RAMA UNIVERSITY

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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, tortuous 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 Adminstrative Law, Universal Delhi
3. I. P. Massey: Administrative law

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LECTURE 31

Reasoned decision (Speaking Order)

Meaning and Importance Reasoned decision may be taken to mean a decision which contains reason in its support. When the adjudicators bodies give reasons in support of their decisions, the decisions are treated as reasoned decision. A decision, thus supported by reasons is called reasoned decision. It is also called speaking order. In such condition the order speaks for itself or it tells its own story. The reasoned decision introduces fairness in the administrative powers. It excludes or at least minimizes arbitrariness.

• The right to reasons is an indispensable part of sound judicial review. The giving of reasons is one of the fundamental of good administration.

• It has been asserted that a part of the principle of natural justice is that a party is entitled to know the reason for the decision apart from the decision itself.

• In another words, a party is entitled to know the reason, for the decision, be it judicial or quasi-judicial. This requirement to give reasons, however, is an approach quite new to administrative law, as the prevailing law is that the quasi-judicial bodies need not give reasons in support of their decisions, although in some cases, the court did insist upon making ‘ speaking orders’. But a change in the approach is being noticed since last few years and a growing emphasis is being laid on these bodies to give reasons for their decisions.

• The reasoned decision gives satisfaction to the person against whom the decision has been given. It will convince the person against whom the decision has been given that the decision is not arbitrary but genuine. It will enable the person against whom the decision has been given to examine his right of appeal. If reasons are not stated, the affected party may not be able to exercise his right of appeal effectively. Thus, the giving of reasons in support of the decision is now considered one of the fundamentals of good administration. In **Sunil Batra v. Delhi administration,** the Supreme Court while interpreting section 56 of the prisons act, 1894, observed that there is an implied duty on the jail superintendent to give reasons for putting bar fetters on a prisoner to avoid invalidity of that provision under article 21 of the constitution. Thus the Supreme Court laid the foundation of a sound administrative process requiting the ad judicatory authorities to substantiate their order with reasons. The court has also shown a tendency to emphasize upon the fact that the administrative order should contain reasons when they decide matters affecting the right of parties. Natural, Justice and Indian Constitution: The principles of natural justice in the modern context describe certain rules of procedure. It supplies the omissions of formulated law. The principles of natural

justice are implicit in Article 14 and 21. The principles of natural justice have come to be recognized as being a part of the guarantee contained in Article 14 of the Constitution because of the new and dynamic interpretation given by the Supreme Court to the concept of equality, which is the subject matter of that Article. Violation of a rule of natural justice results in arbitrariness, which is the same as discrimination. Where discrimination is the result of State action, it is violation of Article 14. Therefore, a violation of principle of natural justice by a state action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. The principles of natural justice apply not only to legislation and Sate action but also where any tribunal, authority or body of men not coming within the definition of "State" in article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially. The constitution of India, while guaranteeing right to life and personal liberty in Article 21 in the same under "procedure established by law", the expression procedure established by law was substituted by constituent Assembly for due process clause as embodies in American constitution Art. 21 of the constitution envisage. "No person shall be deprived of his life or personal liberty except according to procedure established by law." Module – 1 83 Thus the first attempt to incorporate the American principle (which includes principles of natural justice) in the Indian constitution was failed.

Later in the A.K. Gopalan's case, (AIR 1950 S.C 27) Supreme Court held that procedure established by law meant procedure prescribed by the statute. Obviously it implies that law enacted by the state need not be in conformity with the principles of natural justice. Law in Art. 21 meant statute law and nothing more. In case of a procedure prescribed by law it cannot be

questioned on the ground that it violates principles of natural justice. There is no guarantee that it will not enact a law contrary to the principles of A learned author was prompted to observe that this position of Art.21of the Indian constitution was more of a statute justice land not natural justice. The interpretation of Art. 21 given in the Gopalan case in fact placed the liberty of the citizen at the mercy of the party in power. Natural justice supplies the procedural omissions of a formulated law. According to Jackson J. "It might be preferable to live under Russian law applied by common law Procedures, rather then under the Common law enforced by Russian procedure." Gopalan's decision dominated the Indian scene for twenty eight years till the decision of Supreme Court in the celebrated case of Monika Gandhi's which revolution the application rules of natural justice in India. In the instant case, a writ petition was filed under Art. 32 challenging the impugned order interlaid amongst other grounds for being impugned for denial of opportunity of being heard prior the impoundment of passport. As per Maneka's rationale, a procedure could no more be a mere enacted or state prescribed procedure as laid down in Gopalan's but had to be fair, just and reasonable procedure. The most notable and innovative holding in Maneka was that the principle of reasonableness legally as well as philosophically is an essential element of equality or non-arbitrariness and pervades Art. 14 like a boarding omnipresence and the procedure contemplated by Art. 21 must stand the test of reasonableness in Art. 14. Bhagwatil J, for majority referring to audi alteram partem which mandates that no one shall be condemned unheard, remarked: "Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and ever the year it has grown into a widely pervasive rule affecting large areas of administrative action. Thus the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world. In the United States, the right an administrative bearing is regarded as essential requirement of fundamental fairness and in England too it has been held that fair play in action demands that before any prejudicial or adverse action is taken against a person he must be given an opportunity to be heard." So the rules of natural justice were applicable to administrative proceedings positively. The learned judge emphasized that the Audi alteram rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice or to make the law lifeless, absurd, stultifying, self defeating or plainly contrary to the common sense of the situation. Further Bhagwai observed that it must not be forgotten that natural justice is pragmatically flexible and is amenable to capsulation under the pressure of

