearly indicates that the Indian Constitution is basically federal in form and has marked traditional characteristics of a federal system, namely, supremacy of the Constitution, division of power between the Union and the States and existence of an independent judiciary. Federalism is one of the basic features of the Indian Constitution. However, the history of Constitution including the debates in the Constituent Assembly indicate that the distribution of powers was given shape with creating a strong Centre with the object of unity and integrity of India. The States are sovereign in the allotted fields. The Indian Constitution cannot be put in traditional mould of federalism. The traditional concept of federalism has been adopted with necessary modification in the framework of the Constitution to suit the country's necessity and requirement. The sum

total of above discussion is that federalism in the Constitution is limited and controlled by the Constitution and the exercise of powers of both the States and the Centre are controlled by express provisions of the Constitution."

48. A recent Constitution Bench judgment, which needs to be noticed is a judgment of this Court in **State (NCT of Delhi) Vs. Union of India & Another, (2018) 8 SCC 501.** Chief Justice Dipak Misra, as he then was, speaking for the Constitution Bench elaborately considered the concept of federal Constitution and laid down following in Paragraph Nos. 95, 96 and 108:-

"**95.** In common parlance, federalism is a type of governance in which the political power is divided into various units. These units are the Centre/Union, States and Municipalities. Traditional jurists like Prof. K.C. Wheare lay emphasis on the independent functioning of different governing units and, thus, define "federalism" as a method of dividing powers so that the general/Central and regional governments are each within a sphere coordinate and independent. As per Prof. Wheare:

> "the systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so, is that Government federal?"

96. However, modern jurists lay emphasis on the idea of interdependence and define federalism as a form of Government in which there is division of powers between one general/central and several regional authorities, each within its sphere interdependent and coordinate with each other.

108. From the foregoing discussion, it is clear as day that both the concepts, namely, democracy i.e.

rule by the people and federalism are firmly imbibed in our constitutional ethos. Whatever be the nature of federalism present in the Indian Constitution, whether absolutely federal or quasi-federal, the fact of the matter is that federalism is a part of the basic structure of our Constitution as every State is a constituent unit which has an exclusive Legislature and Executive elected and constituted by the same process as in the case of the Union Government. The resultant effect is that one can perceive the distinct aim to preserve and protect the unity and the territorial integrity of India. This is a special feature of our constitutional federalism."

49. Constitution Bench also noticed the concept of cooperative federalism and referring to an earlier judgment of this Court in **State of Rajasthan Vs. Union of India, (1977) 3 SCC 592** laid down following in paragraph No. 121 and 122:-

"**121.** In State of Rajasthan v. Union of India, the Court took cognizance of the concept of cooperative federalism as perceived by G. Austin and A.H. Birch when it observed: (SCC p. 622, para 58)

> "58. Mr Austin thought that our system, if it could be called federal, could be described as "cooperative federalism". This term was used by another author, Mr A.H. Birch (see Federalism, Finance and Social Legislation in Canada, Australia and the United States, p. 305), to describe a system in which:
>
> > '… the practice of administrative cooperation between general and regional Governments, the partial dependence of the regional Governments upon payments from the general Governments and the fact that the general governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions.'"

> **122.** We have dealt with the conceptual essentiality of federal cooperation as that has an affirmative role on the sustenance of constitutional philosophy. We may further add that though the authorities referred to hereinabove pertain to the Union of India and the State Governments in the constitutional sense of the term "State", yet the concept has applicability to the NCT of Delhi regard being had to its special status and language employed in Article 239-AA and other articles."

50. The concept of Collaborative federalism was also noticed in paragraph Nos. 110 and 111 in the following words:-

> "**110.** The Constituent Assembly, while devising the federal character of our Constitution, could have never envisaged that the Union Government and the State Governments would work in tangent. It could never have been the Constituent Assembly's intention that under the garb of quasi-federal tone of our Constitution, the Union Government would affect the interest of the States. Similarly, the States under our constitutional scheme were not carved as separate islands each having a distinct vision which would unnecessarily open the doors for a contrarian principle or gradually put a step to invite anarchism. Rather, the vision enshrined in the Preamble to our Constitution i.e. to achieve the golden goals of justice, liberty, equality and fraternity, beckons both the Union Government and the State Governments, alike. The ultimate aim is to have a holistic structure.
>
> **111.** The aforesaid idea, in turn, calls for coordination amongst the Union and the State Governments. The Union and the States need to embrace a collaborative/cooperative federal architecture for achieving this coordination."

