BOOK REVIEWS

ADMINISTRATIVE LAW. By H.W.R.Wade. (4th ed., 1977). Distributors : N.M. Tripathi (P) Ltd., Bombay. Pp. li+855. Price £8.50

BRITISH ADMINISTRATIVE law will continue to be of abiding interest to us because both Britain and India share a deep commitment to the rule of law and have the same prerogative remedies to control administrative action.[1] Added to this is the fact that perhaps in no country of the world jurists and scholars take recourse to comparative law for finding solutions to their own legal problems as in India. No wonder legal academics, lawyers and judges liberally cite English authorities and literature in their arguments and writings. At times these materials are used to advance the law on the lines of the English law, at times merely to make comparisons and to appreciate an indigenous legal proposition or principle better, and at times to find the law with a view to surging forward. There is no doubt that the English administrative law and academic writings on the subject have an impact on the Indian administrative law. H.W.R. Wade is well-known in this country for his prolific and scholarly legal writings on the subject. The fourth edition of his present work under review is most welcome and will be widely appreciated.

The book is a standard and reliable treatise on administrative law. The present edition has grown in size and it gives a "full-length treatment" (to use the words of the author) to the subject. The justification for "putting so much fat" on the present edition is the "burst of judicial activity unparalleled in its history" during the last several years.

The great qualities of the book are its comprehensiveness of the subject-matter, clarity and lucidity of ideas and excellent style. It is written in a language which could be understood. One cannot refrain from saying that in some of the so-called present day scholarly legal writings there is a definite communication gap between the author and the readers. Wade's presentation does not suffer from such shortcomings.

The book is well-documented. It is a rich source of information on the multifarious principles and propositions of law—a veritable mine of information. The author has not only mentioned the legal propositions but also given his own views as to the future directions of the law.

The book is divided into seven parts and has twenty-four chapters. The seven parts of the book are : I. Introduction II. Authorities and Functions

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1. The prerogative writs have been expressly embodied in arts. 32 and 226 of the Indian Constitution.

III. Powers and Jurisdiction IV. Discretionary Power V. Natural Justice VI. Remedies and Liability VII. Legislative and Adjudicative Procedures.

A few important ideas mentioned in the book may be noted here either for the purposes of comparing our own law or from the point of view of their significance in the development of administrative law in both the United Kingdom and India.

The author has a praise for courts which at the present time are displaying enterprise and vigour in developing administrative law, but he is not sure how long this trend will continue and the courts may not have a period of relapse. Perhaps, in his view, a written constitution and a new Bill of Rights for Britain "should give the judiciary more confidence in their constitutional position and more determination to resist misuse of governmental power, even in the face of most sweeping legislation."[2] However, this may not actually happen. A Bill of Rights will have to be a grand charter laying down individual rights in broad and general terms rather than specifically. Further, the fearlessness of the judiciary may not depend so much on certain sterile constitutional provisions, but on traditions and other sociological factors including public opinion. In spite of the constitution, an executive bent on keeping the judiciary subservient can use several subtle (or even crude) methods to achieve its end.

The author has commended the French administrative courts. He feels that "an English judge, trained basically in private law and administering a more legalistic control, may feel less free to break new ground where new problems of public law call for new solutions."[3] Though in Britain the standing of the courts is high, yet "no one should suppose that administrative courts necessarily weaken administrative law. The natural result ought to be the opposite."[4]

Theoretically, the position of civil service in Britain is extremely shaky. Civil servants of the Crown have no legal protection whatsoever against wrongful dismissal. Even if a Crown servant is employed for a term, he cannot claim any relief for premature termination of his services. In India, on the other hand, civil servants enjoy certain constitutionally guaranteed procedural safeguards.

When one reads the chapter on public corporations[5] one is impressed by the common problems facing the two countries. According to the author "the public corporation is at present more in vogue than even before, and more multifarious in its applications. Whenever Parliament is willing to grant a measure of autonomy, the public corporation is commonly employed".[6]

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2. H.W.R. Wade, *Administrative Law* 22 (4th ed., 1977). (Hereinafter referred to as Wade).
3. *Id.* at 27.
4. *Id.* at 28.
5. *Id.*, chap. 6.
6. *Id.* at 142-43.

To provide a degree of executive control the minister may give to the corporation "directions of a general character". But these general directions have been rarely used. On the other hand, various other methods have been used to provide close ministerial control over public corporations. The author concludes that the management of public corporations has "fallen prey to political and bureaucratic influence", and, what is equally serious is, much of this interference is not accounted for in Parliament. The author makes the valuable observation: "It has often been suggested that there ought to be some sort of ombudsman system for complaints about nationalised industries, in view of the limitations of the statutory consumer councils and users' councils, but nothing of the kind has been instituted."[7]

A book on administrative law has necessarily to devote considerable space to judicial review of administrative action, and this has naturally been so in the case of the work under review. The essential doctrine or key to judicial review is the jurisdictional principle. Though the courts may be quietly discarding this doctrine and opting for wider review as in the United States, yet the author cautions against abandoning rules which have served the courts well for centuries. He states:

> Their addiction to the technicalities of jurisdictional control is not a mere aberration. It is the consequence of their constitutional position *vis-a-vis* a sovereign legislature: only by showing that they are obeying its commands can they justify their interventions. By one means or another, therefore, the doctrine of ultra vires must be stretched to cover the case. The courts of the United States, with their entrenched constitutional status, can afford to dispense with these subtleties. The position of British judges is fundamentally different.[8]

Unfortunately, India, in spite of the constitutional position of the courts, has opted for the English technicalities rather than broader power of judicial review as it prevails in the United States.

