



## **FACULTY OF JURIDICAL SCIENCES**

**Course : LLB , 5<sup>TH</sup> 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 12



**R.D. Shetty v. International Airport Authority (1979 3SCC 459):** It is heartening to see the law catching up with the vagaries of the State's dealings in the exercise of its discretion. In this case the issue was the awarding of a contract for running a second-class hotelier's and it was clearly stipulated that the acceptance of the tender would rest with the Airport Director who would not bind himself to accept any tender and reserved to himself the right to reject all or any of the tenders received without assigning any reason.

The highest of all. A writ petition was filed by a person who was himself neither a tenderer nor an hotelier was filed by a person who was himself neither a tenderer nor a hotelier. His grievance was that he was in the same position as the successful tenderer because if an essential condition could be ignored in the tenderer's case why not in the petitioner's? The Supreme Court accepted Module – 1 52 the plea of locus stand in challenging the administrative action. Justice P.N. Bhagwati, who delivered the judgment of the Court, held:

1) Exercise of discretion is an inseparable part of sound administration and, therefore, the State which is itself a creature of the Constitution, cannot shed its limitation at any time in any sphere of State activity.

2) It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

3) It is indeed unthinkable that in a democracy governed by the rule of law the executive government or any of its officers should possess arbitrary powers over the

interests of an individual. Every action of the executive government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement.

4) The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favor of those having gray hair or belonging to a particular political party or professing a particular religious faith. The government is still the government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual. The exercise of discretion must not be arbitrary, fanciful and influenced by extraneous considerations. In matters of discretion the choice must be dictated by public interest and must not be unprincipled or unreasoned. It has been firmly established that the discretionary powers given to the governmental or quasi-government authorities must be hedged by policy, standards, procedural safeguards or guidelines, failing which the exercise of discretion and its delegation may be quashed by the courts. This principle has been reiterated in many cases. Thus within the area of administrative discretion the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

In India the administrative discretion, thus, may be reviewed by the court on the following grounds.

**I. Abuse of Discretion.** Now a day, the administrative authorities are conferred wide discretionary powers. There is a great need of their control so that they may not be misused. The discretionary power is required to be exercised according to law. When the

mode of exercising a valid power is improper or unreasonable there is an abuse of power.

In the following conditions the abuse of the discretionary power is inferred: -

i) Use for improper purpose: - The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose. It will amount to abuse of power.

ii) Malafide or Bad faith: - If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the court. Malafide exercise of discretionary power is always bad and taken as abuse of discretion. Malafide (bad faith) may be taken to mean dishonest intention or corrupt motive. In relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently. If its repository intends to achieve an object other than that for which he believes the power to have been conferred. The intention may be to promote another public interest or private interest.

iii) Irrelevant consideration: - The decision of the administrative authority is declared void if it is not based on relevant and germane considerations. The considerations will be irrelevant if there is no reasonable connection between the facts and the grounds.

iv) Leaving out relevant considerations: - The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.

v) Mixed consideration: - Sometimes the discretionary power is exercised by the authority on both relevant and irrelevant grounds. In such condition the court will examine whether or not the exclusion of the irrelevant or non-existent considerations

would have affected the ultimate decision. If the court is satisfied that the exclusion of the irrelevant considerations would have affected the decision, the order passed by the authority in the exercise of the discretionary power will be declared invalid but if the court is satisfied that the exclusion of the irrelevant considerations would not be declared invalid.

vi) Unreasonableness: - The Discretionary power is required to be exercised by the authority reasonably. If it is exercised unreasonably it will be declared invalid by the court.

authority is required to exercise its powers reasonably. In a case Lord Wrenbury has observed that a person in whom invested a discretion must exercise his discretion upon reasonable grounds. Where a person is conferred discretionary power it should not be taken to mean that he has been empowered to do what he likes merely because he is minded to do so. He is required to do what he ought and the discretion does not empower him to do what he likes. He is required, by use of his reason, to ascertain and follow the course which reason directs. He is required to act reasonably

vii) Colourable Exercise of Power: - Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, It is taken as colourable exercise of the discretionary power and it is declared invalid.

viii) Non-compliance with procedural requirements and principles of natural justice: - If the procedural requirement laid down in the statute is mandatory and it is not complied,

the exercise of power will be bad. Whether the procedural requirement is mandatory or directory is decided by the court. Principles of natural justice are also required to be observed

. ix) Exceeding jurisdiction: - The authority is required to exercise the power within the limits of the statute. Consequently, if the authority exceeds this limit, its action will be held to be ultra vires and, therefore, void.



## MCQs

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

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