circumstances. The core of it must however remain namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine and not an empty public relations exercise. This rule should be sufficiently flexible to suit the exigencies of myriad kinds of situations, which may arise. The learned judge insisted for post decisional hearing in situations was urgency demands prompt action which cannot wait for a formal hearing because than world defeat the very purpose of a action. Thus Maneka decision has resurrected American procedural due process in Art, 21 which was freed from the confines of Gopalan's after about twenty eight years on 'procedure'. In one more case of the Mohinder Singh Gill, deserves attention due to observation made by Krishna Iyer, J on the principles of natural justice. The judicial history of natural justice in England and India has been remarkably traced by Krishana Iyer, J in this case by observing that the natural justice in no mystic testament of judgment juristic, but the pragmatic yet principled, requirement of fair play in action as the norm of civilized justice- system and minimum of good government-crystallized clearly in our jurisprudence by catena of cases here and elsewhere. Further, Krishana Iyer observed in the instant cases: "The rules of natural justice are rooted in all legal systems, not any new theology and are manifested in the twin principles…. while natural justice is universally respected, the standards vary withy situations contracting into a brief, even post-decisional opportunity, or expanding into trial-type trappings…good administration demands fair play in action and this simple desideratum is the foundation of natural justice. The rules of natural justice are not rigid norms of unchanging contents. Each of the two main rules embrace a number of sub rules, which may very in their application according to the context. In the words of the Supreme Court, the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of rigid formula. 33 (V.N. Shukla, The Constitution of India, 388 (- 1974). Following Exceptions to Natural Justice Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances. Statutory Exclusion: The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principle of natural justice, such silence is taken to imply the observance thereto. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. When the statute. When the

statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provision. Even if there is not provision under the statute for observance of the principle of natural justice, courts may read the requirement of natural justice for sustaining the law as constitution. Emergency: In exceptional cases of urgency or emergency where prompt and preventive action is required the principle of natural justice need not be observed. Thus, the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality, e.g., where a person who is dangerous to peace in the so morality e.g. Where a person who is dangerous to peace in the society is required to be detained or extended or where a building which is dangerous to the human lives is required to be demolished or a trade which is dangerous to the society is required to be prohibited, a prompt action is required to be taken in the interest of public and hearing before the action may delay the administrative action and thereby cause injury to the public interest and public safety. Thus in such situation dine social necessity requires exclusion of the pre-decisional hearing. However, the determination of the situation requiring the exclusion of the rules of natural justice by the administrative authorities is not final and the court may review such determination. In Swadeshi Cottoin Mills v. Union of India, the Supreme Court held that the word ‘immediate” in Section 18AA of the Industries Act does not imply that the rule of natural justice can be excluded. Public Interest. The requirement of notice and hearing may be excluded where prompt action is to be taken in the interest of public safety, or public health, and public morality. In case of pulling down property to extinguish fire, destruction of unwholesome food etc., action has to be taken without giving the opportunity of hearing

MCQs

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1. In context of the judicial control over delegated legislation consider the following statements:

   Substantive ultravires is where the delegating statute itself is unconstitutional, for example being violative of a fundamental right.

   Procedural utravires is where the executive authority does not comply with the rules for example 'previous publication'.

   Which of the above statement is/are correct?

a. Only 1
b. Only 2
c. Both 1 and 2
d. Neither 1 nor 2

2. Substantive ultra vires is when the decision maker has failed to follow the correct procedures set out in the enabling act.

a. True
b. False
c. Neither true nor False
d. None

3. Factors responsible for growth of delegated legislation

a) Lack of time

b) Volume of work with the legislature

c) Democratizing of rule making process

d) Subject Matter Complexity

4. Advantages of Delegated legislation:

a) It saves time for legislature.

b) It can be easily done in consultation with parties affected.

c) It allows for flexibility

d) All

5. What are the main points of criticism of Delegated Legislation

a) Possible misuse

b) Lacks rigorous discussion

c) Against theory of separations of power.

d) All.