



FACULTY OF JURIDICAL SCIENCES

Course : LLB , 5th Semester

Subject : Administrative Law

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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 32



In **Maneka Gandhi v. Union of India** the Supreme Court observed that a passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made, an opportunity of post decisional hearing, remedial in aim, should be given to the person concerned. In the case the court has also been held that “ public interest” is a justiciable issue and the determination of administrative authority on it is not final. Interim disciplinary action: The rules of natural justice is not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order. In *Abhay Kumar v. K. Srinivasan* an order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the pendency of a criminal case against him for stabbing a student. The Court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus. The rules of natural justice were not applicable in the case such order. Academic evolution: Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. The Supreme Court has made it clear that if the competent academic authority assess the work of a student over period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded. but this exclusion does not apply in the case of disciplinary matters. Impracticability: Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being

heard and therefore in such condition the court does not insist on the observance of the rules of natural justice. In *R. Radhakrishna v. Osmania University*, the entire M.B.A. entrance examination was cancelled on the ground of mass copying. The court held that it was not possible to give all the examinees the opportunity of being heard before the cancellation of the examination.

EFFECT OF FAILURE OF NATURAL JUSTICE

In England, for sometimes now, a question of some complexity which has been cropping up before the courts time and again is: When an authority required observing natural justice in making an order fails to do so, should the order made by it be regarded as void or a voidable? Generally speaking, a voidable order means that the order was legally valid at its inception, and it remains valid until it is set aside or quashed by the courts, that is, it has legal effect up to the time it is quashed. On the other hand, a void order is no order at all from its inception; it is a nullity and void ab initio. The controversy between void and voidable is making the England administrative law rather complicated. Before we go further, it may be necessary to enter into a caveat at this place with respect to a void ab initio, the uncertainties of administrative law are such that in most cases a person affected by such an order cannot be sure whether the order is really valid or not until the court decided the matter. Therefore, the affected person cannot just ignore the order treating it as a nullity. He has to go to a Court for an authoritative determination as to the nature of the order is void. For example, an order challenged as a nullity for failure of natural justice gives rise to the following crucial question: Was the authority required to follow natural justice? As the discussion in the previous pages

shows, there is quite a good deal of uncertainty on both these points. Meagherly, J., brings out this point clearly. Nevertheless, conceptually, there is a lot of difference between a void and voidable order. The question arises in various contexts and has a number of ramifications. It has great practical value insofar as the courts have taken recourse to conceptualistic logic to answer a number of questions. For example, the following are some of the questions which arise in regard to orders passed infringing natural justice and which the courts have sought to answer by reasoning based on differentiation between void and avoidable orders, though not always with entire satisfaction: can infringement of natural justice be waived by the person affected? Are they protected? What is the effect of privatization clauses on such orders? Are they protected? Can the defect of failure of natural justice be cured later by the same body or by a higher body? Can the court issue a writ (certiorari) to quash such an order without the affected person having taken recourse to the alternative remedy available under the statute in question? Can the person affected ignore such an order without incurring any liability, civil or criminal? Can the government seek to enforce an order challenged as void because of failure of natural justice pending the court's decision on the matter? Who can challenge such an order? If the law prescribes a time limit within which the order may be challenged, can it be challenged after the period of limitation? Can an order be challenged in collateral proceedings or only in direct proceedings to set it aside? Usually, a voidable order cannot be challenged in collateral proceedings. It has to be set aside by the court in separate proceedings for the purpose. Suppose, a person is prosecuted criminally for infringing an order. He cannot then plead that the order is voidable. He can raise such a plea if the order is void. But, as de Smith points out the case-law on the point is far from being coherent

Certiorari and not a declarations regarded as a suitable remedy for setting aside a voidable decision. In India, by and large, the Indian case law has been free from the void/voidable controversy and the judicial thinking has been that a quasi-judicial order made without following natural justice is void and nullity.