51. Another concept which was noticed and elaborated was the concept of Pragmatic federalism. Following was laid down in Paragraph 123:-

> "**123.** In this context, we may also deal with an ancillary issue, namely, pragmatic federalism. To

> appreciate the said concept, we are required to analyse the nature of federalism that is conceived under the Constitution. Be it noted, the essential characteristics of federalism like duality of governments, distribution of powers between the Union and the State Governments, supremacy of the Constitution, existence of a written Constitution and most importantly, authority of the courts as final interpreters of the Constitution are all present under our constitutional scheme. But at the same time, the Constitution has certain features which can very well be perceived as deviations from the federal character. We may, in brief, indicate some of these features to underscore the fact that though our Constitution broadly has a federal character, yet it still has certain striking unitary features too. Under Article 3 of the Constitution, Parliament can alter or change the areas, boundaries or names of the States. During emergency, the Union Parliament is empowered to make laws in relation to matters under the State List, give directions to the States and empower Union officers to execute matters in the State List. That apart, in case of inconsistency between the Union and the State laws, the Union Law shall prevail. Additionally, a Governor of a State is empowered to reserve the Bill passed by the State Legislature for consideration of the President and the President is not bound to give his assent to such a Bill. Further, a State Legislature can be dissolved and President's rule can be imposed in a State either on the report of the Governor or otherwise when there is failure of the constitutional machinery in the State."

52. It has been laid down by this Court in the above cases, which is clear from above precedents that Indian Constitution has adopted federal structure. Although, it is not in the strict mould of federalism as understood in theory. That is why, different Constitution Benches of this Court have termed the Indian Constitution as a quasi-federal but the essential

characteristics of the federal system are ingrained in the Constitution and reflect in different Constitutional provisions which are (i) the distribution of legislative and executive power between the Union and the States, (ii) the distribution of such legislative and executive power is by the Constitution itself, and (iii) an independent judiciary to interpret the Constitutional provisions and lay down validly in case of any dispute or doubt.

53. The concepts of cooperative federalism, collaborative federalism and pragmatic federalism as has been noticed by the Constitution Bench in **State (NCT Of Delhi) (supra)** essentially engraft the same concept, i.e. faithful discharge of the functions, both Union and States have to follow Constitutional principles and not to encroach in the field reserved to other by the Constitution.

54. 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 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.

Issue No.4 and 5

55. Both the issues being interdependent are being taken together. The expression "Constitutional convention" has been coined by **Professor A.V. Dicey.** In 1885, in his introduction to the study of the "Law of the Constitution", in Chapter dealing with nature of conventions of Constitution, Professor Dicey States:-

> "……The conventions of the constitution are in short rules intended to regulate the exercise of the whole of the remaining discretionary powers of the Crown, whether these powers are exercised by the King himself or by the Ministry……."

56. Elaborating further Prof. Dicey States:-

> "……The result follows, that the conventions of the constitution, looked at as a whole, are customs, or understandings, as to the mode in which the several members of the sovereign legislative body, which, as it will be remembered, is the "Queen in Parliament," should each exercise their discretionary authority, whether it be termed the prerogative of the Crown or the privileges of Parliament. Since, however, by far the most numerous and important of our constitutional understandings refer at bottom to the exercise of the prerogative, it will conduce to brevity and clearness if we treat the conventions of the constitution, as rules or customs determining the mode in which the discretionary power of the executive, or in technical

> language the prerogative, ought (i.e. is expected by the nation) to be employed."

57. Professor Dicey in his treatment of conventions of the Constitution has held that conventions of the Constitution constitutes customs, practices, maxims, and precepts which are not enforced or recognised by the Courts, make up a body not of laws, but of constitutional or political ethics. The Dicey's statement that Constitutional conventions are not a body of laws but constitutional or political ethics was subject to debate and discussion. **Sir Ivor Jennings** in his treatise "The Law and the Constitution" noticed the distinction between laws and conventions as made by Professor Dicey, but opined that distinction appears to be plain and unambiguous, it is by no means free from difficulty.

58. Professor Dicey's statement that the convention is not a binding rule was departed with by **Sir Kenneth Wheare** in "**Modern Constitutions**", who wrote:-

> "By convention is meant a binding rule, a rule of behaviour accepted as obligatory by those concerned in the working of the constitution."

59. Sir Ivor Jennings in his treatise has elaborately dealt the conventions of the Constitution while explaining the purpose of the convention, he states:-

> "The short explanation of the constitutional conventions is that they provide the flesh which clothes the dry bones of the law; they make the legal

constitution work; they keep it in touch with the growth of ideas. A constitution does not work itself; it has to be worked by men……..”

60. How the conventions are to be established was also explained by Sir Ivor Jennings in following words:-

“It is clear, in the first place, that mere practice is insufficient. The fact that an authority has always behaved in a certain way is no warrant for saying that it ought to behave in that way. But if the authority itself and those connected with it believe that they ought to do so, then the convention does exist. This is the ordinary rule applied to customary law. Practice alone is not enough. It must be normative…….”

61. Further, he states that:-

“…….For neither precedents nor dicta are conclusive. Something more must be added. As in the creation of law, the creation of a convention must be due to the reason of the thing because it accords with the prevailing political philosophy. It helps to make the democratic system operate; it enables the machinery of State to run more smoothly; and if it were not there friction would result. Thus, if a convention continues because it is desirable in the circumstances of the constitution, it must be created for the same reason…….”

