



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 5



SEPARATION OF POWERS

Constitution of India: “Article 73. Extent of executive power of the Union. – (1) subject to the provisions of this Constitution, the executive power of the Union shall extend – 8 (a) to the matters with respect to which Parliament has power to make laws...||

—Article 162. Extent of executive power of the State. - Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws....||

Note: The theory of separation of powers envisages: (i) personnel separation; (2) noninterference in the working of one organ by another; and (3) non-usurpation of powers of one organ by another organ. * * * * *

Rai Sahib Ram Jawaya Kapur v. State of Punjab (1955) 2 SCR 225 MUKHERJEA, C.J. - This is a petition under Article 32 of the Constitution, preferred by six persons, who purport to carry on the business of preparing, printing, publishing and selling text books for different classes in the schools of Punjab, particularly for the primary and middle classes, under the name and style —Uttar Chand Kapur & Sonsl. It is alleged that the Education Department of the Punjab Government has in pursuance of their so-called policy of nationalisation of text books, issued a series of notifications since 1950 regarding the printing, publication and sale of these books which have not only placed unwarrantable restrictions upon the rights of the petitioners to carry on their business but have practically ousted them and other fellow-traders from the business altogether. It is said that no restrictions could be imposed upon the petitioners’ right to carry on the trade which is guaranteed under Article 19(1)(g) of the Constitution by mere executive orders without proper legislation and that the legislation, if any, must conform to the requirements of clause (6) of Article 19 of the Constitution. Accordingly, the petitioners pray for writs in the

nature of mandamus directing the Punjab Government to withdraw the notifications which have affected their rights.

2. To appreciate the contentions that have been raised by the learned counsel who appeared for the parties before us, it will be necessary to narrate certain relevant facts. In the State of Punjab, all recognised schools have got to follow the course of studies approved by the Education Department of the Government and the use, by the pupils, of the text books prescribed or authorised by the Department is a condition precedent to the granting of recognition to a school. For a long period of time prior to 1950, the method adopted by the Government for selection and approval of text books for recognised schools was commonly known as the alternative method and the procedure followed was shortly this: Books on relevant subjects, in accordance with the principles laid down by the Education Department, were prepared by the publishers with their own money and under their own arrangements and they were submitted for approval of the Government. The Education Department after proper scrutiny selected books numbering between 3 and 10 or even more on each subject as alternative text books, leaving it to the discretion of the Headmasters of the different schools, to select any one of the alternative books on a particular subject out of the approved list. The Government fixed the prices as well as the size and contents of the books and when these 9 things were done it was left to the publishers to print, publish and sell the books to the pupils of different schools according to the choice made by their respective Headmasters. Authors, who were not publishers, could also submit books for approval and if any of their books were approved, they had to make arrangements for publishing the same and usually they used to select some one of the publishers already on the line to do the work.

3. This procedure, which was in vogue since 1905, was altered in material particulars on and

from May 1950. By certain resolutions of the Government passed on or about that time, the whole of the territory of Punjab, as it remained in the Indian Union after partition, was divided into three zones. The text books on certain subjects like agriculture, history, social studies etc. for all the zones were prepared and published by the Government without inviting them from the publishers. With respect to the remaining subjects, offers were still invited from —publishers and authors‡ but the alternative system was given up and only one text book on each subject for each class in a particular zone was selected. Another change introduced at this time was that the Government charged, as royalty, 5% on the sale price of all the approved text books. The result therefore was that the Government at this time practically took upon themselves the monopoly of publishing the textbooks on some of the subjects and with regard to the rest also, they reserved for themselves a certain royalty upon the sale proceeds. 4. Changes of a far more drastic character however were introduced in the year 1952 by a notification of the Education Department issued on the 9th of August, 1952 and it is against this notification that the complaints of the petitioners are mainly directed. This notification omitted the word —publishers‡ altogether and invited only the —authors and others‡ to submit books for approval by the Government. These —authors and others‡, whose books were selected, had to enter into agreements in the form prescribed by the Government and the principal terms of the agreement were that the copyright in these books would vest absolutely in the Government and the —authors and others‡ would only get a royalty at the rate of 5% on the sale of the text books at the price or prices specified in the list. Thus the publishing, printing and selling of the books were taken by the Government exclusively in their own hands and the private publishers were altogether ousted from this business. The 5% royalty, in substance, represents the price for the sale of the copyright and it is paid to an author or any other person who, not being the author, is

the owner of the copyright and is hence competent in law to transfer the same to the Government. It is against these notifications of 1950 and 1952 that the present petition under Article 32 of the Constitution is directed and the petitioners pray for withdrawal of these notifications on the ground that they contravene the fundamental rights of the petitioners guaranteed under the Constitution.

5. The contentions raised by Mr Pathak, who appeared in support of the petitioners, are of a three-fold character. It is contended in the first place that the executive Government of a State is wholly incompetent, without any legislative sanction, to engage in any trade or business activity and that the acts of the Government in carrying out their policy of establishing monopoly in the business of printing and publishing text books for school students is wholly without jurisdiction and illegal. His second contention is, that assuming that the State could create a monopoly in its favour in respect of a particular trade or business, that could be done not by any executive act but by means of a proper legislation which should conform to the requirements of Article 19(6) of the Constitution. Lastly, it is argued that it was not open to the Government to deprive the petitioners of their interest in any business or undertaking which amounts to property without authority of law and without payment of compensation as is required under Article 31 of the Constitution.

MCQs

1. Which function cannot be delegated?
 - a) Essential legislative functions
 - b) Exclusion
 - c) Suspension
 - d) Commencement

2. Which function can be delegated?
 - a) Essential legislative functions
 - b) Offences and Penalty
 - c) Exemption
 - d) Inclusion

3. A delegated legislation may be held valid on the ground of
 - a) Parent act is unconstitutional
 - b) Mala fide: bad faith
 - c) Where Parent Act is unconstitutional
 - d) Where Parent Act delegates incidental legislative functions

4. When a subordinate legislation fails to comply with procedural requirement prescribed by the parent act or by a general law, it is known as
 - a) Substantive ultra vires
 - b) Parent ultra vires
 - c) Procedural ultra vires
 - d) None of the above

5. Which is not a principle of Rule Of Law according to Dicey
 - a) Equality before law
 - b) Judge made constitution
 - c) Supremacy of courts
 - d) Supremacy of law