



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : Administrative Law

Subject code : BAL306

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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 8



15. Suppose now that the Ministry or the executive Government of a State formulates a particular policy in furtherance of which they want to start a trade or business. Is it necessary that there must be a specific legislation legalising such trade activities before they could be embarked upon? We cannot say that such legislation is always necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorise such expenditure either directly or under the provisions of a statute. What is generally done in such cases is, that the sums required for carrying on the business are entered in the annual financial statement which the Ministry has to lay before the house or houses of legislature in respect of every financial year under Article 202 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the consolidated fund are submitted in the form of demands for grants to the legislature and the legislature has the power to assent or refuse to assent to any such demand or assent to a demand subject to reduction of the amount (Article 203). After the grant is sanctioned, an appropriation bill is introduced to provide for the appropriation out of the consolidated fund of the State of all moneys required to meet the grants thus made by the assembly (Article 204). As soon as the appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Article 266(3) of the Constitution

. 16. It may be, as Mr Pathak contends, that the appropriation Acts are no substitute for specific legislation and that they validate only the expenses out of the consolidated funds for the particular years for which they are passed; but nothing more than that may be necessary for carrying on of the trade or business. Under Article 266(3) of the Constitution no moneys out of

the consolidated funds of India or the consolidated fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution. The expression —law here obviously includes the appropriation Acts. It is true that the appropriation Acts cannot be said to give a direct legislative sanction to the trade activities themselves. But so long as the trade activities are carried on in pursuance of the policy which the executive Government has formulated with the tacit support of the majority in the legislature, no objection on the score of their not being sanctioned by specific legislative provision can possibly be raised. Objections could be raised only in regard to the expenditure of public funds for carrying on of the trade or business and to these the appropriation Acts would afford a complete answer.

17. Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed.

18. In the present case it is not disputed that the entire expenses necessary for carrying on the business of printing and publishing the text books for recognised schools in Punjab were estimated and shown in the annual financial statement and that the demands for grants, which were made under different heads, were sanctioned by the State Legislature and due appropriation Acts were passed. For the purpose of carrying on the business the Government do not require any additional powers and whatever is necessary for their purpose, they can have by entering into contracts with authors and other people. This power of contract is expressly vested in the

Government under Article 298 of the Constitution. In these circumstances, we are unable to agree with Mr Pathak that the carrying on of the business of printing and publishing text books was beyond the competence of the executive Government 15 without a specific legislation sanctioning such course.

19. These discussions however are to some extent academic and are not sufficient by themselves to dispose of the petitioners' case. As we have said already, the executive Government are bound to conform not only to the law of the land but also to the provisions of the Constitution. The Indian Constitution is a written Constitution and even the legislature cannot override the fundamental rights guaranteed by it to the citizens. Consequently, even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution. On the other hand, even if the acts of the executive are illegal in the sense that they are not warranted by law, but no fundamental rights of the petitioners have been infringed thereby, the latter would obviously have no right to complain under Article 32 of the Constitution though they may have remedies elsewhere if other heads of rights are infringed. The material question for consideration therefore is: What fundamental rights of the petitioners, if any, have been violated by the notifications and acts of the executive Government of Punjab undertaken by them in furtherance of their policy of nationalisation of the text books for the school students?

20. The petitioners claim fundamental right under Article 19(1)(g) of the Constitution which guarantees, inter alia, to all persons the right to carry on any trade or business. The business