62. The test to find out as to whether a practice or precedent has become convention, Sir Ivor Jennings lays down following tests:-

“……..We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it. And then, as

we have seen, the convention may be broken with impunity."

63. The above three tests laid down by Sir Ivor Jennings has been approved by a Constitution Bench of this Court in **Supreme Court Advocates-On-Record Association and Others Vs. Union of India, (1993) 4 SCC 441 (Para 346).** The Constituent Assembly while drafting the Constitution of India was well aware of the British convention. Initially on 17.07.1947 **Hon'ble Sardar Vallabhbhai Patel** while moving Clause 14 stated that the Governor shall be generally guided by the conventions of responsible, Government as set out in Schedule. A Schedule was contemplated tobe framed according to the traditions of responsible Government. It is useful to notice what was said by Hon'ble Sardar Vallabhbhai Patel:

> "**The Hon'ble Sardar Vallabhbhai Patel :** Sir, I move that:
>
> "In the appointment of his ministers; and his relations with them, the Governor shall be generally guided by the conventions of responsible, Government as set out in Schedule.....; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions."
>
> Now a Schedule according to the traditions of responsible Government will be framed and put in. This also is a non-controversial thing and I move the proposition for the acceptance of the House."

64. Although Schedule IIIA was contemplated codifying

convention but at the later stage it was decided to drop codifying the convenient. The reasons for not codifying the convention was elaborated by Shri. T.T. Krishnamachari in Constituent Assembly debate on 11.10.1949. Schedule IIIA which was contemplated to be inserted by way of amendment was not moved. Similarly, Schedule IV which was to describe relations of the President and the Governor *viz-a-viz* the Ministers was also moved to be deleted. On the questioning of deletion of the Schedule, Dr. B.R. Ambedkar asked Shri Krishnamachari to explain. Shri T.T. Krishnamachari while explaining stated following:

> "**Shri T.T. Krishnamachari:** ....Therefore, we have decided to drop Schedule IIIB which we proposed as an amendment and also Schedule IV which finds a place in the Draft Constitution, because it is felt to be entirely unnecessary and superfluous, to give such direction in the Constitution which really should arise out of conventions that grow up from time to time, and the President and the Governors in their respective spheres will be guided by those conventions...."

65. The above debates in the Constituent Assembly clearly indicate that Constitutional conventions were very much in the contemplation during the debates in the Constituent Assembly. Conventions were expected to grow from time to time and the President and Governors in their respective spheres were to be guided by those conventions.

66. The American jurisprudence also recognises convention including the constitutional conventions. John Alexander Jameson in '***A Treatise on Constitutional Conventions***' while explaining the constitutional convention states:

> "as its name implies, constitutional; not simply as having for its object the framing or amending of Constitutions, but as being within, rather than without, the pale of the fundamental law; as ancillary and subservient and not hostile and paramount to it. The species of Convention sustains an official relation to the state, considered as a political organization. It is charged with a definite, and not a discretionary and indeterminate, function."

67. Leonid Sirota in his Article '***Towards a Jurisprudence of Constitutional Conventions***' defines constitutional convention, as:

> "those primary constitutional rules, limiting the powers of the several organs of government in a polity and governing the relations among them, which are not found in constitutional or ordinary statutes or the common law, and which reflect the 'constitutional theory' or political values of the day."

68. The constitutional conventions are born and recognised in working of the Constitution. The purpose and object of constitutional convention is to ensure that the legal framework of the Constitution is operated in accordance with constitutional values and constitutional morality. The

constitutional conventions always aims to achieve higher values and objectives enshrined in the Constitution. The conventions are not static but can change with the change in constitutional values and constitutional interpretations. No constitutional convention can be recognised or implemented which runs contrary to the expressed constitutional provisions or contrary to the underlined constitutional objectives and aims which Constitution sought to achieve.

69. There have been several pronouncements by this Court where the Constitutional conventions were referred to and relied. In **U.N.R. Rao vs. Smt. Indira Gandhi, (1971) 2 SCC 63,** this Court while interpreting Article 75(3) held that while interpreting the Constitution the conventions prevalent at the time when Constitution was formed, have to be kept in mind. In interpreting Article 75(3), this Court took support from the conventions followed in United Kingdom and other countries. In paragraphs 3 and 11 following was held:

> *"**3**……It seems to us that a very narrow point arises on the facts of the present case. The House of the People was dissolved by the President on December 27, 1970. The respondent was the Prime Minister before the dissolution. Is there anything in the Constitution, and in particular in Article 75(3), which renders her carrying on as Prime Minister contrary to the Constitution? It was said that we must interpret Article 75(3) according to its own terms regardless of the conventions that prevail in the United Kingdom. If the words of an Article are clear, notwithstanding any relevant*

convention, effect will no doubt be given to the words. But it must be remembered that we are interpreting a Constitution and not an Act of Parliament, a Constitution which establishes a Parliamentary system of Government with a Cabinet. In trying to understand one may well keep in mind the conventions prevalent at the time the Constitution was framed."