The author mentions the point that courts look indulgently on matters of fact decided by administrative bodies. Ordinary facts are in general exempt from review but jurisdictional facts are subject to some review. In reviewing such facts the courts apply the "no evidence rule". The author makes the observation which is significant for us that "No evidence" "does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding; or where, in other words, no tribunal

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7. *Id.* at 151.
8. *Id.* at 256-57.

could reasonably reach that conclusion on that evidence."[9] He thinks that no evidence rule so interpreted is not very much different from the American substantial evidence rule. He also mentions that the substantial evidence rule has virtually eliminated the need to enquire whether facts are jurisdictional, since the same test is applied whether they are so or not. In India in some of the cases the Supreme Court has taken the position that when jurisdictional facts are involved, the power of judicial review will extend to consideration of the evidence by the court upon its own independent judgment, as if it was an appeal.[10]

On estoppel and misleading advice by the administrators, the author feels that the courts should not legitimise *ultra vires* action even on equitable grounds. In other words, in no case should estoppel lie against the statute. Where, however, the individual has suffered on account of wrong advice, in his opinion, the only way is "to enforce the law but to compensate the person who suffered the loss"[11] by acting on the wrong advice. Such a solution may not be acceptable in India as invariably the legislature enacts an ouster clause in every statute barring the filing of suits against the government. Further, in a particular case, monetary compensation may not be an adequate remedy for the injury suffered by an individual.

Commenting on the *audi alteram partem* rule, Wade says that; "The right to a fair hearing has... been used by the courts as a base on which to build a kind of code of fair administrative procedure, comparable to 'due process of law' under the Constitution of the United States."[12] Since 1963 (after *Ridge* v. *Baldwin*)[12a], there had been an outburst of judicial activity in extending the horizons of the right to fair hearing. Fair hearing is now the rule rather than the exception. *Ridge* v. *Baldwin* has had a tremendous impact in India as well.

Speaking about the developments after *Ridge* v. *Baldwin*, the author states:

> [T]he courts now have two strings to their bow. An administrative act may be held to be subject to the requirements of natural justice either because it affects rights or interests and therefore involves a duty to act judicially, in accordance with the classic authorities and *Ridge* v. *Baldwin*; or it may simply be held that it automatically involves a duty to act fairly and in accordance with natural justice.[13]

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9. *Id.* at 274-75.
10. See M.P. Jain and S.N. Jain, *Principles of Administrative Law* 451-55 (1979).
11. Wade at 330.
12. *Id.* at 421.
12a. (1964) A.C. 40.
13. Wade at 447.

The English prerogative remedies suffered from certain procedural technicalities. The major difficulty has been the lack of interchangeability of these remedies. The author discusses these defects of the English remedies and also proposals for reform. Ultimately the anomaly was removed by the Rules of the Supreme Court brought into force in January 1978. Order 53 introduced a comprehensive system of judicial review. Rules 1 (1) and 1 (2) now enable an applicant to cover, under one umbrella, all the remedies of *certiorari*, *mandamus* and prohibition and also declaration and injunction. In India we never imported the aforesaid procedural technicalities of the English law. The result was we have had a sort of single remedy to control administrative action.

In the chapter on remedies for enforcing public duties,[14] the author points out the weakness of judicial remedies in enforcing general public duties. Thus, he says that a duty imposed by the statute on the government to promote a comprehensive health service cannot be enforced through the processes of the court. "It is plain that duties expressed in such general terms are intended to be enforced, if at all, by political rather than legal means."[15] He takes up several examples to illustrate the point. However, he feels that the political remedy is unrealistic. The individual grievance thus remains unremedied in this area. This point gets an added significance because of the expanding activity of the government in areas which were the preserve of private enterprise till sometime back. Here, the traditional law needs to be altered. Recently, the Indian Supreme Court in the *Ratlam Municipality* case[16] showed judicial efflorescence in directing the municipality to carry out its statutory duty to provide sanitary facilities. The court did not accept its "alibi" of not possessing funds to do so.

Government contracts are hardly the concern of administrative law in Britain. Except for the Crown Proceedings Act of 1947, or rules "which prevent their [government] contracts from fettering their discretionary powers and from creating estoppels in some cases",[17] there is no special law governing government contracts. Government contracts are subject to the ordinary contracts in the same way as private individuals and corporations. In other words, the government has an unfettered freedom like a private individual in the matter of contracts. In India, however, the Supreme Court has invoked article 14 of the Constitution (equality clause) to impose some limitations on the power of the government to enter into contracts. This has been done in two ways—by

14. *Id.*, chap. 19.
15. *Id.* at 593.
16. *Municipal Council, Ratlam* v. *Vardhichand,* A.I.R. 1980. S.C. 1622.
17. Wade at 644.

holding that in blacklisting a firm and thus debarring it completely from entering into government contracts, principles of natural justice are to be observed;[18] and by holding that in inviting tenders the norms or standards governing the same should be reasonable and not discriminatory and arbitrary.[19]

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18. *E.E. & Co. Ltd.* v. *State of West Bengal*, A.I.R. 1975 S.C. 266.

19. *Ramana Dayaram Shetty* v. *International Airport Authority*, A.I.R. 1979 S.C. 1628.

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