



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 7



10. The other case [Vide Attorney-General for Victoria v. Commonwealth, 52 CLR 533] is of an altogether different character and arose in the following way. The Commonwealth Government had established a clothing factory in Melbourne for the purpose of making naval and military uniforms for the defence forces and postal employees. In times of peace the 12 operations of the factory included the supply of uniforms for other departments of the Commonwealth and for employees in various public utility services. The Governor-General deemed such peace time operations of the factory necessary for the efficient defence of the Commonwealth inasmuch as the maintenance intact of the trained complement of the factory would assist in meeting wartime demands. A question arose as to whether operations of the factory for such purposes in peace time were authorised by the Defence Act. The majority of the court answered the question in the affirmative. Starke, J. delivered a dissenting opinion upon which Mr Pathak mainly relied. The learned Judge laid stress on Section 61 of the Constitution Act according to which the executive power of the Commonwealth extended to the maintenance of the Constitution and of the laws of the Commonwealth and held that there was nothing in the Constitution or any law of the Commonwealth which enabled the Commonwealth to establish and maintain clothing factories for other than Commonwealth purposes. The opinion, whether right or wrong, turns upon the particular facts of the case and upon the provision of Section 61 of the Australian Act and it cannot and does not throw any light on the question that requires decision in the present case.

11. A question very similar to that in the present case did arise for consideration before a Full Bench of the Allahabad High Court in Motilal v. Government of the State of Uttar Pradesh [AIR 1951 Allah. 257]. The point canvassed there was whether the Government of a State has power under the Constitution to carry on the trade or business of running a bus service in the absence of

a legislative enactment authorising the State Government to do so. Different views were expressed by different Judges on this question. Chief Justice Malik was of opinion that in a written Constitution like ours the executive power may be such as is given to the executive or is implied, ancillary or inherent. It must include all powers that may be needed to carry into effect the aims and objects of the Constitution. It must mean more than merely executing the laws. According to the Chief Justice the State has a right to hold and manage its own property and carry on such trade or business as a citizen has the right to carry on, so long as such activity does not encroach upon the rights of others or is not contrary to law. The running of a transport business therefore was not per se outside the ambit of the executive authority of the State. Sapru, J. held that the power to run a Government bus service was incidental to the power of acquiring property which was expressly conferred by Article 298 of the Constitution. Mootham and Wanchoo, JJ., who delivered a common judgment, were also of the opinion that there was no need for a specific legislative enactment to enable a State Government to run a bus service. In the opinion of these learned Judges an act would be within the executive power of the State if it is not an act which has been assigned by the Constitution of India to other authorities or bodies and is not contrary to the provisions of any law and does not encroach upon the legal rights of any member of the public. Agarwala, J. dissented from the majority view and held that the State Government had no power to run a bus service in the absence of an Act of the legislature authorising the State to do so. The opinion of Agarwala, J. undoubtedly supports the contention of Mr Pathak but it appears to us to be too narrow and unsupportable.

12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that

remain after legislative and judicial functions are taken away. The Indian 13 Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.

13. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

14. In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature? Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, —a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part. The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them

MCQs

1. The institution of Ombudsman originated in _____ in 1809.
 - a) India
 - b) New Zealand
 - c) Finland
 - d) Sweden

2. Article 299 lays down condition which must be fulfilled in contracts made by or with the union or a state –
 - a) Expressed to be made by the President or the Governor
 - b) Execute by a person authorized by the President or the Governor
 - c) Expressed in the name of President or the Governor
 - d) All of the above

3. The doctrine of Vicarious Liability is based on following maxim
 - a) Audi alteram partem
 - b) Respondeat superior
 - c) Qui facit per alium facit per se
 - d) Both b and c

4. . A.V.Dicey criticized the French legal system of _____
 - a) Drone
 - b) Drone Administration
 - c) Droit Administratif
 - d) None of the above

5. . Droit Administratif is the legal system of what country
 - a) Germany
 - b) France
 - c) Sweden
 - d) UK.