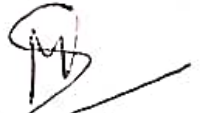


STATE COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING
(An Autonomous Organisation of Education Deptt, Govt. of NCT of Delhi)
VARUN MARG, DEFENCE COLONY, NEW DELHI-110024

CIRCULAR

Please find enclosed herewith a copy of Letter No. F.No.20(40)/LA/2023/dsadvise/869-918 dated 28.08.2023 enclosing herewith an Office Memorandum received from Dept. of Law, Justice and Legislative Affairs, GNCT of Delhi regarding implementation of "The Government of National Capital Territory of Delhi (Amendment) Act, 2023

This is for kind information & further necessary action at your end please.


(Mahish)

Section Officer (Admn.)

Encl: As above

U.O. NO.Admn.Branch/Circular/2008-09/10042-10068 Dated: - 11-9-2023

Copy to: -

1. PS to Director, SCERT
2. PA to Jt. Director (Academic), SCERT
3. All Principal DIETs
4. All Branch In-charge SCERT
- ✓ 5. WIM SCERT
6. Guard File


(Mahish)
Section Officer (Admn.)

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MOST URGENT
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF LAW, JUSTICE AND LEGISLATIVE AFFAIRS
8TH LEVEL, C-WING, DELHI SECRETARIAT, I.P. ESTATE
NEW DELHI-110002

F. No F.20(40)/LA/2023/dsadvise/869-918

Dated: 28.08.2023

To,

Addl. Chief Secretaries/ Pr. Secretaries/ Secretaries/ HODs,
Govt. of NCT of Delhi, Delhi/ New Delhi.

Subject: Regarding Implementation of "The Government of National Capital Territory of Delhi (Amendment) Act, 2023".

Sir/ Madam,

I am directed to forward herewith a copy of the U.O. No.17(1)/2023/RN/A-2392 dated 24.08.2023 of the Principal Secretary to Lt. Governor, NCT of Delhi on the subject cited above (copy enclosed).

The contents of the aforesaid U.O. letter are self-explanatory. The same is being forwarded for strict compliance please.

This issues with the approval of Competent Authority.

Encl: As above.

Yours faithfully,

Puneet Nagpal
Puneet Nagpal

Additional Secretary (L,J&LA)

1. No. F.20(40)/LA/2023/dsadvise/869-918
Copy for information to:-

Dated: 28.08.2023

1. Principal Secretary to Lt. Governor, Raj Niwas, Delhi w.r.t. U.O. letter referred above.
2. Special Secretary to Hon'ble Chief Minister, Govt. of NCT of Delhi, New Delhi.
3. All Secretaries to Hon'ble Ministers, Govt. of NCT of Delhi, New Delhi.
4. Staff Officer to Chief Secretary, Delhi Secretariat, New Delhi

Puneet Nagpal
Puneet Nagpal

Additional Secretary (L,J&LA)

Office of Chief Secretary, Delhi
Diary No. 22457 TS
C. D. No.
Date 25/08/23

Pr Secy (Law)

27/8
28/08 TS (Law)

Subject: Implementation of the GNCTD (Amendment) Act, 2023.

A Report dated 21.08.2023 under section 45J (5) of the Government of NCT of Delhi Act, 1991 (GNCTD Act) has been submitted by the Chief Secretary, Delhi to Hon'ble Lt. Governor, in respect of the Orders dated 16.08.2023 and 19.08.2023 issued by the Hon'ble Minister (Services/Vigilance) in material departure from the provisions of article 239AA (4) of the Constitution, the GNCTD Act and the rules made thereunder. The copy of the said Report has also been forwarded to the Hon'ble Chief Minister and Hon'ble Minister (Services/Vigilance).

2. After perusal of the said Report, Hon'ble Lt. Governor has observed that as per Order dated 16.08.2023, Hon'ble Minister (Services/Vigilance) has issued directions to the Chief Secretary, Delhi, as under-

"(a) All proposals for transfer and posting under section 45H (1) will be put up to NCCSA with the approval of Minister Services. After obtaining the approval of Minister Services, Secretary (Services) shall send the proposal to Member Secretary of the NCCSA for putting up before the NCCSA.

(b) All proposals for vigilance and non-vigilance related matters under section 45H (2) will be put up to NCCSA with the approval of Minister Vigilance. After obtaining the approval of Minister Vigilance, Secretary Vigilance shall send the proposal to Member Secretary of the NCCSA for putting up before the NCCSA."

