

It is gratifying to note that Professor Kagzi's almost pioneering work on Indian Administrative Law, first published in 1962, has now run into its second edition. Many writers had made their contributions on different aspects of the subject, but it was to the credit of Professor Kagzi to have ventured a systematic and functional exposition of the fundamental principles of administrative law in a single volume. The present edition is a better realisation of the author's endeavour in that direction. The book should be welcome to everyone interested in serious study of a subject which in the words of an eminent American judge is "the outstanding legal development of the twentieth century."<sup>1</sup>

The book under review is divided into five parts, consisting of twelve chapters in all. Within the pages the author has neatly compressed a wealth of available material on administrative law. Since the publication of the first edition, the channel of administrative law has deepened and widened, and the author is abreast of all the recent developments whether it be the proposed office of the Lokpal or Lokayuktas to remedy what is better known as "maladministration" or the establishment of the Central Vigilance Commission to check administrative corruption or the administration of the emergency declared soon after the Chinese aggression. The case-law is fairly up-to-date and the author does not lose sight of the recent statutes providing social control over banks and the effective regulation of trade and industry.

The field of administrative law in India which is founded upon the Anglo-American jurisprudence, is not as wide as the author makes out by his remark that administrative law "brings the administrative processes in accord with law,..." and later, "It is the law relating to the organisation and services performed by the administrative agencies..."<sup>2</sup> This view seems to obliterate the fact that administrative law under the Anglo-American system does not mean the same thing as in civil law. It is in civil law that administration's machinery, services, jurisdiction and means of action are studied under administrative law, which "has for its aim canalisation of administrative authority by law."<sup>3</sup> It is also difficult to accept the author's remark that "Administrative law...prescribes the modes of the control of administrative action by the Legislature and the Judiciary..."<sup>4</sup> Obviously enough, he does not mean exclusion of other

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1. Vanderbilt in Introduction to Schwartz, *French Administrative Law and the Common Law World* xiii (1954).

2. M.C.J. Kagzi, *The Indian Administrative Law* 4 (1969).

3. Schwartz, *An Introduction to American Administrative Law* 4 (1958).

4. *Supra*, note 2 at 4.

methods of control of administrative action from the purview of administrative law, but nonetheless, such expressions may create some confusion.

Statutory corporations, as the author very correctly puts it, "credit a third dimension to the two dimensioned state activities." Perhaps to the detriment of a more detailed treatment of the topic, it now forms a part of the second chapter and no new material has been added since the first edition. The complexities in the nature, composition, functions and governmental control of the modern corporations should have been explained under these headings and some sort of classification of these corporations could have been attempted. The reviewer is in agreement with the author that such an attempt may not be "completely successful" but lucidity and analytical presentation of the subject-matter with a more representative selection of the topics and not completeness is the object of classification. With the government entering the field of commerce and industry, the role of the departmental undertakings, government companies, and non-government companies with governmental control have come into prominence in the recent years. Justice P.B. Mukherji's classification of State enterprises in *M. Verghese v. Union of India*,<sup>5</sup> is particularly helpful in this matter. The author, in his treatise, remains oblivious to these developments.

Following the discussion on administrative procedure, the reader is led into a maze of case-law on natural justice without sufficient delineation of the basic principles. For example: "The requirement of a reasonable opportunity of being heard generally has two elements: (i) the opportunity must be given, and (ii) the opportunity given must be reasonable. Both these matters are justiciable."<sup>6</sup> Then, without much comment, two cases are briefly discussed to illustrate the principles. Such treatment obviously does not help much to understand the full import of "reasonable opportunity." The author fails to indicate that notice is an essential requirement of reasonable opportunity. The rules of natural justice, though stated consisely at pages 89-90, have neither been developed nor suitably illustrated with cases. Thus, the rules settled by the Supreme Court that a judge shall not act at the dictation of others<sup>7</sup> or that a person has a right to cross-examine witnesses appearing against him,<sup>8</sup> are denied their rightful place. The test of bias as a ground for vitiating administrative adjudications has been laid down by the Supreme Court in *Manaklal v. Dr. Premchand*<sup>9</sup> in perhaps the most explicit terms but unfortunately, this case also is not noted.

The scope of judicial review of administrative action is given very lucid exposition and ample case-law has been discussed. The author

5. A.I.R. (1963) Cal. 421.

6. At p. 93.

7. *Mahadaya v. Commercial Tax Officer*, A.I.R. 1958 S.C. 667, at pp. 670-71; *Glaxo Laboratories v. A.V. Venkateswarn*, A.I.R. 1959 Bom. 372 at p. 380.

8. *State of Mysore v. Shivaleasappa*, A.I.R. 1963 S.C. 375.

