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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL.) 824/2020

AQIL HUSSAIN

...Petitioner

Through: Mr. Mehmood Pracha, Mr. Shariq
Nisar & Mr. Jatin Bhatt, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

...Respondents

Through: Mr. Rahul Mehra, Standing Counsel
and Mr. Chaitanya Gosain, Advocate
with DCP Rajesh Deo & DCP Pramod
Singh Kushwah, for respondent/
GNCTD.

Mr. Aman Lekhi, ASG and Mr. Amit
Mahajan, Senior Standing Counsel for
respondent/ UOI.

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HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

29.05.2020

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1. On the last date of hearing, we had taken note of the controversy relating to the authority to represent the respondents, which had arisen between the Government of National Capital Territory of Delhi (GNCTD) and the Union of India (UOI).

2. Mr. Mehra, learned Standing Counsel for the GNCTD submits that as per the law settled by this Court and the Supreme Court, it is only on the aid

and advice of the Council of Ministers of the GNCTD that the power under Section 24(8) Cr.P.C. to appoint the Special P.P./ Special Counsel can be exercised by the Hon'ble Lieutenant Governor, and that the Hon'ble Lieutenant Governor has no independent power to make such appointments. He further submits that Delhi Police has accepted that position, since it had applied for appointment of Special P.P./ Special Counsel to the Ministry of Home, GNCTD and appropriate orders have been issued by the Hon'ble Home Minister. He submits that the issue of the Hon'ble Lieutenant Governor directly and independently appointing counsels to represent Delhi Police does not remain outstanding before this Court.

3. In support of this submission, Mr. Mehra has, firstly, forwarded the communication dated 28.05.2020 addressed to Mr. Satyendra Jain, Hon'ble Minister of Home, GNCTD by Mr. Rajesh Deo, DCP (Legal Cell), PHQ, Delhi, which also contains an endorsement made by the Hon'ble Minister approving appointment of Special P.P./ Special Counsel to represent the respondents in the present case.

4. He has also forwarded the communication dated 29.05.2020 issued by the Deputy Secretary (Home), GNCTD to the Deputy Commissioner of Police (Legal Cell), whereby it is informed that Mr. Tushar Mehta, learned Solicitor General; Ms. Maninder Acharya, learned ASG; Mr. Aman Lekhi, learned ASG; and Mr. Amit Mahajan, learned Senior Standing Counsel; and Mr. Rajat Nair, Advocate were appointed as Special P.P./ Special Counsel to represent Delhi Police in the present case. Mr. Mehra states that the aforesaid law officers/ Special Counsels would be representing the respondents in the present case since the approval of the GNCTD has been

specifically obtained in the present case.

5. Mr. Mahajan submits that the approval of the Hon'ble Home Minister of the GNCTD has been obtained by the Delhi Police, so as to avoid the controversy and the same does not necessarily reflect the understanding of the Union of India with regard to interpretation of the judgment of the Constitution Bench of the Supreme Court in *State (NCT of Delhi) Vs. Union of India & Another*, (2018) 8 SCC 501.

6. The controversy taken note of by us in our previous order, and taken note of aforesaid, does not survive for determination in the present case. We hope and expect that such like issues would be similarly resolved in other cases as well, so that the focus of the Court remains on determination of the merits of the disputes before it, rather than on such like issues.

7. One more aspect highlighted by Mr. Mehra in the present case is that the response on behalf of the Delhi Police has been filed by Mr. Mahajan without the same being routed through the Office of the Standing Counsel (Criminal), which has been the consistent practice followed in the past. He, however, has no objection to the contents of the said affidavit, and since the Special P.P./ Special Counsel and the law officers have been appointed in the present case to represent the respondents, he does not object to the said counter-affidavit being taken on record, as filed. Mr. Mahajan states that this is a procedural aspect which would be taken care of in future.

8. Mr. Pracha submits that the response of Delhi Police has been received by him only yesterday. He wishes to file a rejoinder to deal with the factual and legal averments made therein.

9. Let the rejoinder be filed within a week.
10. List on 08.06.2020.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

MAY 29, 2020
B.S. Rohella