3. Another Order dated 19.08.2023 was issued by the Hon'ble Minister (Services/Vigilance) directing the Chief Secretary, as under-

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"All files, letters or any other written communication shall be sent from Vigilance Department, to any other Department or autonomous body of the Government of NCT of Delhi (GNCTD) or the Hon'ble LG or outside GNCTD, only with the approval of Minister in charge.

This applies to all service related matters as well, since services is a transferred subject, after the order of the Hon'ble Supreme Court on 11.05.2023, and the removal of the Section 3A (that was present in the GNCTD Amendment Ordinance) from the GNCTD (Amendment) Act, 2023, which has now been notified on 11.08.2023 by the Hon'ble President of India."

4. In his Report, the Chief Secretary, Delhi after analyzing the aforesaid Orders of Hon'ble Minister (Services/Vigilance) in light of the provisions of article 239AA(3) (relating to legislative powers of the Delhi Assembly) and 239AA(4) (relating to provisions of aid and advise of Council of Ministers) of the Constitution, Sections 41, 45C and 45E to 45I of the GNCTD Act (as amended vide GNCTD (Amendment) Act, 2023) and Hon'ble Supreme Court's judgment dated 11.05.2023 has concluded, as under-

"38. As the directions issued by Hon'ble Minister vide her note dated 16.08.2023 as well as 19.08.2023 are in material departure from the provisions of the Article 239AA(4) of the Constitution as well as provisions of the Act 1991 and rules made thereunder, therefore, instead of giving effect to such material departure, the undersigned as Chief Secretary is duty bound to bring the same personally to the notice of Hon'ble Minister (Services/Vigilance), Hon'ble Chief Minister and Hon'ble Lt. Governor under provisions of section 45J(5) of the Act, 1991."

5. Keeping in view that the legal validity of these Orders dated 16.08.2023 and 19.08.2023 has been questioned in this Report, these orders were examined in light of the constitutional and statutory provisions on this issue. Hon'ble Lt. Governor noticed that the business relating to 'Services' and 'Vigilance' was allocated to Hon'ble Minister vide notification dated 14th August, 2023 under rule 3 of the GNCTD (Allocation of Business) Rules, 1993, with the following conditions,-

"The allocation of business to the Minister is approved, in so far as, such business relates to matters with respect to which the Council of Ministers is required under article 239AA of the Constitution to aid and advise the Lieutenant Governor in exercise of his functions, in accordance with rule 3 of the GNCTD (Allocation of Business) Rules, 1993 and subject to the Government of NCT of Delhi (Amendment) Act, 2023."

6. The allocation of business to a Minister is to fulfil the mandate of Article 239AA(4) of the Constitution providing for aid and advise of Council of Ministers to the Lieutenant Governor in the exercise of his functions in relation to the matters within the legislative competence of Legislative Assembly, however, this article excludes such matters from the purview of aid and advise, on which the Lieutenant Governor, by or under any law, is required to act in his discretion, as under--

"(4) There shall be a Council of Ministers consisting of not more than ten per cent. 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 of 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:..."

7. Rule 3 of the GNCTD (Allocation of Business) Rules, 1993 framed by the Hon'ble President of India under section 44 of the GNCTD Act, 1991 for allocation of business by the Lieutenant Governor amongst the Ministers further confirms this constitutional scheme, as under,-

"3. Allocation of Departments amongst Ministers. - The Lieutenant Governor shall in consultation with Chief Minister, allocate to the Ministers so much of business of the Government of National Capital Territory of Delhi as relates to matters with respect to which the Council of Ministers is required under article 239AA of the Constitution to aid and advise the Lieutenant Governor in the exercise of his functions and for that purpose assign one or more departments to the charge of a minister:"

"The allocation of business to the Minister is approved, in so far as, such business relates to matters with respect to which the Council of Ministers is required under article 239AA of the Constitution to aid and advise the Lieutenant Governor in exercise of his functions, in accordance with rule 3 of the GNCTD (Allocation of Business) Rules, 1993 and subject to the Government of NCT of Delhi (Amendment) Act, 2023."

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"(4) There shall be a Council of Ministers consisting of not more than ten per cent. 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 of 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: ..."