*"**11.** We are grateful to the learned Attorney-General and the appellant for having supplied to us compilations containing extracts from various books on Constitutional Law and extracts from the debates in the Constituent Assembly. We need not burden this judgment with them. But on the whole we receive assurance from the learned authors and the speeches that the view we have taken is the right one, and is in accordance with conventions followed not only in the United Kingdom but in other countries following a similar system of responsible Government."*

70. The most elaborate consideration of Constitutional convention was undertaken by the Constitution Bench of this Court in **Supreme Court Advocates-on-record Association and others vs. Union of India, (1993) 4 SCC 441,** Justice Kuldip Singh in his judgment has elaborately considered the Constitutional convention. This Court held that conventions are found in all established Constitutions and soon develop even in the newest. In paragraphs 340 and 341 following was laid down:

*"**340.** The written Constitutions cannot provide for every eventuality. Constitutional institutions are often created by the provisions which are generally worded. Such provisions are interpreted*

with the help of conventions which grow with the passage of time. Conventions are vital insofar as they fill up the gaps in the Constitution itself, help solve problems of interpretation, and allow for the future development of the constitutional framework. Whatever the nature of the Constitution, a great deal may be left unsaid in legal rules allowing enormous discretion to the constitutional functionaries. Conventions regulate the exercise of that discretion. A power which, juridically, is conferred upon a person or body of persons may be transferred, guided, or canalised by the operation of the conventional rule. K.C. Wheare in his book Modern Constitutions (1967 Edn.) elaborates such a rule as under:

> *"What often happens is that powers granted in a Constitution are indeed exercised but that, while they are in law exercised by those to whom they are granted, they are in practice exercised by some other person or body of persons. Convention, in short, transfers powers granted in a Constitution from one person to another."*

341. *The primary role of conventions is to regulate the exercise of discretion — presumably to guard against the irresponsible abuse of powers. Colin R. Munro in his book Studies in Constitutional Law (1987 Edn.) has summed up the field of operation of the conventions in the following words:*

> *"Some of the most important conventions, therefore, are, as Dicey said, concerned with 'the discretionary powers of the Crown' and how they should be exercised. But it is not only in connection with executive government and legislature-executive relations that we find such rules and practices in operation. They may be found in other spheres of constitutional activity too; for example, in relations between the Houses of Parliament and in the workings of each House, in the legislative process, in judicial administration and judicial behaviour, in the civil service, in local government, and in the relations with other members of the Commonwealth.""*

71. This Court held that every act by a constitutional authority is a 'precedent' in the sense of an example which may or may not be followed in subsequent similar cases, but a long series of precedents all pointing in the same direction is very good evidence of a convention. On the requirements for establishing the existence of a convention, this Court quoted with approval the test laid down by Sir W. Ivor Jennings in 'The Law and the Constitution'. In paragraphs 345 and 346 following was laid down:

> *"**345.** Every act by a constitutional authority is a 'precedent' in the sense of an example which may or may not be followed in subsequent similar cases, but a long series of precedents all pointing in the same direction is very good evidence of a convention.*
>
> ***346.** The requirements for establishing the existence of a convention have been succinctly laid down by Sir W. Ivor Jennings in The Law and the Constitution, Fifth Edn., (1959) as under:*
>
> > *"We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it.""*

72. This Court after referring to several treatises on the

constitutional law held that the constitutional functionaries have to follow the same as a binding precedent. In paragraphs 351 and 353 following was held:

> *"**351.** It is not necessary for us to delve into this subject any more. We agree that a convention while it is a convention is to be distinguished from the law. But this does not mean that what was formerly a convention cannot later become law. When customary rules are recognised and enforced by courts as law, there is no reason why a convention cannot be crystallized into a law and become enforceable. "Conventions can become law also by judicial recognition" stated K.C. Wheare in Modern Constitution (1966 Edn.). It is no doubt correct that the existence of a particular convention is to be established by evidence on the basis of historical events and expert factual submissions. But once it is established in the court of law that a particular convention exists and the constitutional functionaries are following the same as a binding precedent then there is no justification to deny such a convention the status of law.*
>
> ***353.** We are of the view that there is no distinction between the "constitutional law" and an established "constitutional convention" and both are binding in the field of their operation. Once it is established to the satisfaction of the Court that a particular convention exists and is operating then the convention becomes a part of the "constitutional law" of the land and can be enforced in the like manner."*

73. This Court in the above case has clearly held that existence of a particular convention is to be established by historical and factual evidence and for establishing the existence of convention the test laid down by Sir Ivor

Jennings was also approved and applied in the following words in paragraph 357:

> *"**357.** We now proceed to consider whether an established constitutional convention can be read in Articles 124(2) and 217(1) of the Constitution of India to the effect that in the matter of appointment of the Judges of the High Courts and Supreme Court, the opinion of the judiciary expressed through the Chief Justice of India is primal and binding. For that purpose we adopt the test for the existence of a convention, laid down by Sir Ivor Jennings, based on three questions: (a) What are the precedents? (b) Did the actors in the precedents believe that they were bound by a rule?, and (c) Is there a reason for the rule?"*

74. We now proceed to apply the tests for establishing a convention in the facts of the present case. The submission of Shri Kapil Sibal, as noted above, is that on six prior occasions members were nominated to the Puducherry Legislative Assembly after consultation with elected Government of Puducherry. He has referred to nominations made in the year 1985, 1990, 1996, 2006 and 2011. With regard to year 2001, it has been submitted that when Lt. Governor unilaterally forwarded the names of the members, upon objection from the then Chief Minister, the proceedings were dropped and proposed list was referred back to the Administrator for lack of consultation.

