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 30

A man may not be prejudiced without being biased about another, but he may be biased without being prejudiced.

Thus bias is usually of three types:

(1) Pecuniary bias;

(2) Personal bias; and

3) Bias as to subject matters.

(1) Pecuniary Bias. A series of consistent decisions in English Courts have laid down the rule that the pecuniary interest, howsoever small, will invalidate the proceedings. So great enthusiasm was there in the minds of the English Judges against the pecuniary interest that very small amount and negligible quantity of interest were considered to be a valid ground, for reversing the judgment of Lord Chancellor Cottenham by the Appellate Court in Dimes case.(1852, 3 hlr 759) In this case the appellant was engaged in prolonged litigations against the respondent company. Against a decree passed by the V. C. Dimes he appealed before the Lord Chancellor, who gave the decision against him. It later came to the knowledge of the appellant that Lord Chancellor had a share in the respondent company. In appeal, their Lordships of House of Lords held that through Lord Chancellor forgot to mention about the interest in the company by mere inadvertence, yet the interest was sufficient to invalidate the decision given by the Lord Chancellor.

Indian Courts also invariably followed the decision in Dimes' case. The Privy Council made a reference to this famous case in the case of Vassilliadas.(AIR 1945 SC 38) .Thus a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.

(2) Personal Bias. Personal bias has always been matter of judicial interpretation. It can be claimed that no other type of bias came for judicial scrutiny as much as this type At least for a full century. With the growing interdependability of human relations, cases of personal bias favouring one or the other party, have grown tremendously. Personal bias can be of two types viz.

(a) Where the presiding officer has formed the opinion without finally completing the proceeding.

(b) Where he is interested in one of the parties either directly as a party or indirectly as being related to one of the parties. In fact, there are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or hostility against one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge. The leading case on the point is **Mineral Development Ltd. V. State of Bihar,(AIR 1960** SC 468) in this case, the petitioner company was owned by Raja Kamkshya Narain Singh, who was a lessee for 99 years of 3026 villagers, situated in Bihar, for purposes of exploiting mica from them. The Minister of Revenue acting under Bihar Mica Act cancelled his license. The owner of the company raja Kamalkshya Narain singh, had opposed the Minister in general election of 1952 and the Minister had filed a criminal case under section 500, Indian Penal Code, against him and the case was transferred to a Magistrate in Delhi. The act of cancellation by the Minister was held to be a quasi- judicial act. Since the personal rivalry between the owner of the petitioner's company and the minister concerned was established, the cancellation order became vitiated in law. The other case on the point **is Manek Lal v. Prem Chand (AIR 1957 S.C. 425)** Here the respondent had filed a complaint of professional misconduct against Manek Lal who

was an advocate of Rajasthan High Court. The chief Justice of the High Court appointed bar council tribunal to enquire into the alleged misconduct of the petitioner. The tribunal consisted of the Chairman who had earlier represented the respondent in a case. He was a senior advocate and was once the advocate-General of the State. The Supreme Court held the view that even though Chairman had no personal contact with his client and did not remember that he had appeared on his behalf in certain proceedings, and there was no real likelihood of bias, yet he was disqualified to conduct the inquiry. He was disqualified on the ground that justice not only be done but must appear to be done to the litigating public. Actual proof of prejudice was not necessary; reasonable ground for assuming possibility of bias is sufficient. A Judge should be able to act judicially, objectively and without any bias. In such cases what the court should see is not whether bias has in fact affected the judgment, but whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal.

(3) Bias as to the Subject-matter. A judge may have a bias in the subject matter, which means that he is himself a party, or has some direct connection with the litigation, so as to, constitute a legal interest. "A legal interest means that the Judge is in such a position that bias must be assumed." The smallest legal interest will disqualify the Judge. Thus for example, members of a legal or other body, who had taken part in promulgating an order or regulation cannot afterwards sit for adjudication of a matter arising out of such order because they become disqualified on the ground of bias. Subject to statutory exceptions persons who once decided a question should not take part in reviewing their own decision on appeal. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in

dispute To vitiate the decision on the ground of bias as for the subject matter there must be real likelihood of bias such bias has been classified by Jain and Jain into four categories:-

(a) Partiality of connection with the issues;

(b) Departmental or official bias;

(c) Prior utterances and pre-judgement of Issues.

