

BHARATI VIDYAPPETH (DEEMED TO BE UNIVERSITY)PUNE,INDIA

NEW LAW COLLEGE INTRA MOOT COURT COMPETITION 2019

MOOT PROBLEM

Govt. of Perumur

vs.

Union Of Indiana

State of Perumur is the Capital of Indiana. Indiana is a Sovereign, Democratic, Republic, socialist and secular country having its own written constitution i.e. the Constitution of Indiana, 1950. State of Perumur is given special status under article 239AA of the Constitution Of Indiana .

Perumur had an elected government to regulate the functions specified under article 239AA and an administrator was also appointed as the Lieutenant Governor(Hereinafter referred to as LG). The issue occurred in the year 2016. The elected government at that time was of Adhikaar party. The Central government of Indiana issued a notice saying the services department of the Perumur government would fall under the L-G's purview. This was in addition to three other subjects - land, police and public order - which fall with the Centre. This triggered clash between LG and Adhikaar party. After this the Adikaar government carried on many Inquiries in various scams and made some top bureaucratic appointments without consulting the then LG.

After this LG made some civil servants appointments without consulting the Adhikaar government. Adhikaar government instituted a case in the High Court of Perumur on the ground that it was facing difficulties in managing the affairs of the Capital territory of Perumur because of LG's ultra vires actions. The Perumur High Court gave a decision in favor of the lieutenant governor stating that he has power to run state of Perumur under the Constitution of Indiana..

The Adhikaar government has therefore challenged the high court judgment in The Supreme Court of Indiana under its civil appellate jurisdiction and the case is referred to be heard by the constitution bench.

NOTE: The Constitution and other laws of Indiana are same as those of India. Taking into account various aspects of the case matrix, arguments are to be put forward from the side of both the Petitioner and the Respondent. The arguments are not to be given on creative lines in addition to the details given in moot proposition.

Article 239AA of the Constitution Of Indiana states as follows:

- (1) as from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991 the Union Territory of Perumur shall be called the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.**
- (2) (a) There shall be a Legislative Assembly for the National Capital Territory of Perumur and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.**
 - (b) The total number of seats in the Legislative Assembly, the number of seats reserved for scheduled castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.**
 - (c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively and any reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament of Indiana.**
- (3) (a) Subject to the provisions of the Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State of List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1,2, and 18 of the State List and Entries 44, 65 and 66 of that List in so far as they relate to the said Entries 1,2,and 18.**
 - (b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this constitution to make laws with respect to any matter for a Union Territory or any part thereof.**

- (c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void;

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President of India and has received his assent such law shall prevail in National Capital Territory ;

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

- (4) There shall be a Council of Ministers consisting of not more than ten percent, of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise to his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President of India for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is 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.

- (5) The Chief Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

- (6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

- (7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing provisions contained in the foregoing clauses and for all matter incidental or consequential thereto .

*** (b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this constitution.**