75. Learned counsel appearing for the Union of India has

replied the aforesaid submission. In the short note submitted on behalf of the Union of India, details regarding nominations made on the earlier occasions have been explained. Learned counsel for the Union of India has also produced the original files of the Central Government relating to the aforesaid nominations as was orally directed on 20.11.2018. It relates to the nominations made on earlier occasions, original records duly flagged has been submitted by the Union of India. The details submitted by the Union of India are in the following tabular form:

DETAILS REGARDING NOMINATIONS MADE ON EARLIER OCCASIONS

	Centre	**Union Territory**	**Remarks**	
1985	Congress	Congress	File not traceable	
1990	Congress	DMK	On the recommendations of LG	FLAG 1 FLAG 1A
1995	Congress	Congress	CM directly recommended names to the Home Minister out of which only one name was accepted. The other names were taken from request made by President, Puducherry Pradesh Congress Committee and another recommendation/ order of PMO. However, the said notifications were cancelled by a later notification.	FLAG 2 FLAG 2A
1997		DMK	Out of 3 MLA's, two on the recommendation of LG and one on the recommendation of CM	FLAG 3 FLAG 3A FLAG 3B
2001	NDA	Congress	NO CM recommendation. Persons recommended by LG	FLAG 4 FLAG 4A

			were holding office of profit and hence nominations not done.	FLAG 4B FLAG 4C
2005	UPA	Congress	All 3 MLA's nominated on the recommendation of CM & LG	FLAG 5 FLAG 5A FLAG 5B FLAG 5C
2007	UPA	Congress	All 3 MLA's nominated on the recommendation of CM and LG	FLAG 6 FLAG 6A FLAG 6B
2011	UPA	NR Congress	Recommendation sent by LG & CM. However, nominations not done.	FLAG 7 FLAG 7A FLAG 7B
2014	UPA	NR Congress	All 3 MLA's nominated on the recommendation of CM and LG	FLAG 8 FLAG 8A FLAG 8B
2017	NDA	Congress	No recommendations received either from LG or CM	FLAG 8C

76. The above details indicate that in the year 1990, 1997, 2005, 2007 and 2014 nominations were made on the recommendations of Chief Minister/LG. Original records fully support the statement made in the above Chart. The position of nomination is different in the year 1995, 2001 and 2011 which needs to be specifically noted.

77. In the year 1995, Chief Minister of the Pondicherry suggested three names for nominations whereas President, Puducherry Pradesh Congress Committee also suggested three different names. The Prime Minister had approved three names which consists one name suggested by Chief Minister, one name suggested by President, Puducherry Pradesh Congress Committee

and one name of its own. Notification was issued on 26.07.1995. A decision was subsequently taken to cancel the notification by the Home Minister on 12.08.1995. No further nominations were made in the said year.

78. Now we come to year 2001. In the year 2001, Lieutenant Governor had forwarded names of 10 persons who had sought nominations as members of the Legislative Assembly. The Chief Minister, Pondicherry had sent representation that the Lt. Governor did not consult him in the matter of proposing nominations. The issue surfaced in the said year as to whether the consultation of Chief Minister is necessary before nomination by the Central Government. The Home Minister by his order dated 08.08.2001 directed for obtaining legal advise. The Joint Secretary and Legal Adviser submitted a note dated 21.09.2001 in which in paragraph 9 he opined:

> "9. In the light of the above, we are of the view that consultation with the Chief Minister of Pondicherry is not necessary before the Central Government nominates a person to be a member of its Legislative Assembly under sub-section (3) of section 3 of the Act."

No final nominations could be made in the year 2001, 2002 and 2003.

79. In the year 2011, although recommendations were sent by the Lt. Governor and Chief Minister but no nominations were made. After the nominations made in the year 2014, the nominations have been made in the year 2017. A note dated 16.08.2016 was put up by Deputy Secretary that last nomination was made vide notification dated 02.09.2014 with the approval of Home Minister. The tenure of the Assembly got over and new Assembly has been constituted, hence, new persons are to be appointed as Nominated Members. A perusal of the original records indicates that following four issues were outlined to be referred to the Attorney General for his advice:

> "**Issue No.1:** Whether the Central Govt. has got absolute powers to appoint nominated Members to the Legislative Assembly of Puducherry?
>
> **Issue No.2:** Whether recommendation of LG, Puducherry is mandatory for consideration of names for appointment of nominated Members to Puducherry Legislative Assembly by the Central Government ?
>
> **Issue No.3:** If the reply to Issue 1 is in affirmative, is there any role of the Chief Minister/Council of Ministers to aid/advise the L.G. in the matter of making such recommendation, and if so, whether such aid and advice is binding upon the LG?
>
> **Issue No.4:** Keeping in view that there is no laid down procedure for such nomination, whether any prescribed procedure is

required to be followed or any specific condition to he imposed for making nominations?"

