

Judicial contradiction in Delhi Chief Secretary's extension

The Supreme Court of India's judgment, in November 2023, permitting a six-month extension to Delhi's Chief Secretary Naresh Kumar is one more instance of the Court's judicial self-abnegation. The Court sets out the correct doctrine, but when the government digs in its heels and refuses to follow the law laid down, the Court buckles down and invents a subsequent justification for the government to do as it wants. This kind of reversal renders the Court's judgments as "writ in water".

Delhi's incumbent Chief Secretary has serious charges of corruption and favouritism against him, with the Delhi Chief Minister Arvind Kejriwal writing to the Delhi Lt. Governor seeking the Chief Secretary's removal. He was anyway due to retire on November 30, 2023 and the Delhi Government had sought discussions with the Centre on appointing a successor. On November 29, the Chief Justice asked the Solicitor-General, "Or you (Centre) can let this man superannuate and make a fresh appointment... Don't you have an IAS officer who can be appointed Chief Secretary?" The Solicitor-General responded that a 2023 Amendment Act gave the Centre statutory authority over the civil services in the national capital. Later the court was informed that the Centre had chosen to extend the Chief Secretary's tenure by six months.

Passage of the Amendment Act

It must be noted that the Government of National Capital Territory of Delhi (Amendment) Act 2023, had been challenged by the Delhi government but had not been stayed by the courts due to a presumption of constitutionality. The Act had been passed to negate portions of the earlier Services judgment dated May 11, 2023, which held that under Article 239AA of the Constitution, the elected government of Delhi exercises control over services in Delhi. In its five-judge Constitution Bench Services judgment, the Court held unequivocally that references to "state government" in the relevant All India Rules (AIR) or Joint Cadre Rules (JCR) which related to Delhi, shall mean the Government of Delhi.

Going by this ruling, the Delhi government's recommendation was necessary for extending the tenure of the Chief Secretary under Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. But now, the Supreme Court has carved an exception for the Chief Secretary of Delhi by holding that he is differently placed than other officers under the AIR or JCR



Sanjay Hegde
is Senior Advocate of the Supreme Court of India

and thus not bound by the Services judgment. If the government indeed controls services, its choice must prevail in the choosing of its prime servant, the Chief Secretary. However the Court's current order of November 29, 2023, permitting the Union Government to unilaterally extend the tenure of the incumbent Delhi Chief Secretary despite the Delhi Government's opposition, seems to have undone the Court's own reasoning and constitutional logic.

Alleged conflict of interest

Even if the requirement of the Government of National Capital Territory of Delhi recommendation does not strictly apply to the Delhi Chief Secretary as he also exercises control over some matters reserved for the Union Government, the rule also contains two other pre-conditions for the extension of his tenure. The rule requires "with full justification" and "in public interest". As mentioned earlier, serious allegations of conflict of interest have been levied against the incumbent Chief Secretary which are currently under investigation, and the Chief Minister has recommended his immediate removal to the Delhi Lt. Governor. When the Chief Secretary has completely lost the confidence of the Government of National Capital Territory of Delhi, the question of "full justification" or "public interest" does not even arise.

The role of a Chief Secretary in a government was first delineated by a five-judge Bench decision of the Supreme Court, in the Royappa case. The ruling finds mention in its recent order only to be ignored. In *Royappa*, the Court had held that the post of the Chief Secretary is a post of great confidence, as he is the "lynchpin in the administration", necessitating a rapport between him and the Chief Minister. But in Delhi now, the Court has evaded this ruling, saying that the application of *Royappa* to the matter of the Chief Secretary shall be decided when the Court hears the challenge to the constitutional validity of the Government of National Capital Territory of Delhi (Amendment) Act, 2023. But while ignoring *Royappa* on this count, the Court then cherry-picks observations from *Royappa* to say that the Chief Secretary must comply with the directions of the elected government over matters on which their executive competence extends.

