



THE SELECTIVE ASSERTION OF STATE-LIKE POWERS BY PUDUCHERRY

-By Nirmalkumar Mohandoss, Advocate

The recently concluded India Today conclave put the Chief Minister of one of the smallest territories of India in the limelight. The CM of Puducherry, Mr. V. Narayanasamy, made some bold political statements that took the large gathering of politicians, media persons, and intellectuals by surprise.

The main take-away in the Chief Minister's speech was two-fold: firstly, that he was discriminated against by the Union NDA Government as he was from the Congress party; secondly, that there was inconsistent treatment of Puducherry as a Union Territory with a legislature. The former was largely a political question and does not have much to do with law. However, the second statement has substantial legal ramifications which can affect the people and the polity of Puducherry in the long run. The crux of his largely legal argument was that Puducherry was a 'State' for all practical purposes as long as the legislature was in session.

His disappointment with the Central Government was because of the inconsistency in treating Puducherry-*viz.*, being treated like a 'State' when Puducherry wanted grants like Union Territory and being treated like a 'Union Territory' when sharing of tax receipts were sought like a 'State'. He substantiated this by stating that for the purpose of GST, Puducherry was treated like a State but for the purpose of disbursement of 'State funds', it

Page No: 123

Page No: 124

was treated like a 'Union Territory'. On such hypocritical treatment by the Central Government, the Chief Minister lamented that 'Puducherry was treated neither like a man nor like a woman'.

But is the Government of Puducherry not inconsistent regarding the same? In this article, I would move on to show how whenever considering Puducherry a 'State' will give the ruling dispensation assertive power, they consider themselves 'State' and whenever such consideration will make them more accountable and responsible, they consider themselves 'Union Territory' and fail to act as a 'responsible State'.

It is pertinent to note that when I filed a Writ Petition, vide W.P. No.43539 of 2016, challenging the abolition of Puducherry 'State' Information Commission, the Puducherry Government filed an Affidavit stating that it was only a 'Union Territory' but not a 'State' and therefore it was not empowered to establish the Commission under the Right To Information Act, 2005.

Since the Court refused to interfere with the merits as it dates back to 2007, it disposed off the matter by merely observing that 'this is an aspect which has to be examined by the Central Government and it may take a call on the issue within a period of three months'.

Unlike Union Territories which are directly administered by the President (Union Government), as Union Territory with legislature under Article 239-A of the Constitution, there are several Public Authorities including Government Departments, Educational Institutions, Government of Puducherry undertakings and Statutory Institutions established, owned, controlled and substantially financed by the Government of Puducherry. Since these Public Authorities are not directly under the control of the Central Government, they must have 'State Public Information Officers' appointed under the RTI Act under the appellate and Supervisory jurisdiction of Puducherry State Information Commission. This was necessary in order to make

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the Government of Puducherry more accountable and responsible to the people who elect them.

The Right to Information Act has given citizens a powerful weapon to know what their Government is up to. Several Government fault lines have been identified and projected to the outside world by information collected under the RTI Act, 2005. However in my personal experience, I understand that Public Information Officers, who have been entrusted with the responsibility to provide information under the Act, find a way out to escape from divulging material that is self-incriminating. Some of them take the route of 'exceptions' provided under the Act and some others take the route of technicalities like mode of payment of information fee, the form of application, etc. There are also cases in which the Information Officers say they do not possess information.

Page No: 124

Page No: 125

In order to provide remedy in such situations, the Act provides for institution of Appeals and lodging of Complaints by mandating the Central Government and the State Governments to establish the Central Information Commission and the State Information Commissions respectively. This is done so that the Information Officers do not escape their responsibility and ensure that the Act is implemented in letter and spirit.

The abolition of the Puducherry Information Commission is a severe blow to the 'right to information' vested with the people of Puducherry as the Puducherry Government can now, through its Public Information Officers, deny several incriminating information without any active check from the Information Commission. For several practical reasons, it is very difficult to approach the Central Information Commission and it has therefore given a much needed respite to the Puducherry Government to evade responsibilities under the RTI Act, 2005.

Instances of assertion of State powers by Puducherry Government:

What Puducherry Government has done in similar situations over the years is apparently disapproving of what it did in the above Writ Petition. Whenever, some Parliamentary statute required 'State Government' to establish some Authority, Puducherry Government has done it but only as long as it meant assertion of power without assuming any responsibility.