80. The Attorney General on 15.11.2016 ordered the file "Be put up before the S.G.". In the records there is detailed opinion given by the Solicitor General on 29.11.2016. The Solicitor General with regard to Queries Nos.1,2,3 and 4 has opined:

"5. In light of the aforementioned observations, the Queries raised are answered accordingly:

i. **Re:Query (I):** Section 3(3) of the Government of Union Territories Act, 1963 empowers Central Government to nominate members of the Legislative Assembly of Puducherry. Due to the operation of the word "may" in the said sub-section (3), the said power is to be exercised at the discretion of the Central Government. Hence, the Central Government may, or may not nominate three members to the Legislative Assembly of Puducherry. However, it is relevant to note the members nominated in the manner envisaged in sub-section (3) of Section 3, must comply with the criteria of qualification of members to the Legislative Assembly enumerated in Section 4 of the Government of Union Territories Act, 1963 and will be disqualified from being members of the Legislative Assembly if found within Section 14 of the Government of Union Territories Act, 1963.

ii. **Re: Query (iii):** The Central Government may in

its wisdom consult the Administrator of Puducherry for consideration of names for appointment of nominated members to the Puducherry Legislative Assembly especially when the Administrator is the nominee of the President.

iii. **Re: Query (iii):** As stated in response to Query (ii), the recommendation of Administrator is not mandatory for consideration of names for appointment of nominated members to the Puducherry Legislative Assembly but he/she may be consulted. Therefore, the role of Chief Minister/Council of Minister to aid/advice the L.G. in the matter of making such recommendation does not arise.

iv. **Re: Query (iv):** There is no prescribed procedure for the Central Government to nominate three members to the Legislative Assembly. In the absence of such procedure, only the criteria for eligibility of a member laid down in Section 4 *supra* and the criteria for disqualification in Section 14 *supra* must be followed.

I have nothing further to add."

81. The file processed thereafter and Home Minister approved nominations of three persons to the Legislative Assembly, Puducherry on 20.06.2017. Draft notification was put up for approval on 23.06.2016.

82. After having noticed the details of earlier nominations from 1985 till 2017, now the question has to be answered as to

whether from the sequence of the events as noticed above a Constitutional convention can be found established that nominations to the Legislative Assembly has to emanate from Chief Minister and can be made only with the concurrence of Chief Minister. We have noticed the test formulated by Sir W. Ivor Jennings, as approved by this Court in **Supreme Court Advocates-on-record Association case** for establishing the existence of a convention. The relevant test, as noticed above, is again reproduced for ready reference:

> *"We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it."*

83. We will take up the three questions which are to be posed for deciding the question. First is "what are the precedents". From the facts noticed above, although it is indicated that on several occasions on the recommendations of the Chief Minister/LG nominations were made by the Central Government, one relevant fact cannot be lost sight that recommendations made by CM/LG were readily accepted by the Central Government when the Government of Puducherry and the Central Government

were of the same political party or were of allies. But the instance of year 1995 indicates that the recommendations made by Chief Minister were not followed and the nominations were made taking one name from Chief Minister's recommendation, one name from Puducherry Pradesh Congress Committee and one name at the instance of the Central Government itself which nominations, however, subsequently were cancelled. In the year 2001 recommendations made by Chief Minister and LG were not accepted and no nominations were made. Similarly, in the year 2011 recommendations were made by Chief Minister and LG but no nominations were made. The above facts does not indicate uniform precedent in making nominations by the Central Government.

84. Now, we come to the second test that is “did the actors in the precedents believed that they were bound by the rules”. The said test is not satisfied in the present case since more than one occasion There is material on records that the Central Government concluded that it is not bound by any rule that recommendations made by Chief Minister is to be accepted by the Central Government or recommendations of Chief Minister is a condition precedent for exercising power under sub-section (3) of Section (3). No uniform procedure was followed nor the Central Government was under the belief that

it is bound under the Rule to accept the recommendations made by the Chief Minister. It is true that there is no inhibition in the Central Government considering the recommendations sent by Chief Minister or LG or ask for suitable names from Chief Minister/LG or even suggests suitable names to the Chief Minister/LG but the fact that the Central Government can consider the recommendations or call for names is not akin to saying that there was any precedent or rule that unless the names are recommended by Chief Minister the Central Government is incapacitated in exercising its powers under sub-section (3) of Section 3 of the Act, 1963. The instance where the Central Government readily accepted recommendations made by LG or Chief Minister which emanated from the Government belonging to the same political party cannot be said to be action of then Central Government by virtue of any rule or convention rather the acts have to be treated as convenient exercise of power. The Central Government can receive input from any quarter including the Chief Minister or LG for nomination.