The most significant case in the series is **Nawabkhan v. Gujarat S. 56 of the Bombay Police Act, 1951** empowers the Police Commissioner to extern any undesirable person on certain grounds set out therein. An order passed by the commissioner on the petitioner was disobeyed by him and he was prosecuted fro this in a criminal court. During the pendency of his case, on a writ petition filed by the petitioner, the High Court quashed the internment order on the ground of failure of natural justice. The trial court then acquitted the appellant. The government appealed against the acquittal and the High Court convicted him for disobeying the order. The High Court took the position that the order in question was not void ab initio; the appellant had disobeyed the order much earlier than date it was infringed by him; the High Courts own decision invalidating the order I question was not retroactive and did not render it non-ext or a nullity from its inception but it was invalidate only from the date the court declared it to be so by its judgment. Thus, the arguments adopted by the high Court were consistent with the view that the order in question was void able and not void. However, the matter came in appeal before the Supreme Court, which approached the matter from a different angle. The order of internment affected a Fundamental Right) art. 19) Of the appellant in a manner which was not reasonable. The order was thus illegal and unconstitutional and hence void. The court ruled definitively that an order infringing a constitutionally guaranteed right made without hearing the party affected, where hearing was required, would be void ab initio and ineffectual to bind the parties from the very beginning and a person cannot be convicted non observance of such an order. “Where hearing is obligated by statute which affects the fundamental right of a citizen, the duty to give the hearing sound in constitutional requirement an failure to comply with such a duty is fatal. The appellant could not this be convicted for flouting the police commissioners order which encroached upon his Fundamental Right and had been made without due hearing and was thus void ab initio and so was never really inexistence. Nawabkhan raises some critical issues. A few general commons may, however, be made at this place Much for the confusion in Administrative Law India can be avoided if the rule is accepted that an order made ought to have been observed,

is void ab initio. A person disobeys an administrative order at his own risk, for if he disobeys an order, and the court later holds it as not void, then he suffers the consequence, for whether an order is void or not can only be settled conclusively by a court order. Accepting the voidness rule will make authorities take care in passing orders after fulfilling all the necessary formalities. It will also denude the courts of discretion whether to set aside an order or not in case of violation of natural justice. However, there may be some situations when violation of a void order may not be excusable, e.g. when a prisoner escapes from thereon thinking that the administrative order under which he has been detained is void. It is an area where no general principle can be held applicable to all the varying situations because what has to be reconciled here is public interest with private rights. In most of the cases i.e. staying the implementation of the order challenged until the court is able to decide the question on merits

MCQs

1. The power of Supreme Court to decide the dispute between the centre and the states falls under its
 - a) Advisory Jurisdiction
 - b) Appellate Jurisdiction
 - c) Original Jurisdiction
 - d) Advisory and appellate Jurisdiction
2. Which of the following statement(s) is/are correct about a Judge of the Supreme Court of India?
 1. A Judge of the Supreme Court is appointed by the President of India.
 2. He holds office during the pleasure of the President
 3. He can be suspended, pending an inquiry.
 4. He can be removed for proven misbehavior or incapacitySelect the correct answer from the codes given below:
Codes:
 - a) 1,2 and 3
 - b) 1,3and 4
 - c) 1 and 3
 - d) 1 and 4
3. Which of the following statement(s) is/are not correct about the Attorney General of India?
 1. The President appoints a person, who is qualified to be a Judge of a High Court, to be the Attorney General of India.
 2. He has the right of audience in all the Courts of the Country.
 3. He has the right to take part in the proceedings of the Lok Sabha and the Rajya Sabha.
 4. He has a fixed tenure. Select the correct answer from the codes given below: Codes:
 - a) 1 and 4
 - b) 2, 3 and 4
 - c) 3 and 4
 - d) 3 only
4. In which of the following countries the courts do not have the power of Judicial Review? i. USA ii. UK iii. France iv. India
Codes:
 - a) iii
 - b) ii and iii
 - c) i and iii
 - d) ii
5. In which country all courts including all levels of the State courts have the power of Judicial review?
 - a) India
 - b) Switzerland
 - c) America
 - d) Australia