7. Rule 3 of the GNCTD (Allocation of Business) Rules, 1993 framed by the Hon'ble President of India under section 44 of the GNCTD Act, 1991 for allocation of business by the Lieutenant Governor amongst the Ministers further confirms this constitutional scheme, as under,-

"3. Allocation of Departments amongst Ministers. - The Lieutenant Governor shall in consultation with Chief Minister, allocate to the Ministers so much of business of the Government of National Capital Territory of Delhi as relates to matters with respect to which the Council of Ministers is required under article 239AA of the Constitution to aid and advise the Lieutenant Governor in the exercise of his functions and for that purpose assign one or more departments to the charge of a minister:"

8. The Parliament of India has enacted the GNCTD (Amendment) Act, 2023 whereby a new Part-IVA has been inserted in the GNCTD Act, 1991. Further, clause (iii) of sub-section (1) of Section 41 of said Act (*inserted by said Amendment Act of 2023*) provides that the Lt. Governor shall act in his sole discretion in discharge of his functions under Part-IVA of this Act. Part-IVA of the Act covers many aspects of matters relating to "Services" and "Vigilance" being dealt by various Departments of GNCTD, including the Services and Vigilance Departments.

9. Therefore, on conjoint reading of the article 239AA (4) of the Constitution, rule 3 of the GNCTD (Allocation of Business) Rules, 1993, Part-IVA and section 41 of the GNCTD Act, 1991, as amended by the GNCTD (Amendment) Act, 2023, Hon'ble Lt. Governor has observed that the business falling under Part-IVA of the Act, falling within sole discretion of Lieutenant Governor are not allocated to any Minister including the Minister (Services/ Vigilance). Accordingly, Hon'ble Lt. Governor has agreed with the conclusion arrived at by the Chief Secretary, Delhi in his Report dated 21.08.2023 that the Orders dated 16.08.2023 and 19.08.2023 of the Hon'ble Minister (Services/Vigilance) are issued without authority under any law and in material departure from the existing constitutional and statutory provisions in this regard.

10. Apart from lacking the legal authority, these orders have also been issued in complete disregard to the proviso of section 45-I(2) of the GNCTD Act, as it subjected the Authority under the Chairmanship of the Hon'ble Chief Minister as a subordinate to the Hon'ble Minister (Services/Vigilance). The non-obstante clause used by the Parliament in section 45H of the Act clearly indicate the legislative mandate that the responsibility assigned to the National Capital Civil Services Authority by the Parliament is unfettered and is not subject to any control by a Minister. Further, sub-section (3) of this section clearly indicates the direct communication between the Authority and the Lieutenant Governor, and empowering him to exercise his sole discretion in respect of recommendations of the Authority. The matters under Part-IVA of the Act fall within the exception provided under article 239AA (4) of the Constitution excluding it from the purview of aid and advise of the Council of Ministers. Any such direction to place the proposals before the Authority only after the approval of Minister (Services/Vigilance) is a vicious attempt to control the functioning of the Authority and make it redundant. Hence, Hon'ble Lieutenant Governor has

concluded that the directions dated 16.08.2023 and 19.08.2023 issued by the Hon'ble Minister (Services/Vigilance) are contrary to the constitutional and statutory provisions and therefore, null and void.

11. Therefore, in accordance with sub-section (2) of section 41 of the GNCTD Act, 1991, Hon'ble Lieutenant Governor has directed that,-

(a) The matter or proposal within the sole discretion of the Lieutenant Governor under section 41 of the GNCTD Act, 1991, including Part-IVA of the GNCTD Act, (as inserted by the GNCTD (Amendment) Act, 2023), are excluded from the business allocated to a Minister under rule 3 of the GNCTD (Allocation of Business) Rules, 1993, in accordance with article 239AA (4) of the Constitution;

(b) All such sole discretionary matters shall be processed and submitted for the decision of the Lt. Governor strictly through Chief Secretary.

12. Hon'ble Lt. Governor has desired that the Chief Secretary, Delhi may bring these directions to the notice of all Additional Chief Secretary/Principal Secretary/Secretary/Head of Department, etc. for strict compliance.

13. This issues with the approval of Hon'ble Lieutenant Governor.


(Chandra Bhushan Kumar)
Principal Secretary to LG

✓ Chief Secretary, GNCT of Delhi

U.O. No. 17(1)/2023/RN/A-2392

Dated: 24 AUG 2023

Copy for information to :-

1. Union Home Secretary, Ministry of Home Affairs, Government of India
North Block, New Delhi-110001
2. Special Secretary to Hon'ble Chief Minister, Delhi
3. All Secretaries to Hon'ble Ministers, GNCTD