



## NOTES AND COMMENTS

### JUDICIAL CONTROL OF DISCRETIONARY POWERS—*Barium Chemicals Ltd. v. Rana*<sup>1</sup>

RULE OF LAW, said Dicey, means absence of arbitrary powers or even discretionary powers because wherever there is discretion there is scope for arbitrariness. In the modern welfare state there has been a vast accretion of discretionary powers with the administration to affect the life, liberty and property of the individual in a substantial way. On the one hand, solution of the present day complex problems requires the presence of these powers in the hands of administration, but on the other hand, they have vastly widened the scope for administrative despotism. Control of these discretionary powers in order to check their misuse or abuse is an enigma of the administrative law. In the absence of other control-mechanisms developing, a great responsibility has come to fall on the judiciary—a strong citadel of individual liberty against the administrative arbitrariness—to keep the administrative authorities within bounds of their powers. Traditionally the judicial control over discretionary powers of the administration has been weak, but the recent tendency on its part has been to expand and invigorate its control in this area of administrative operation. The recent judgment of the Supreme Court in *Barium Chemicals Ltd. v. Rana*<sup>2</sup> is worthy of notice in this regard. This case belies the common belief that the administration could have unqualified or unlimited powers. The case establishes that even a power expressed in the widest terms is subject to some limits.

Under section 19(2) of the Foreign Exchange Regulation Act, 1947, if the central government, considers it necessary or expedient to obtain and examine, for the purpose of the Act, any information, book or other document in the possession of any person, it may by order in writing require any such person to furnish to it with such information, book or other document. The words “considers it necessary or expedient” seem to indicate that an unqualified discretion was with the government to obtain such information but the Supreme Court interpreted the words as postulating “that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order.” The court will quash the order if the order was to show that there was no careful thinking or proper application of mind as to the necessity of obtaining and examining the documents, *etc.* The court found that the order in this case, served on the appellants, had specified a number of documents some of which did not have even the remotest bearing on the

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1. A.I.R. 1972 S.C. 591.
  2. *Ibid.*



matters covered by the Act. From this the court concluded that there was no due application of the mind by the authority concerned. Thus, through the process of interpretation, the court has put fetters on the exercise of a power expressed almost in unqualified terms. The ground of non-application of mind is emerging as a new ground to control the exercise of administrative discretion.

While reading the *Rana* case one is reminded of the House of Lords' decision in England in *Padfield v. Minister of Agriculture*,<sup>3</sup> wherein the House of Lords rejected the minister's contention that he had an unfettered discretion where the statute provided for complaints by milk producers against the Milk Marketing Board to be referred to a committee of investigation "if the Minister in any case so directs". In the words of Lord Reid:

Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court...if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.<sup>4</sup>

As the minister, on the facts of the case, had not acted according to law, the House of Lords intervened.

The *Rana* case carries further the trend of the Supreme Court decisions of late of controlling administrative powers through various ways, and establishes another landmark.

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3. (1968) A.C. 997.

4. *Id.* at 1030.

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