RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : .LLB , 5th Semester
Subject : Administrative Law
Subject code : LLB 501
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, tortuous 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 Adminstrative Law, Universal Delhi
3. I. P. Massey: Administrative law

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LECTURE 29

So let us try to find out what does natural justice mean?

• Natural Justice is rooted in the natural sense of what is right and wrong. It mandates the Adjudicator or the administrator, as the case may be, to observe procedural fairness and propriety in holding/conducting trail, inquiry or investigation or other types of proceedings or process.

• The object of Natural Justice is to secure Justice by ensuring procedural fairness. To put it negatively, it is to prevent miscarriage of Justice.

• • The term "Natural Justice" may be equated with "procedural fairness" or "fair play in action".

• It is concerned with procedure and it seeks to ensure that the procedure is just, fair and reasonable.

• It may be regarded as counterpart of the American "Due Process". Co-relationship between Law and Natural Justice.

(a) Law is the means, Justice is the end. Law may be substantive as well as procedural.

(b) Natural Justice also aims at Justice. It, however, concerns itself only with the procedure. It seeks to secure justice by ensuring procedural fairness. It creates conditions for doing justice.

(c) Natural justice humanizes the Law and invests the Law with fairness.

(d) Natural Justice supplements the Law but can supplant the Law.

(e) Natural Justice operates in areas not specifically covered by the enacted law. An omission in statute, likely to deprive a procedure of fairness, may be supplied by reading into the relevant provision the appropriate principle of Natural Justice.

Applicability of the principles of Natural Justice To Judicial, quasi-judicial and administrative proceedings. The natural justice principles in India are transmigration of common law to the sub-continent during the British rule. Before the commencement of constitution the courts in India insisted on fair hearing where punishments were awarded under the statutory provisions and they demanded fair hearing, even in statutory requirements. But the decision of the Privy Council in the Shanker Sarup's (28 1.A 203 P.C) case, held an order of distribution under Section 295 CPC to be in the nature of administrative Act, though right of the individual was affected.

Similar other cases dealing with the orders of the administrative officer were held administrative in character. Such decisions subjected the working of the common law principle of hearing and this tendency continued to shape the Indian law. The principle established in the above cases clearly shows that the principles of natural justice were confined to judicial proceedings. So Indian courts clung to the traditional distinction between judicial, quasijudicial and administrative functions.

The application of natural justice was for considerable time confined to the judicial and quasi-judicial proceedings. The meaning and connotations of term quasi-judicial has engaged judicial attention repeatedly to determine questions affecting the rights of subjects and having the duty to act judicially is said to be exercising a quasi-judicial functions. The decision of the House of Lords in Ridge's case and subsequent cases has influenced most of the development of law in this respect in India. The influence of Ridge's case judgment has been of considerable and valuable importance "in deciding the scope of the application of principles of natural justice."

In state of **Bina Pani's case (AIR 1967 S.C. 1259**) the Supreme Court has tried to abandon the traditional view of first holding an act judicial and then to observe the principles of

natural justice and stated: " It is true that the order is administrative in Character but even an administrative order must be made consistently with the rules of natural justice." The dichotomy between administrative and quasi-judicial proceedings vis-à-vis the doctrine of natural justice was finally discarded as unsound by the court in Re-H (K) (infant) and Schmidt cases in England. This development in the law had its parallel in India in the form of Associated Cement Companies Ltd.'s case, where in the Supreme Court with approval referred to the decision in Ridge's case and latter in the Bina Pani's case.

The decision of Supreme Court in **A.K.Kripak's case (AIR 1973 S.C. 150)** is landmark in the application of principles of natural justice. In the instant case court held: " the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated." The observations of Hegde,J are remarkable. The learned judge after examining various English and Indian cases has tried to remove all the clouds of doubt relating to application of natural justice. To his Lordship, the concept of rule of law would loose its vitality if the instrumentalities of the state are not charged with the duty of discharging their functions in a fair and just manner. **In D.F.O South Kheri's case, (AIR 1973 S.C. 203)** the court reiterated that law must now be taken to be settled, that even in administrative proceedings, which involve civil consequences, the doctrine of natural justice must be held to be applicable. In order to put the controversy at rest Bhagwati,J. in Maneka's case emphasized that enquiries which were considered administrative at one time are now considered quasi-judicial in character. Arriving at a just decision is the aim of both administrative and quasi-judicial enquiries. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. From the above discussion, so hear the other side is a rule of fairness. Fairness is a component of rule of law, which pervades the constitution.

