



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : Administrative Law

Subject code : BAL306

Faculty Name : Ms Taruna Reni Singh

ADMINISTRATIVE LAW

UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

UNIT IV:

- Liability of the administration: Contractual liability, tortious liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Administrative Law, Universal Delhi
3. I. P. Massey: Administrative law

LECTURE 10



22. This Court in Narinder Chand Hem Raj v. Lt. Governor, Union Territory, Himachal Pradesh [(1971) 2 SCC 747] observed as under: —The power to impose tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions the legislature may delegate that power to some other authority. But the exercise of that power, whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact.¶

23. In the State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla [(1985) 3 SCC 169], this Court held as under: —The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution.... But at the same time the court cannot usurp the functions

assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature.¶ 20

24. The legislature of Jammu & Kashmir having not made any law pertaining to medical education the field is exclusively to be operated by the executive under Article 162 of the Constitution of India read with Section 5 of Jammu & Kashmir Constitution. When the Constitution gives power to the executive government to lay down policy and procedure for admission to medical colleges in the state then the High Court has no authority to divest the executive of that power. The State Government in its executive power, in the absence of any law on the subject, is the competent authority to prescribe method and procedure for admission to the medical colleges by executive instructions but the High Court transgressed its self-imposed limits in issuing the aforesaid directions for constituting statutory authority. We would make it clear that the procedure for selection laid down by the executive as well as the selection is always open to judicial review on the ground of unreasonableness or on any other constitutional or legal infirmity.

25. Mr Altaf Ahmed, learned Advocate General, Jammu & Kashmir, appearing for the State, Mr M.H. Baig and Mr G.L. Sanghi, learned counsel appearing for the selected candidates, have contended that the observations in Jyotshana Sharma case were in the nature of suggestions by the court. It is further argued that even if those are taken to be directions, the same have been complied with by the State Government. There was no issue before the court in Jyotshana Sharma case regarding method or procedure adopted by the government for making selections. None of the parties argued for Statutory Body on the ground of lack of confidence in the executive. A bare reading of the judgment shows that the bench, before parting with the

judgment, laid down some guidelines for the government to follow. The learned Chief Justice in his judgment in Farooq Bacha case reiterated the necessity of having an autonomous independent statutory body —on the lines suggested by the Division Bench in Jyotshana Sharma case”. The learned Chief Justice rightly treated the bench’s observations as suggestions and we agree with the same. There is also force in the contention that assuming the said suggestions to be the directions; the same have been complied with. SRO 291 was issued as a consequence of the judgment in Jyotshana Sharma case. The notification specifically states —whereas a Division Bench of the High Court by judgment and order 17-4- 1987 inter alia made certain suggestions for improving the system for making admission to MBBS/BDS course in the State, now, therefore, in deference to the observations of the High Court of Jammu & Kashmir... the government hereby makes the following order....|| Mr Bhim Singh, learned counsel appearing for the unsuccessful candidates, however, argued that the principals of two medical colleges have not been associated with the selections. That may be so but we are satisfied that SRO 291 read with 1987 Order issued by the State Government which provide method and elaborate procedure for making selections to the medical colleges of Jammu & Kashmir substantially comply with the directions of the High Court.

40. In view of the above discussion civil appeals filed by the State of Jammu & Kashmir and the successful candidates are allowed, the judgment of the Jammu & Kashmir High Court is set aside and the writ petitions filed by the unsuccessful candidates before the Jammu & Kashmir High Court are dismissed. * * * * *

The students are advised to read State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla (1985) 3 SCC 169