85. We may also refer to a judgment of this Court in **Consumer Education and Research Society vs. Union of India and others, (2009) 9 SCC 648.** One of the questions which came for

consideration before this Court in the above case was violation of constitutional convention. In paragraph 37(ii) following question was noticed:

> "37(ii) Whether of as many as fifty-five offices relating to statutory bodies/non-statutory bodies, without referring the proposal to the Joint Committee would render the amendment a colourable legislation which violated any "constitutional convention" or Article 14 of the Constitution."

86. One of the contentions raised in the above case for assailing the Parliament (Prevention of Disqualification) Act, 1959 as amended by Act 31 of 2006 on the ground that for exempting particular office from a list of the office of profit, opinion of Joint Committee was not obtained on Act 31 of 2006. Repealing the contention following was held in paragraph 79:

> *"**79**. This brings us to the last question. It is not in serious dispute that ever since Bhargava Committee submitted its report in November 1955, whenever an office of profit had to be exempted the matter used to be referred to a Joint Committee and its opinion whether the office should be exempted or not, was being taken and only when there was a recommendation that a particular office should be exempted, the Act was being amended to add that office to the list of exemptions. However, this was merely a parliamentary procedure and not a constitutional convention. Once Parliament is recognised as having the power to exempt from disqualification and to do so with retrospective effect, any alleged violation of any norm or traditional procedure cannot denude the power of Parliament to make a law. Nor can such law which is*

otherwise valid be described as unconstitutional merely because a procedure which was followed on a few occasions was not followed for the particular amendment."

87. The above judgment although was considering law made by the Parliament where in the present case we are concerned with the exercise of statutory power of the Central Government under sub-section (3) of Section 3 of the Act, 1963. In exercising the power under Section 3(3) no particular statutory procedure having been prescribed except the exercise of power as per Allocation of Business Rules and Transaction of Business Rules, 1961 nominations made cannot be held to be vitiated on the submission that a particular procedure which was followed in some earlier cases was not followed.

88. We do not find any established practice or convention to the fact that names for nominations to members of the Legislative Assembly has to emanate from Chief Minister and can be made by the Central Government only after concurrence by Chief Minister. Both the issues are answered accordingly.

Issue No. 6

89. Shri Kapil Sibal submits that High Court in Paragraph No. 5 has made certain recommendations. He has taken exception to

the recommendation (iv), which is to the following effect:-

> "(iv) If the nominated MLA belongs to a political party on the date of nomination, it should be made clear that he shall become part of the legislature party of that political party. If there is no legislature party in the house on the date of nomination, the nominated MLA/s shall constitute the legislature party of that political party. This is inter-alia owing to Explanation (b) to paragraph 2(1) (b) of Tenth Schedule to COI using the term 'political party' and not 'legislature party'."

90. We have perused the recommendations made in Paragraph No. 5 of the judgment of Justice M. Sundar. The recommendations contained in paragraph No. 5 are nothing but recommendations to the Parliament to frame legislation on various aspects as enumerated in the recommendation. We have, in the foregoing discussions, concluded that it is the Central Government, which is under Section 3(3) empowered to nominate members in the Legislative Assembly of Union Territory. The procedure and manner of taking decision by Central Government has already been regulated by Rules of Business framed by President in exercise of power under Article 77 of the Constitution of India. The Rules framed by President of India under Article 77(3) are applicable to all executive actions of the Central Government including Constitutional and Statutory functions. In a Constitution Bench judgment of this Court in **Samsher Singh Vs. State of Punjab and Another, (1974) 2 SCC 831** following was laid

down in Paragraph No. 29:-

> **"29.** The executive power is generally described as the residue which does not fall within the legislative or judicial power. But executive power may also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123 viz. ordinance making power and all powers and functions of the Governor except his legislative power as for example in Article 213 being ordinance making powers are executive powers of the Union vested in the President under Article 53(1) in one case and are executive powers of the State vested in the Governor under Article 154(1) in the other case. Clause (2) or clause (3) of Article 77 is not limited in its operation to the executive action of the Government of India under clause (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 is not limited in its operation to the executive action of the Government of the State under clause (1) of Article 166. The expression "Business of the Government of India" in clause (3) of Article 77, and the expression "Business of the Government of the State" in clause (3) of Article 166 includes all executive business."

