Conflicts between Delhi Government and LG

What is the issue?

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SC is looking into the problem of jurisdictional conflicts between Delhi's elected government and the lieutenant governor (LG).

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What is Article 239AA?

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- Delhi, although a union territory, is not administered by the president acting through the LG under Article 239.
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- It is administered under Article 239 AA.
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- Article 239 AA was incorporated in the Constitution in 1992.
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- It creates a "special" constitutional set up for Delhi.
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- It has provisions for popularly elected assembly, a council of ministers responsible to the assembly and a certain demarcation of responsibilities between the LG and the council of ministers.
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- As per Article 239 AA (3) (a), the Delhi assembly can legislate on all those matters listed in the State List and Concurrent List as are applicable to union territories.
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- The public order, police and land are reserved for the LG.
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What is the problem?

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- This special set up worked well mainly because the same party held office at

the Centre as well as in Delhi for much of the time.
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- Things changed when different government ruled the city and the centre.
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- This was complicated when the Delhi High Court judgment declared that the LG is the only decision-making authority in the NCT.
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- Presently, SC is looking into two main issues:\n
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1. Whether the elected government is the final authority in respect of matters assigned to it by the constitution &
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2. Whether the LG has primacy when a difference of opinion arises between him and his council of ministers on matters of governance.
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Why should Council of Ministers be given more power?

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- **Final Authority -** Under Article 239 AA (4), the council of ministers has the executive power to execute all matters in respect of which the assembly has the power to make laws.
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- Article 239 AB (a) says “if the administration of the NCT cannot be carried on in accordance with the provisions of Article 239 AA,” the president can dismiss the council of ministers.
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- Further, Article 239 AA (b) says that the council of ministers shall be collectively responsible to the assembly.
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- So, the council of ministers is responsible for Delhi’s administration and if it fails in its functions, it will be removed by the president.
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- But the council of ministers cannot be removed for the breakdown of the constitutional machinery unless they are vested with the power to take final decisions on matters of administration.
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- It is also absurd to think that the council of ministers will be removed for the failure of the LG.
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- So vesting of all powers in the LG in respect of matters which come within the jurisdiction of the assembly is not in conformity with the scheme of Article 239 AA.
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- **Primacy -** A LG, motivated by political considerations, could disagree with many decisions of elected government and refer them to the president.
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- So such a provision in the proviso to Clause (4) of Article 239 AA virtually nullifies the executive power vested in the council of ministers.
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- After all, the purpose of the constitutional amendment was to provide a democratic government for Delhi and not to enhance the powers of the LG.
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- So in regard to matters of governance other than that in the discretionary list, the council of ministers should be left free to exercise the executive power.
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Source: The Indian Express

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