



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 9



17 Asif Hameed v. State of J. & K. AIR 1989 SC 1899 [Has the High Court power to issue directions to the State Government to constitute “statutory body” for making admissions?]

Jyotshana Sharma and a number of other unsuccessful candidates for admission to the two medical colleges of Jammu & Kashmir for the year 1986-87 challenged the selection by filing writ petitions. A Division Bench of the High Court upheld the selection in general but allowed some individual writ petitions on different grounds. The bench, after adjudicating upon the points involved in the writ petitions, made the following observations: —In future State Government shall entrust the selection process of the two medical colleges to a statutory independent body who will be vested with the power to conduct examination of written as also of viva voce. Therefore, it is ideal that an independent statutory body is constituted for conduct of entrance test for the MBBS/BDS course in the State which body shall be kept free from executive influence. Till that is done, State may entrust the process of selection to such a body which will be free from executive influence. At any rate we do not approve Training Branch, or any other department of the State Government under the control of administration or associated with the process of selection for the MBBS/BDS course in the State Medical Colleges. Selection Committee, till a statutory body is constituted, shall consist of such persons who are academicians of high calibre and with the process of selection principals of the two medical colleges shall necessarily be associated.

KULDIP SINGH, J. - 17. Before advertng to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under

the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation in case of *Trop v. Dulles* [356 US 86], observed as under: 18 —All power is, in Madison's phrase, —of an encroaching nature. Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.... Rigorous observance of the difference between limits of power and wise exercise of power - between questions of authority and questions of prudence - requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the court's giving effect to its own notions of what is wise or politic. That self-restraint

. 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 is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the executive branch do.¶ 19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. 20. Now coming to the judgment under appeal the High Court says that its directions issued in Jyotshana Sharma case have not been complied with thereby rendering the State action in making selections for admission to the medical colleges

invalid. To examine the High Court reasoning we have to see as to which of the three organs of the State is entrusted, under the Constitution, with the function of taking a policy decision regarding management and admissions to medical colleges in the State. Both the medical colleges at Jammu and Srinagar are government institutions. Entry 25 List III of Seventh Schedule, Article 246(2) and Article 162 of the Constitution of India and Section 5 of the Constitution of Jammu & Kashmir which are relevant, are reproduced hereinafter: —Entry 25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64,65 and 66 of List I; vocational and technical training of labour.¶ “Article 246. Subject-matter of laws made by Parliament and by the legislatures of States. - (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the —Concurrent List¶).¶ 19 “Section 5. Extent of executive and legislative power of the State. - The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.¶ 21. The High Court’s directions for constituting —Statutory Independent Body¶ obviously mean that the State legislature must enact a law in this respect. The Constitution has laid down elaborate procedure for the legislature to act there under. The legislature is supreme in its own sphere under the Constitution. It is solely for the legislature to consider as to when and in respect of what subject matter, the laws are to be enacted. No directions in this regard can be issued to the legislature by the courts. The High Court was, therefore, patently in error in issuing directions in Jyotshana Sharma case and reiterating the same in the judgment under appeal.

MCQs

1. The control of delegated legislation may be of the following types:

- a) Procedural
- b) Parliamentary
- c) Judicial
- d) All

2. Judicial control can be divided into which of the following classes:

- a) Doctrine of ultra vires
- b) Use of prerogative writs.
- c) Both
- d) None

3. Consider the following statements

Delegated legislation is ancillary and cannot replace or modify the parent law nor can it lay down details which are contradictory to substantive law.

If subordinate legislation tends to replace or modify the provisions of the basic law to attempts to lay down new law, it is struck down as ultra vires.

Which of the above statement is/are correct?

- a) Only 1
- b) Only 2
- c) Both 1 and 2
- d) Neither 1 nor 2

4. In context of the factors responsible for the growth of delegated legislation consider the following statements:

Democratisation of rule-making process by providing for consultation with affected interests.

It can help in adaptability of the law for future conditions without formal legislative amendments.

Legislation is increasingly becoming technical like intellectual property law, biotechnology, tax laws etc., parliament is not expected to have knowledge over these matters.

Which of the above statement is/are correct?

- a) Only 1 and 2
- b) Only 1 & 3
- c) Only 2 and 3
- d) All of the above

5. Consider the following statements about the advantages of delegated legislation:

It saves time of Parliamentary so that the August body can focus more on the broader policy aspects

Delegated legislation allows laws to be made more quickly than Parliament, which is vital for times of emergency.

Which of the above statement is/are correct?

- a) Only 1
- b) Only 2
- c) Both 1 and 2
- d) Neither 1 nor 2