91. There being already Rules of Business for carrying out the functions by the Central Government as per Article 77(3) of the Constitution of India, we fail to see any justification for making recommendation in paragraph No. 5 of the impugned judgment. Furthermore, the power is to be exercised by Central Government and it is to be presumed that Central Government, in exercise of its power, shall be guided by objective and rational considerations. We, however, hasten to add that there is no inhibition in Central government or the

Legislature to make Rules or a Statute for more convenient transaction of business regarding nominations. Recommendations to the Legislature and the high Constitution authorities are not made in a routine manner and we are of the view that High Court ought to have desisted for making any recommendations as contained in paragraph No. 5. The qualifications and disqualifications to become a member or continue to be a member of a Legislative Assembly have already been provided in the Act, 1963. The qualifications and disqualifications for members of Legislative Assembly are provided in the Act, 1963 and other relevant Statutes, which are always to be kept in mind, while exercising any Statutory functions by the Central Government. We, thus, are of the view tat not only recommendation made in paragraph No. 5(iv) but all the recommendations made in Paragraph No. 5 deserves to be set aside. In result, all recommendations as made in Paragraph No. 5 of the impugned judgment are set aside.

Issue No.7

92. One of the submissions, which has been pressed by Shri Kapil Sibal is that even if the nominated members have right to vote in the proceeding of Assembly, they have no right to vote in two circumstances, i.e. budget and no confidence

motion against the Government. Article 239A which provides for composition of Union Territory of Puducherry itself contemplated that the Parliament, may by law, create a body, (i) whether elected or; (ii) partly nominated and partly elected, to function as a Legislature for the Union Territory of Puducherry. Under Article 239, the Parliament has enacted the law, i.e., the Government of Union Territory Act, 1963, Section 3 of which provides that there shall be a Legislative Assembly for each Union territory. The total number of seats in the Legislative Assembly of the Union territory to be filled by persons chosen by direct election shall be thirty and the Central Government may nominate not more than three persons, to be members of the Legislative Assembly of the Union territory. Thus, the composition of Legislative Assembly itself consists of both persons chosen by direct election and persons nominated by the Central Government. Both elected and nominated persons are part of Legislative Assembly. The provisions of Act, 1963 refers to members of the Legislative Assembly. Section 11 provides that every member of the Legislative Assembly of the Union territory shall, before taking his seat, make and subscribe before the Administrator, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the

purpose in the First Schedule. The expression "every member of the Legislative Assembly of the Union territory" shall include both elected and nominated members. It is further clarified by First Schedule of the Act, 1963, which contains the forms of oaths and affirmations, which expressly refers both elected and nominated members.

93. Section 12 deals with the voting in the Assembly, which is as follows:-

> 12. Voting in Assembly, power of Assembly to act notwithstanding vacancies and quorum.
>
> (1) Save as otherwise provided in this Act, all questions at any sitting of the Legislative Assembly of the Union territory shall be determined by a majority of votes of the members present and voting other than the Speaker or person acting as such.
>
> (2) The Speaker or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.
>
> (3) The Legislative Assembly of the Union territory shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislative Assembly of the Union territory shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.
>
> (4) The quorum to constitute a meeting of the Legislative Assembly of the Union territory shall be

> one-third of the total number of members of the Assembly.
>
> (5) If at any time during a meeting of the Legislative Assembly of the Union territory there is no quorum, it shall be the duty of the Speaker, or person acting as such, either to adjourn the Assembly or to suspend the meeting until there is a quorum.

94. Section 12(1) provides that all questions at any sitting of the Legislative Assembly of the Union territory shall be determined by a majority of votes of the members present and voting other than the Speaker or person acting as such. When the expression used is votes of members present, obviously the members of the Assembly both elected and nominated person has to be counted, we cannot while interpreting Section 12(1) exclude the nominated members. Further Section 12(1) uses the expression "all questions at any sitting of the Legislative Assembly", the expression "all questions" shall include all matters, which are to be decided in any sitting of the Legislative Assembly. The Statutory provision does not give indication that nominated members have no right to vote on budget and no confidence motion against the Government. To accept the submission of Shri Sibal shall be adding words to provision of Section 12, which are clear and express. Further, sub-section(1) provides that in the voting majority of the

votes of the members present and voting, the speaker shall not be a person, who shall vote. When provision of sub-section(1) clearly provides no voting by Speaker, if intention of Legislature was to exclude the votes of nominated members, the said expression was bound to find included in the sub-section(1). The conclusion is inescapable that all members including the nominated members are entitled to vote in the sitting of the Legislative Assembly and the submission of Shri Sibal that nominated members cannot exercise vote in budget and no confidence motion has to be rejected. Other provisions like sub-section (4) of Section 12, which provides for quorum to constitute a meeting of the Legislative Assembly used the word "one-third of the total number of members of the Assembly", members of the Assembly obviously will include both elected and nominated members. Thus, there is no basis for submission raised by Shri Sibal that nominated members cannot exercise their vote in budget and no confidence motion against the Government. The issue is answered accordingly.

95. In view of the foregoing discussions, we uphold the impugned judgment of the Madras High Court for the above reasons except directions in paragraph 5 which are hereby deleted. In the result, the appeals are dismissed subject to the deletion of recommendations made in paragraph 5 of the

judgment. Parties shall bear their own costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

.....J.
(S. ABDUL NAZEER)

NEW DELHI,
December 06 , 2018.