The Court then proceeded to decide the matter based on the "position of law as it exists today," but failed to note that the 2023

amendment did not oust the application of *Royappa* case, and hence, *Royappa* is the "position of law as it exists today". This flaw is clear from the fact that the Court order does not even rely on the 2023 amendment, for there is no provision under it relating to the appointment, or the extension of tenure, of the Delhi Chief Secretary.

Delhi's government's point on appointment

Interestingly, the Delhi government did not ask for the Union Government to be completely divested of the power to appoint the Delhi Chief Secretary, and only asked for his appointment to be a collaborative process between the two Governments. But the Supreme Court erroneously held that while making a reference to the Union Government regarding appointment of the Chief Secretary, the Lt. Governor acts in his sole discretion. While such a reference to the Union Government is required, it should be grounded on the aid and advice of the elected Government of Delhi. The Court reasoned that the Chief Secretary is concerned with the three subjects reserved for the Union Government, but completely ignored the fact that he is also concerned with more than 100 other subjects over which the Government of National Capital Territory of Delhi has competence.

Through the Services judgment, the Court went to great lengths explaining why the Delhi government's control over services is necessary for proper democratic functioning. It recognised the triple chain of accountability between the people, their representatives (Members of Parliament/Members of the Legislative Assembly), the Council of Ministers, and the bureaucrats. The Court should have recognised that when the Chief Secretary completely loses the confidence of the elected government, the chain of accountability is broken. This breakage is not one time in nature; it perpetuates the distrust between the elected government and the bureaucracy in all matters of governance.

In the *Services* matter, the Supreme Court faced a simpler challenge than what it faces today. Every matter related to services that the Court now hears will be a test of its own stance, its own reasoning, and its own conviction set out in *Royappa* and *Services*. By allowing the unilateral extension of Delhi's Chief Secretary's tenure, the Court has not only lost sight of the constitutional logic but also its own past wisdom that had given meaning to, and attributed great value to, that constitutional interpretation.

The top court has not only lost sight of constitutional logic but also its own past wisdom

EVASTALIN

tiva
to Se

STALIN IAS ACADEMY - BEST IAS COACHING IN CHENNAI

12/24, Muthurangan Muthali St, West Tambaram, Chennai - 600045

<https://www.evastaliniasacademy.in/>

Contact Number - +91-8678969915, +91-9940332851

The geopolitics in the Bangladesh election results

Bangladesh held its national elections on January 7, 2024 amidst violence and protests as the polls became embroiled in controversy. The ruling Awami League and allies achieved a resounding victory by getting 225 out of the 300 contested seats. The main opposition party, the Bangladesh Nationalist Party (BNP), whose leader and former Prime Minister Khalesa Zia is imprisoned under allegations of corruption, boycotted the polls, demanding that elections be held under a neutral caretaker government, the constitutional provision of which was abrogated by the Awami League after it came into power in 2009.

Bangladesh's political history around past elections remains problematic and the nature of politics, confrontational. In the previous elections of 2014 and 2018 under the Awami League, the party faced similar allegations of electoral manipulation, irregularities, and violence, drawing criticism from international election observation missions.

Regional and global geopolitics at play

Once overlooked on the global stage, Bangladesh has ascended as a rising economic powerhouse in South Asia with 7.1% annual GDP growth in 2022, an economy exceeding \$400 billion, and population of over 165 million. This strategically located nation has been at the centre of a geopolitical tug-of-war, with regional and global powers such as China, India, Russia and the United States vying for influence.