9. A.I.R. 1957 S.C. 425.

explodes the popular my that Parliament controls the government and concludes that "seldom issues of individual importance with which administrative law is immediately concerned can be raised in Parliament."<sup>10</sup> Making petitions is not an adequate remedy against maladministration. Causes of political and official corruption have succinctly been analysed, in a very forthright manner, and the remedies devised in Sweden, Denmark, New Zealand, the United Kingdom, the difficulties felt in the United States to check such corruption and the nature of the office of the Lokpal and Lokayukta, which is yet in the offing, have been detailed.

Delegation of legislative powers is another important aspect of administrative law. The book under review presents carefully selected illustrations of the exercise of rulemaking powers and contains a thorough discussion of the *In re Delhi Laws Act* case<sup>11</sup> and all the subsequent case-law on the subject. The limitations on the Parliament under the Constitution, in delegating legislative powers have been underlined; and the control of legislative delegation through parliamentary channels, by way of procedural safeguards and under the doctrine of judicial review, has been adequately considered. Drawing upon the various Reports of the Committee on Subordinate Legislation, the author makes the discussion more valuable because such material is often not readily accessible to the reader.

The growth of administrative tribunals in India has been spectacular in the post-independence era. Hence, a systematic study of their constitution, nature and functioning is of great consequence. The working of some of the tribunals, old and new has been described and the rules of procedure and evidence applicable before these tribunals, explained. Speaking of the finality of the tribunal decisions, the author's view that the "statutory provisions barring the jurisdiction of the courts hold ground only against the ordinary jurisdiction of the courts,"<sup>12</sup> is, however, untenable in the light of the following observations of the Supreme Court, in *Firm Radha Kishan v. Ludhiana Municipality*<sup>13</sup> :

A suit in a civil Court will always lie to question the order of a tribunal created by a statute, even if the order is expressly or by necessary implication, made final if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.<sup>14</sup>

The method of judicial control of administrative action has become the all important topic of administrative law today. A clear and concise account of the writs and orders envisaged under Article 226 of the Constitution has been given under "Powers of a High Court". But, curiously enough, the next Chapter which deals with "Powers of the Supreme Court"

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10. *Supra*, note 2 at 134.

11. A.I.R. (1951) S.C. 332.

12. *Supra*, note 2 at 254.

13. A.I.R. (1963) S.C. 1547.

14. *Ibid.*

makes no reference except incidentally at one place, to article 32, which itself is a guaranteed fundamental right. Although much of the ground under article 32 is covered by article 226, but the distinction which is there deserved mention. The reviewer sees no reason as to why the author should exclude declaratory relief and injunctions—powers of the civil courts—from this part of his treatise and relegate it to the last Chapter. As is evident from the American experience, these remedies are full of promise and it is high time that more attention was paid to them in India.

Among other topics included in this book are governmental liability in tort and contracts, binding authority of the statutes over the State, and procedural advantages of the government as a litigant whether in claiming official privilege of withholding documents or in fulfilling the requirement of statutory notice under section 80 of the Code of Civil Procedure, when a suit is instituted against the Union of India, any State, or a public officer. Thus, the author presents a fairly comprehensive view of the operation of administrative law in India.

The appendices contain excerpts from the Constitution and from certain other enactments, which have been referred to in the text, the draft of the Lokpal Bill and the Vigilance Commission Resolution. In the end, the select bibliography is useful but the table of cases and the index are of both unsatisfactory. In the table of cases, the name of the case is entered but the reference to pages of the text is omitted (e.g. see *Associated Tube Wells Ltd.*; *Dist. Board, Bhagalpur*; *Gurbakhsh Singh* cases). Often the citation of a case is omitted (e.g. see *Dalmia Jain Airways*, *Dhirendra*, *Krishna Mandal* cases), or a wrong page number of the text is entered (e.g. the *Glaxo Laboratories* case is not cited at page 221) or even the same case is entered at two places under different spellings (e.g. *Purshottam Lal Dhingra* is also wrongly entered as *Parshottam Lal*). Similar defects beset the Index as well. The break-up of the contents of each part of the book, given at the beginning of that part, is also not thorough. The headings given in the break-up do not tally with that in the text and it becomes difficult to locate the subject-matter precisely. *Vice versa*, sometimes headings under the text have not been included in the break-up of the contents for that part (e.g. see matter under 2.2.1.1., 2.2.2.2., etc.). The author's method of indicating the divisions, and the sub-divisions of a chapter by the catalogues, system of marking has failed due to bad printing because the points denoting the sub-division are often omitted.

The printing of the book has been far from satisfactory for a work of this standard. The book seems to have been hurried through, and at places the citation of cases in the footnotes has been left out (e.g. see, *Hari v. Dy. Commr. of Police*, cited in footnote on page 127, *Joyal v. State*, cited in footnote on page 215). Instances are also not lacking where a quotation has been given in the text without indication of its source (e.g. see page 21).

Despite these drawbacks, the author's work has fulfilled its purpose well and it should find ready acceptance among its readers.

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