The dispensation of natural justice by statute will render any decision without observance of natural justice as unjust and hence is not acceptable. The Two Fundamental Principles of Natural Justice There are two fundamental principles of Natural Justice. They are:

(i) Nemo Judex in Causa Sua:

(a) Rule against bias

(b) None should be a Judge in his own cause.

(ii) Audi Alter am Par tem

(a) Hear the other side.

(b) Hear both sides.

(c) No person should be condemned unheard. Doctrine of Bias.

One of the essential elements of judicial process is that administrative authority acting in a quasi- judicial manner should be impartial, fair and free from bias. Rules of judicial conduct, since early times, have laid down that the deciding Officer should be free from any prejudices. Where a person, who discharges a quasi-judicial function, has, by his conduct, shown that he is interested, or appears to be interested, that will disentitle him from acting in that capacity. In this connection the Supreme Court pointed out that one of the fundamental principles of natural justice is that in case of quasi-judicial proceedings, the authority, empowered to decide the dispute between opposing parties must be one without bias, by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute. (Wade, Administrative Law, Page 311, (1982) de Smith. Judicial Review of Administrative Action 151

(1980)). No tribunal can be Judge in his own cause and any person, who sits in judgment over the rights of others, should be free from any kind of bias and must be able to bear an impartial and objective mind to the question in controversy. Bias and Mala fide. In case of mala fide, Courts insist on proof of mala fide while as in case of bias, proof of actual bias is not necessary. What is necessary is that there was "real likelihood" of bias and the test is that of a reasonable man. " The reason underlying this rule", according to prof. M.P. Jain, is that bias being a mental condition there are serious difficulties in the path of proving on a balance of probabilities that a person required to act judicially was in fact biased. Bias is the result of an attitude of mind leading to a predisposition towards an issue. Bias may arise unconsciously. It is not necessary to prove existence of bias in fact, what is necessary is to apply the test what will reasonable person think about the matter?

Further, justice should not only be done but seem to be done. Therefore, the existence of actual bias is irrelevant. What is relevant is the impression which a reasonable man has of the administration of justice." (See M.P. Jain ' Evolving Indian administrative Law', p. 78.) Rule of bias is only a principle of judicial conduct and is imposed strictly on the exercise of the judicial or quasi- judicial authorities. In the matters of sole discretion of the authority or in the matters depending upon the subjective satisfaction of the authority concerned, the Court will not issue any order on the ground of bias for quashing it. The search for mala fide intention and scrutinizing the honest intention of the administrative authorities have always been subject-matter of judicial review by the English Courts. (See Griffith and Street "Principles of Administrative Law", p. 20.) Bias and Prejudice. Of a slightly lesser type of evil is prejudice. It is nearer to bias and sometimes it is likely to be misunderstood for bias. Judicial pronouncements on this aspect have made the distinction clear. The compilation of the words and phrases, which

have been judicially defined, made by the West Publishing Co., mentions; Bias and prejudice are not synonymous terms. Prejudice is defined by Webster as to prepossess unexamined opinion or opinions formed without due knowledge of the facts and circumstances attending to the question, to bias, the mind by hasty and incorrect notion, and to give it an unreasonable bent to one side or other of a cause. Bias is the leaning of the mind, inclination, prepossession, and propensity towards some persons or objects, not leaving the mind indifferent. Bias is a particular influential power, which sways the judgment, the inclination of mind towards a particular object and is not synonymous with prejudice.

MCQs

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1. . the nature of the power under section 19 of the right to information act 2005 is

a) supervisory power

b) an appellate procedure

c) both A and B

d) none of the above

2. .in which of following recent cases supreme court held that section 18 and section 19 of the right to information act 2005 serve two different purposes and law down two different procedures and they provide two different remedies . one cannot be substitute for the other.

a) CIC v state of mysore

b) CBSE v Aditya

c) ICAI v shaushak staya

d) none of the above

3. . which of the following is covered under Right to information act 2005

a) supreme court

b) high court

c) both A and B

d) none of the above

4. according to righ to information act the information which cannot be denied to the parliament or a state legislature shall not be denied to any citizen

a) true

b) false

c) partly correct

d) none of the above

5. can the information requested under RTI be sent through email ?

a) yes

b) No

c) Depends

d) none of the above