(d) Acting under dictation. II Audi Alter am Par tem (Hear the other side) Rule of Fair Hearing Meaning, Object and Ambit

The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should condemned unheard. It requires that both sides should be heard before passing the order. This rule insists that before passing the order against any person the reasonable opportunity must be given to him. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto. 4 (See also **National Central Cooperative Bank v. Ajay Kumar, A.I.R. 1994 S.C. 39**).

Ingredients of fair hearing Hearing' involves a number of stages. Such stages or ingredients of fair hearing are as follows:-

1. Notice: Hearing starts with the notice by the authority concerned to the affected person. Consequently, notice may be taken as the starting point of hearing. Unless a person knows the case against him, he cannot defend himself. Therefore, before the proceedings start, the authority concerned is required to give to the affected person the notice of the case against him. The proceedings started without giving notice to the

affected party, would violate the principles of natural justice. The notice is required to be served on the concerned person properly. However, the omission to serve notice would not be fatal if the notice has not been served on the concerned person on account of his own, fault. For example, in a case some students were guilty of gross violence against other students. The notice could not be served on them because they had absconded. The action of the authority was held to be valid as the notice could not be served on the students on account of their own fault. The notice must give sufficient time to the person concerned to prepare his case. Whether the person concerned has been allowed sufficient time or not depends upon the facts of each case. The notice must be adequate and reasonable. The notice is required to be clear and unambiguous. If it is ambiguous or vague, it will not be treated as reasonable or proper notice. If the notice does not specify the action proposed to be taken, it is taken as vague and therefore, not proper.

2. Hearing: An important concept in Administrative law is that of natural justice or right to fair hearing. A very significant question of modern Administrative law is, where can a right to hearing be claimed by a person against whom administrative action is prepared to be taken? We know that right to hearing becomes an important safeguard against any abuse, or arbitrary or wrong use, of its powers by the administration in several ways. A large volume of present day case law revalues around the theme, wherein courts are called upon to decide whether or not, in a particular situation, failure on the part of the administration to give as hearing is fatal to the action taken. There is no readymade formula to judge this question and every case is to be considered on its own merits. The right to hearing can be claimed by the individual affected by the

administrative action from 3 sources. Firstly, the requirement of hearing may be spelt out of certain fundamental rights granted by constitution. Secondly, the statute under which an administrative action is being taken may itself expressly impose the requirements of hearing. Thus Art. 311 of constitution lays down that no civil servant shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action. According to the prevalent principles of judicial review of administrative action, courts have far greater control over administrative action involving a hearing (or "fair hearing" to be sure) than they have otherwise. Thus, a more effective control-mechanism comes into force. Thirdly it has been reiterated over and over again that a quasijudicial body must follow principles of natural justice. But this gives rise to another intricate question: what is quasi-judicial? Answer to this question is not easy as no " quasi-judicial" from " administrative". A general test sometimes adopted for the purpose is that " any person or body having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially" acts in a quasi-judicial manner. But it is not clearly defined as to what is meant by "acting judicially." This proposition is vague in the extreme; it is even a tautology to say that the function is quasi- judicial if it is to be done judicially. How is one to ascertain whether an authority is required to act judicially or not? The statutes, it becomes a matter of implication or inference fro the courts to decide, after reading a statute, whether the concerned authority acting under it is to act judicially. In the absence of any such explicit indication in a statute, it becomes a matter of implication or inference for the courts to decide, after reading a statute, whether the concerned authority is to act judicially or not. The courts make the necessary inference from "the cumulative effect of the courts make the

