



FACULTY OF JURIDICAL SCIENCES

Course : LLB , 5TH Semester

Subject : Administrative Law

Subject code : LLB 501

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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 1 1



ADMINISTRATIVE DISCRETION

‘Discretion’ when qualified by the word ‘administrative’ has somewhat different overtones. ‘Discretion’ in this sense means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful, but legal and regular. The problem of administrative discretion is complex.

It is true that in any intensive form of government, the government cannot function without the exercise of some discretion by the officials. But it is equally true that absolute discretion is a ruthless master. Discretionary power by itself is not pure evil but gives much room for misuse. Therefore, remedy lies in tightening the procedure and not in abolishing the power itself. There is no set pattern of conferring discretion on an administrative officer. Modern drafting technique uses the words ‘adequate’, ‘advisable’, ‘appropriate’, ‘beneficial’, ‘reputable’, ‘safe’, ‘sufficient’, ‘wholesome’, ‘deem fit’, ‘prejudicial to safety and security’, ‘satisfaction’, ‘belief’, ‘efficient’, ‘public purpose’, etc. or their opposites. It is true that with the exercise of discretion on a case-to-case basis, these vague generalizations are reduced into more specific moulds, yet the margin of oscillation is never eliminated. Therefore, the need for judicial correction of unreasonable exercise of administrative discretion cannot be overemphasized. Judicial Behavior and Administrative Discretion in India D Module – 1 50

Though courts in India have developed a few effective parameters for the proper exercise of discretion, the conspectus of judicial behavior still remains halting, variegated and residual, and lacks the activism of the American courts. Judicial control mechanism of administrative discretion is exercised at two stages:

I) at the stage of delegation of discretion;

II) at the stage of the exercise of discretion.

(1) Control at stage of delegation of discretion The court exercise control over delegation of discretionary powers to the administration by adjudicating upon the constitutionality of the law under which such powers are delegated with reference to the fundamental rights enunciated in Part III of the Indian Constitution. Therefore, if the law confers vague and wide discretionary power on any administrative authority, it may be declared ultra vires Article 14, Article 19 and other provisions of the Constitution. In certain situations, the statute though it does not give discretionary power to the administrative authority to take action, may give discretionary power to frame rules and regulations affecting the rights of citizens. The court can control the bestowal of such discretion on the ground of excessive delegation.

(2) Control at the stage of the exercise of discretion In India, unlike the USA, there is no Administrative Procedure Act providing for judicial review on the exercise of administrative discretion. Therefore, the power of judicial review arises from the constitutional configuration of courts. Courts in India have always held the view that judge-proof discretion is a negation of the rule of law. Therefore, they have developed various formulations to control the exercise of administrative discretion. These formulations may be conveniently grouped into two broad generalizations:

i) That the authority is deemed not to have exercised its discretion at all.

ii) That the authority has not exercised its discretion properly.

i) That the authority is deemed not to have exercised its discretion at all :- Under this categorization, courts exercise judicial control over administrative discretion if the authority has either abdicated its power or has put fetters on its exercise or the jurisdictional facts are either non-existent or have been wrongly determined.

Purtabpore Company Ltd. V. Cane Commissioner of Bihar,(AIR 1970 SC 1896) is a notable case in point. In this case the Cane Commissioner who had the power to reserve sugarcane areas for the respective sugar factories, at the dictation of the Chief Minister excluded 99 villages from the area reserved by him in favor of the appellant-company. The court quashed the exercise of discretion by the Cane Commissioner on the ground that he abdicated his power by exercising it at the dictation of some other authority; therefore, it was deemed that the authority had not exercised its discretion at all. Thus the exercise of discretion or in compliance with instructions of some other person amounts to failure to exercise the discretion altogether. It is immaterial that the authority invested with the discretion itself sought the instructions

. ii) That the authority has not exercised its discretion properly This is an all-embracing formulation developed by courts in India to control the exercise of discretion by the administrative authority. Improper exercise of discretion includes everything that English courts include in 'unreasonable' exercise of discretion and American courts include in 'arbitrary and capricious' exercise of discretion. Improper exercise of discretion includes such things as 'taking irrelevant considerations into account', 'acting

for improper purpose', 'asking wrong questions', 'acting in bad faith', 'neglecting to take into consideration relevant factors' or 'acting unreasonable'.

S.R. Venkataraman v. Union of India,(1979 2SCC 491) the appellant, a Central Government officer, was prematurely retired from service in 'public interest' under Rule 56(j)(i) on attaining the age of 50 years. Her contention was that the government did not apply its mind to her service record and that in the facts and circumstances of the case the discretion vested under Rule 56(j)(I) was not exercised for furtherance of public interest and that the order was based on extraneous circumstances. The government conceded that there was nothing on record to justify the order. The Supreme Court, quashing the order of the government, held that if a discretionary power has been exercised for an unauthorized purpose, it is generally immaterial whether its repository was acting in good faith or bad faith. An administrative order based on a reason or facts that do not exist must be held to be infected with an abuse of power.