



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 6



6. The first point raised by Mr Pathak, in substance, amounts to this, that the Government has no power in law to carry on the business of printing or selling text books for the use of school students in competition with private agencies without the sanction of the legislature. It is not argued that the functions of a modern State like the police States of old are confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. What Mr Pathak says, however, is, that as our Constitution clearly recognises a division of governmental functions into three categories viz. the legislative, the judicial and the executive, the function of the executive cannot but be to execute the laws passed by the legislature or to supervise the enforcement of the same. The legislature must first enact a measure which the executive can then carry out. The learned counsel has, in support of this contention, placed considerable reliance upon Articles 73 and 162 of our Constitution and also upon certain decided authorities of the Australian High Court to which we shall presently refer.

7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following, the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down.....Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed

by Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also. Neither of these articles contains any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr Pathak seems to suggest, that it is only when Parliament or the State Legislature has legislated on certain items appertaining to their respective lists that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 172 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr Pathak's contention.

8. The Australian cases upon which reliance has been placed by the learned counsel do not, in our opinion, appear to be of much help either. In the first [*Commonwealth and the Central Wool Committee v. Colonial Combing, Spinning and Weaving Co Ltd.*, 31 CLR 421] of these cases, the executive Government of the Commonwealth, during the continuance of the war, entered into a number of agreements with a company which was engaged in the manufacture and

sale of wool-tops. The agreements were of different types. By one class of agreements, the Commonwealth Government gave consent to the sale of wool-tops by the company in return for a share of the profits of the transactions (called by the parties —a licence fee). Another class provided that the business of manufacturing wool-tops should be carried on by the company as agents for the Commonwealth in consideration of the company receiving an annual sum from the Commonwealth. The rest of the agreements were a combination of these two varieties. It was held by a Full Bench of the High Court that apart from any authority conferred by an Act of Parliament or by regulations there under, the executive Government of the Commonwealth had no power to make or ratify any of these agreements. The decision, it may be noticed, was based substantially upon the provision of Section 61 of the Australian Constitution which is worded as follows: —The executive power of the Commonwealth is vested in the Queen and is exercised by the Governor-General as the Queen's representative and extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. In addition to this, the King could assign other functions and powers to the Governor-General under Section 2 but in this particular case no assignment of any additional powers was alleged or proved. The court held that the agreements were not directly authorised by Parliament or under the provisions of any statute and as they were not for the execution and maintenance of the Constitution they must be held to be void. Isacs, J., in his judgment, dealt elaborately with the two types of agreements and held that the agreements, so far as they purported to bind the company to pay to the government money, as the price of consents, amounted to the imposition of a tax and were void without the authority of Parliament. The other kind of agreements which purported to bind the Government to pay to the company a remuneration for manufacturing wool-tops was held to be an appropriation of public revenue and being without legislative authority was also void.

9. It will be apparent that none of the principles indicated above could have any application to the circumstances of the present case. There is no provision in our Constitution corresponding to Section 61 of the Australian Act. The Government has not imposed anything like taxation or licence fee in the present case nor have we been told that the appropriation of public revenue involved in the so-called business in text books carried on by the Government has not been sanctioned by the legislature by proper Appropriation Acts.

MCQs

1. . The principle of Natural Justice is –
 - a) Audi alteram partem
 - b) Speaking Orders
 - c) Nemo debet esse judex in propria causa
 - d) All of the above

2. Under Indian Constitution, Art. _____ authorized to constitute Administrative Tribunals
 - a) Art.299
 - b) Art.300
 - c) Art.323-A
 - d) None of the above

3. The _____ latin phrase _____ means 'have the body'-
 - a) Mandamus
 - b) Habeas corpus
 - c) Prohibition
 - d) Certiorari

4. 'Quo Warranto' literally means _____
 - a) To issue warrant
 - b) What is your authority
 - c) Both a and b
 - d) None of the above

5. Article _____ of the constitution confers on every High Court, the power of superintendence over all the subordinate courts and inferior Tribunals in the State.
 - a) 32
 - b) 226
 - c) 299
 - d) 227