necessary inference from “the cumulative effect of the nature of the right affected, the manner of the disposal provided, the objective criteria to be adopted, the phraseology use, the nature of the power conferred, of the duty imposed on the authority and the other indication afforded by the statute. “This prime facie is too broad a generalization, which is hardly adequate or articulate to predicate the nature of a function or a body with any certainty. The personality of a judge could make a substantial difference in the end-result, for one judge may be more inclined to lean towards a quasi-judicial approach by the administration in a particular context than another judge. The extension of the right of hearing to the person affected by administrative process has been consummated by extension of the scope of quasi-judicial and natural justice as well as by discarding the distinction between “quasi-judicial’ and ‘administrative’ and invoking the concept of fairness in administrative action. Hearing has thus become the norm, rather than an exception, in administrative process at the present day. Requirements of fair hearing: A hearing will be treated as fair hearing if the following conditions are fulfilled:-

1. Adjudicating authority receives all the relevant material produced by the individual A hearing to be treated a fair hearing the adjudicating authority should provide the person-affected opportunity to produce all the relevant materials, which he wishes to produce. If the adjudicating authority does not allow the person affected to produce material evidence, the refusal will be violative of the rule of fair hearing. If the adjudicating authority refuses to hear a person who does not appear at the first hearing but appears subsequently during the course of hearing. It would be against the principle of natural justice.

2. The adjudicating authority discloses the individual concerned evidence or

material which it wishes to use against him. It is the general principle that all the evidence which the authority wishes to use against the party, should be placed before the party for his comment and rebuttal. If the evidence is used without disclosing it to the affected party, it will be against the rule of fair hearing. The extent and context and content of the information to be disclosed depend upon the facts of each case. Ordinarily the evidence is required to be taken in the presence of the party concerned. However, in some situations this rule is relaxed. For example, where it is found that it would be embarrassing to the witness to testify in the presence of the party concerned, the evidence of the witness may be taken in the absence of the party.

3. The adjudicating authority provides the person concerned an opportunity to rebut the evidence or material which the said authority issues to use against him The hearing to be fair the adjudicating authority is not required only to disclose the person concerned the evidence or material to be taken against him but also to provide an opportunity to rebut the evidence or material. Cross-examination: The important question is, does it include right of cross-examination of witnesses? Whether it includes the right to crossexamination or not depends upon the provisions of the statute under which the hearing is being held and the facts and circumstances of the each case. Where domestic enquiry is made by the employees, right of cross examination is regarded as an essential part of the natural justice. In the case disciplinary proceedings initiated by the Government against the civil servants, the right to cross examination is not taken orally and enquiry is only a fact finding one. **Hira Nath Mishra v. Rajendra Medical College, (A.I. R 1973 S.C. 1260)** in this case some male students were charged of some indecent behaviour towards some girl students. The accused male students were not allowed to

cross-examine the girl students. The refusal allow the accused male students to cross examine the girl students was upheld and was not treated as violation of natural justice because allowing them the right of cross examination would have been embarrassing for the girl students. The refusal was necessary for protecting the girl students from any harassment later on. Sometimes the identity of the witness is required to be kept confidential because the disclosure thereto may be dangerous to their person or property. In a case the externment order was served on a person by the Deputy Commissioner under the Bombay Police act. The said person was not allowed to cross-examine the witnesses. The refusal was not taken as violation of the natural justice because the witnesses would not like to give evidence openly against the persons of bad characters due to fear of violence to their person or property. Similarly in another case the business premises of a persons where searched and certain watched were confiscated by the authority under Sea Customs Act. The said person was not allowed to cross-examine the persons who gave information to the authority. There was no violation of the natural justice.

The court held that the principles of natural justice do not require the authority to allow the person concerned the right to cross-examine the witnesses in the matters of seizure of goods under the Sea Customs Act. If the person concerned is allowed the right to crossexamine, it is not necessary to follow the procedure laid down in the Indian Evidence Act. Legal Representation: An important question is whether right to be heard includes right to legal representation? Ordinarily the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. However, in certain situations denial of the right to legal representation amounts

to violation of natural justice. Thus where the case involves a question of law or matter which is complicated and technical or where the person is illiterate or expert evidence is on record or the prosecution is conducted by legally trained persons, the denial of legal representation will amount to violation of natural justice because in such conditions the party may not be able to meet the case effectively and therefore he must be given some protect ional assistance to make his right to be heard meaningful.