For instance, 'Sections 7 & 7-A of the Industrial Disputes Act, 1947' provides that the 'appropriate Government' may, by Notification in the Official Gazette, constitute Labour Courts and Industrial Tribunals to adjudicate Industrial Disputes laid down under the Act. For this purpose, according to Section 2(a)(ii) 'appropriate Government' means 'State Government' in relation to any Industrial Dispute other than the ones listed under Section 2(a)(i). Under this provision, Puducherry Government has established Labour Court at Puducherry vide Government Order Ms. 34/84/LAB dated 10.4.1984.

Similarly, Section 9(b) of the Consumer Protection Act, 1986 provides that 'there shall be established ... a Consumer Disputes Redressal Commission to be known as the State Commission established by the State Government in the State by Notification'. Under this provision, the Puducherry Government established Puducherry State Consumer Commission in 1988. Further, Section 16 of the Act which speaks of 'Composition of the State Commission' lays down that the Commission 'shall consist of (a) a person, who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President'. It is the Puducherry Government which appoints the President of the Puducherry State Consumer Commission till date under this provision.

If Puducherry is not a 'State' for the purpose of establishing Puducherry State Information Commission under



under the Industrial Disputes Act or the Puducherry State Consumer Commission under the Consumer Protection Act as shown above. However, while establishment of the Information Commission comes with the danger of being more responsible and accountable to the people, establishment of Labour Court and Consumer Commission only manifests the 'assertive power' of the Government of Puducherry without any connected liability.

To show another example of appointment of public office like a 'State Government', recourse should be taken to the Code of Criminal Procedure, 1973. Under Section 24(1) of the Code 'For every High Court, ...the State Government shall...appoint a Public Prosecutor for conducting any prosecution, Appeal or other proceeding on behalf of the...State Government.' Section 24(2) similarly provides for appointment of Public Prosecutor and Additional Public Prosecutors by the State Government for every district. Under these provisions, the Puducherry Government has appointed Public Prosecutors in the High Court of Madras and in each of the 4 Districts of Puducherry.

Hypocrisy of Puducherry Government:

On the other hand, the Government of Puducherry is silent with respect to establishment of Lok Ayukta under Section 63 of the Lokpal and Lokayuktas Act, 2013. Section 63 of the Act provides as follows:

Establishment of Lokayukta.- Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted, or appointed, by a law made by the State legislature, to deal with Complaints relating to corruption against certain public functionaries, within a period of one year from the date of commencement of this Act.

This is a mandatory provision imposing a Statutory duty upon the States to establish Lokayukta to deal with Complaints relating to corruption against Public functionaries in relation to the State. This provision should have been complied with by the State Governments within a period of one year from the date of commencement of the Act *i.e.*, by 31.12.2014.

However, the Government of Puducherry has not established a Lokayukta even after the expiry of more than three years of the time period given to establish the same to deal with Complaints of allegations pertaining to Public functionaries including the Chief Minister of Puducherry, members of his Council of Ministers, the Members of Puducherry Legislative Assembly, Officers in the service of the Government of Puducherry and in the bodies established, controlled and substantially financed by laws of the Puducherry Territorial Assembly.

Though the Government of Puducherry has established similar Statutory Authorities under other statutes as shown above, it failed to establish Lok Ayukta by hiding behind the expression 'State Government' as it did with respect to establishment of State Information Commission. Since public functionaries in all other Union Territories are directly under the control of



the Union Government, they are subjected to the jurisdiction of Lokpal under Section 3 of the Act. Similarly, in all States, the Public functionaries of the State including their Chief Minister, Ministers and MLAs are subject to the jurisdiction Lok Ayukta under Section 63 of the Act. Puducherry is the only place, whose Public functionaries including its Chief Minister and MLAs will not be subjected either to jurisdiction of Lokpal or of Lok Ayukta if the Government hides behind the expression 'State Government'. (The only other Union Territory with legislature, namely the 'National Capital Territory of Delhi' has established Lok Ayukta to receive Complaints and investigate even its Chief Minister relating to allegations of corruption.)

Therefore, when the Chief Minister was complaining the Central Government of treating Puducherry with inconsistency, little did he acknowledge that his own Government at Puducherry chose to exert its 'power' like a 'State' but did not want to be 'responsible' like a 'State'. Even as the Chief Minister wants to romanticize his powers under the Constitution, the Government of Puducherry Act, 1963 and under the various other Statutes, he should be aware that his power also comes with responsibilities.