As its closest neighbour with shared historical, economic, social and cultural linkages, India harbours deep strategic interests in Bangladesh. Bilateral trade is nearing \$15 billion annually and agreements across a range of issues such as investment, counterterrorism, energy, and river water sharing underscore a close bilateral relationship. Bangladesh is India's crucial partner for balancing China's growing regional economic and diplomatic clout, including the Belt and Road Initiative (BRI) infrastructure financing. A stable Bangladesh, seen as a counterweight offsetting instability from neighbours such as Pakistan and Afghanistan, keeps India actively invested in its neighbour. It is no surprise that the Indian Prime



Syed Munir Khasru

is Chairman of the international think tank The Institute for Policy, Advocacy, and Governance (IPAG) with a presence in Dhaka, Delhi, Melbourne, Dubai, and Vienna

Bangladesh's growing economic and strategic heft is a factor

Minister Narendra Modi promptly congratulated Sheikh Hasina after her win, committing to fortify the partnership between India and Bangladesh.

The U.S. has been critical of the Bangladesh government for democratic shortcomings, the suppression of human rights and muzzling press freedom. America's messaging is torn between advancing core strategic interests by maintaining healthy ties with Bangladeshi authorities while upholding democratic values, as echoed in the U.S. Department of State pre-electoral press statement: "We are taking steps to impose visa restrictions on Bangladeshi individuals responsible for, or complicit in, undermining the democratic election process in Bangladesh."

China and Russia's responses

In contrast, Yao Wen, Ambassador of China to Bangladesh – China is Bangladesh's number one trading partner with annual bilateral trade exceeding \$25 billion – stated, "Election is completely an internal issue of Bangladesh...Bangladesh knows the kind of election required." Under its BRI, China has financed over \$10 billion worth of ports, bridges, highways and other critical infrastructure.

Post elections, the U.S. has aligned with other observers in asserting that the elections were neither free nor fair and largely non-participative. On the other hand, China's Foreign Ministry spokesperson Mao Ning felicitated the Awami League for its victory, "China congratulates Bangladesh on successfully holding its national election as scheduled and congratulates the Awami League on winning the election".

Moscow has drawn Bangladesh closer through financing one of the nation's largest infrastructure projects, the Rooppur 2,400-megawatt nuclear power plant worth over \$12 billion. With major investments at stake, Russia has taken a keen interest in Bangladesh's election. In a unique act of collaboration, when a Russian ship carrying nuclear materials was denied entry due to U.S. sanctions in late 2022, India intervened to receive the cargo and transported it by road to the construction site. Russia also congratulated Sheikh Hasina on her election victory; Alexander Mantysky,

Ambassador of Russia to Bangladesh, was received at her official residence. In a similar vein, prior to the elections, Russian Foreign Ministry spokeswoman Maria Zakharova had quipped in 2023, "We have repeatedly highlighted attempts by the US and its allies to influence the internal political processes in Bangladesh".

Problems before Bangladesh

The 2024 election results have evolved into a geopolitical battleground driven by Bangladesh's increasing economic and strategic heft.

Geopolitical considerations make it a little tricky for the U.S. and its allies to conduct normal business with Bangladesh. The extent to which they may take actions remains uncertain. The readymade garment industry is a significant source of foreign exchange earnings for Bangladesh and any restrictions imposed by the U.S. and European Union could pose a serious challenge as they import a significant bulk of Bangladesh's readymade garments.

In 2007, when the opposition BNP tried to manipulate elections, the United Nations issued a stern warning, indicating a potential halt to Bangladesh's involvement in peacekeeping operations; this led to the military-backed caretaker government stepping in to hold elections in 2008 which the then opposition Awami League won. This time, apart from criticism, whether the UN would go any further remains to be seen.

Last but not the least have been surging living costs triggering protests in recent months as the government grapples with the challenges of dealing with soaring energy import prices, diminishing dollar reserves and a weakening local currency. The International Monetary Fund highlighted multiple shocks to Bangladesh's economy in its post-COVID-19 pandemic recovery, aggravated by supply chain disruptions and inflationary pressures due to the Ukraine war. For Ms. Hasina's government, the months ahead are expected to be fraught with challenges, both at home and abroad, as she tries to manage a weakening economy and delicately balance geopolitics with national interests.

EVA STALIN