Institutional Decision (One who decides must hear) In ordinary judicial proceedings, the person who hears must decide. In the judicial proceedings, thus the decision is the decision of the specific authority. But in many of the administrative proceedings the decision is not of one man or one authority i.e. it is not the personal decision of any designated officer individually. It is treated as the decision of the concerned department. Such decision is called institutional decisions. In such decision often one person hears and another person decides. In such decision there may be division in the decision making process as one person may hear and another person may decide.

In **Gullapalli Nageswara Rao v. A. P. State Road Transport** Corporation the Supreme Court the hearing by one person and decision by another person has been held to be against the rule of fair hearing. But the actually the Administrative practice continues to permit the hearing by one person and decision by another. Post Decisional Hearing Post decisional hearing may be taken to mean hearing after the decision sometimes public interest demands immediate action and it is not found practicable to afford hearing before the decision or order. In such situation the Supreme Court insists on the hearing after the decision or order. In short, in situations where prior hearing is dispensed with on the ground of public interest or expediency or emergency the Supreme Court insists on the post decisional hearing.

In Charan Lal Sadu V. Union of India the Supreme Court has held that where a statute does not in terms exclude the rule of predecisional hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits it would be construed as excluding the rule of audi alteram partem at the pre-decisional stage. If the statute is silent with regard o the giving of a pre-decisional hearing, then the

administrative action after the post decisional hearing will be valid. The opinion of Chief Justice P. N. Bhagwati with regard to the post decisional hearing is notable.

In his foreword to Dr. I. P. Massey's book Administrative Law, he has stated that the Supreme Court's decisions in **Mohinder Singh Gill V. E. C.** (A.I.R. 1978 S.C. 851) **and Maneka Gandhi V. Union of India** (A.I.R. 1978 S.C. 597) have been misunderstood. It is clear that if prior hearing is required to be given as part of the rule of natural justice, failure to give it would indubitably invalidate the exercise of power and it cannot be read into the statute because to do so would be to defeat the object and purpose of the exercise of the power, that past decisional hearing is required to be given and if that is not done, the exercise of the power would be vitiated. (**Management of M/S M.S. Nally Bharat Engineering Co. Ltd. v. State of Bihar 1990 S.C.C. 48**)

In normal cases pre-decisional hearing is considered necessary, however in exceptional cases, the absence of the provision for predicisional hearing does not vitiate the action if there is a provision for post decisional hearing.

MCQs

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1. . can a public authority authorize a representative to present his case befoe the appellate authority?

    a) yes

    b) No

    c) Depends

    d) none of the above

2. the new amendment to RTI rules in 2012 made it mandatory for the appellant of his authorized representative to appear before the CIC either in person or through video-conferencing. This statement is

    a) true

    b) false

    c) partly correct

    d) none of the above

3. . as per the new rules , fee can be paid in cash or demand draft , bankers cheque , postal order or by …… under RTI Act, 2005.

    a) Electronic means

    b) Cheque

    c) stamps

    d) none of the above

4. . In context of the factors responsible for the growth of delegated legislation consider the following statements:

    Democratisation of rule-making process by providing for consultation with affected interests.

    It can help in adaptability of the law for future conditions without formal legislative amendments.

    Legislation is increasingly becoming technical like intellectual property law, biotechnology, tax laws etc., parliament is not expected to have knowledge over these matters.

    Which of the above statement is/are correct?

    a) Only 1 and 2

    b) Only 1 & 3

    c) Only 2 and 3

    d) All of the above

5. Consider the following statements about the advantages of delegated legislation:

    It saves time of Parliamentary so that the August body can focus more on the broader policy aspects

    Delegated legislation allows laws to be made more quickly than Parliament, which is vital for times of emergency.

    Which of the above statement is/are correct?

    Only 1

    Only 2

    Both 1 and 2

    Neither 1 nor 2