which the petitioners have been carrying on is that of printing and publishing books for sale including text books used in the primary and middle classes of the schools in Punjab. Ordinarily it is for the school authorities to prescribe the text books that are to be used by the students and if these text books are available in the market the pupils can purchase them from any book-seller they like. There is no fundamental right in the publishers that any of the books printed and published by them should be prescribed as text books by the school authorities or if they are once accepted as text books they cannot be stopped or discontinued in future. With regard to the schools which are recognised by the Government the position of the publishers is still worse. The recognised schools receive aids of various kinds from the Government including grants for the maintenance of the institutions, for equipment, furniture, scholarships and other things and the pupils of the recognised schools are admitted to the school final examinations at lower rates of fees than those demanded from the students of non-recognised schools. Under the school code, one of the main conditions upon which recognition is granted by Government is that the school authorities must use as text books only those which are prescribed or authorised by the Government. So far therefore as the recognised schools are concerned - and we are concerned only with these schools in the present case the choice of text books rests entirely with the Government and it is for the Government to decide in which way the selection of these text books is to be made. The procedure hitherto followed was that the Government used to invite publishers and authors to submit their books for examination and approval by the Education Department and after selection was made by the Government, the size, contents as well as the prices of the books were fixed and it was left to the publishers or authors to print and publish them and offer them for sale to the pupils. So long as this system was in vogue the only right which publishers like the petitioners had, was to offer their books for inspection and approval by

the Government. They had no right to insist on any of their books being accepted as text books. So the utmost that could be said is that there was merely a chance or prospect of any or some of their books being approved as text books by the Government. Such chances are incidental to all trades and businesses and there is no fundamental right guaranteeing them. A trader might be lucky in securing a particular market for his goods but if he loses that field because the particular customers for some reason or other do not choose to buy goods from him, it is not open to him to say that it was his fundamental right to have his old customers for ever. On the one hand, therefore, there was nothing but a chance or prospect which the publishers had of having their books approved by the Government, on the other hand the Government had the undisputed right to adopt any method of selection they liked and if they ultimately decided that after approving the text books they would purchase the copyright in them from the authors and others provided the latter were willing to transfer the same to the Government on certain terms, we fail to see what right of the publishers to carry on their trade or business is affected by it. Nobody is taking away the publishers' right to print and publish any books they like and to offer them for sale but if they have no right that their books should be approved as text books by the Government it is immaterial so far as they are concerned whether the Government approves of text books submitted by other persons who are willing to sell their copyrights in the books to them, or choose to engage authors for the purpose of preparing the text books which they take up on themselves to print and publish. We are unable to appreciate the argument of Mr Pathak that the Government while exercising their undoubted right of approval cannot attach to it a condition which has no bearing on the purpose for which the approval is made. We fail to see how the petitioners' position is in any way improved thereby. The action of the Government may be good or bad. It may be criticised and condemned in the houses of the legislature or outside but this

does not amount to an infraction of the fundamental right guaranteed by Article 19(1) (g) of the Constitution.

21. As in our view the petitioners have no fundamental right in the present case which can be said to have been infringed by the action of the Government, the petition is bound to fail on that ground. This being the position, the other two points raised by Mr Pathak do not require consideration at all. As the petitioners have no fundamental right under Article 19(1)(g) of the Constitution, the question whether the Government could establish a monopoly without any legislation under Article 19(6) of the Constitution is altogether immaterial. Again a mere chance or prospect of having particular customers cannot be said to be a right to property or to any interest in an undertaking within the meaning of Article 31(2) of the Constitution and no question of payment of compensation can arise because the petitioners have been deprived of the same. The result is that the petition is dismissed. * * * * *

MCQs

1. for achieving supremacy of law three principles of postulates must be followed which are
 - a) Supremacy of law,
 - b) Equality before law
 - c) Predominance of Legal Spirit
 - d) All

2. Judicial control mechanism of administrative discretion is exercised in what stages:
 - a) At the stage of delegation of discretion;
 - b) At the stage of the exercise of discretion.
 - c) Both
 - d) None

3. In what conditions the abuse of the discretionary power is inferred:
 - a) Use for improper purpose:
 - b) Malafide or Bad faith:
 - c) Irrelevant consideration:
 - d) All

4. . Who opposed delegated legislation?
 - a) Lord Hewart
 - b) Ivor Jennings
 - c) Dicey
 - d) Coke

5. What are the types of delegation of legislative power in India?
 - a) Skeleton delegation
 - b) Machinery type
 - c) Both
 - d) None