

ADMINISTRATIVE LAW (3rd ed. 1984). By K.C. Joshi. Allahabad Law Agency, 9 University Road, Allahabad. Pp. xxix+282+iv. Price Rs. 30.

ADMINISTRATIVE LAW is a subject of fairly recent origin with the potentiality of multi-dimensional growth. Though there may have been some force in the early 1960s when Lord Reid stated in *Ridge v. Baldwin*¹ that, "We do not have a developed system of administrative law—perhaps until fairly recently we did not need it,"² but in the last quarter of the twentieth century very few public law experts would venture to contest the proposition that administration of justice would be incomplete without the proper appreciation of administrative law. It goes without saying that within a decade this subject has marched from the status of optional to the dignified status of a compulsory subject in LL.B. courses of many universities. Also the five-year degree course proposed by the Bar Council of India requires it to be taught as a compulsory subject.

Though there is no dearth of books on Indian administrative law,³ this book⁴ is a significant contribution to cater to the needs of the LL.B. students. The third edition shows sufficient improvement over the earlier ones and contains a detailed analysis of certain emerging topics which were pointed out by a noted reviewer⁵ of the second edition.

The field of administrative law can mainly be divided into four parts, (i) introductory; (ii) legislative functions of administrative bodies; (iii) judicial functions of administrative bodies; and (iv) purely administrative functions of administrative bodies especially involving exercise of discretionary powers. Chapters I, II, III and IV of the book deal with introduction of administrative law and analyse its definition and sources along with classification of administrative action and governmental structure. Chapter V presents a live discussion on administrative legislation. The author examines minutely the different aspects of delegated legislation including its constitutionality and control thereof. Legislation through ordinances also finds place in this chapter. Chapter VI deals with the most expanding area of administrative adjudication. It discusses not only the constitutional basis and procedures to be followed by tribunals, but also administrative adjudication in different fields like

1. [1964] A.C. 40.

2. *Id.* at 72.

3. S. Rajagopal, *Administrative Law* (2nd ed. 1970); Suranjan Chakravarti, *Administrative Law* (1970); M.P. Jain and S.N. Jain, *Principles of Administrative Law* (1986); I.P. Massey, *Administrative Law* (1980); S.P. Sathe, *Administrative Law* (1984).

4. K.C. Joshi, *Administrative Law* (3rd ed. 1984).

5. P.M. Bakshi, Book Review of Joshi's "*Administrative Law*, 2nd ed. 1980", 6 *Kurukshetra Law Journal* 154 (1980).

labour and industrial laws, transport, taxation and rent control. Also included in it is a discussion on vocational tribunals and administrative tribunals added by the Constitution (42nd Amendment) Act 1976. Chapter VII deals with the much delicate issue of discretionary power of administration. The author rightly expresses vulnerability of the exercise of administrative discretion in case of exercise of power for an improper purpose or *mala fides*.⁶ He also points out the necessity of relevant considerations for exercising administrative discretion in public interest⁷ and quotes the observation of the Supreme Court in *S R. Venkataraman v. Union of India*,⁸ that "if people who have to exercise a public duty by exercising their discretion take into account matters which the court considers not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."⁹ Citing the relevant authorities the author very pertinently emphasises that "[d]iscretion in public affairs is seldom absolute."¹⁰ In all the chapters mentioned so far, the author has discussed the power of administration from two angles, *first* from the angle of the extent of power, and *second* from that of control by the judiciary as well as by higher administrative authorities in case of transgression of limit by administration. Chapter VIII deals with inquiries and investigations.

Chapter IX sets out the most cardinal principle of administration of justice, *viz.*, natural justice. In addition to the discussion of different aspects of the principle of natural justice, the author very clearly narrates the judicial journey from confinement of the rule of *audi alteram partem* to judicial acts, to its extension to quasi-judicial and administrative action.¹¹ *A.K. Kraipak v. Union of India*¹² opened the door for the application of the principles of natural justice to all cases where there is apprehension of miscarriage of justice. The author rightly points out that even in exercise of administrative acts the "[h]earing requirement has been treated as a minimum requirement of just and fair treatment."¹³ However, the author favours the cautious use of the rules of natural justice and shows agreement with Justice O. Chinnappa Reddy,¹⁴ that "the court should not unnecessarily stretch the application of these rules where there is a conflict between the public interest and private interest for protecting the private

6. *Supra* note 4 at 122-23.

7. *Id.* at 124.

8. A.I.R. 1979 S.C. 49.

9. *Id.* at 51. The court reiterated the principle laid down in *The Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras*, (1890) 24 Q.B.D. 371 at 375 (1890).

10. *Supra* note 4 at 125.

11. *Id.* at 175.

12. A.I.R. 1970 S.C. 150.

13. *Supra* note 4 at 175.

14. *Swadeshi Cotton Mills v. Union of India*, (1981) 2 S.C.R. 533 (dissenting judgment).

interest.”¹⁵ The author has nicely discussed “void and voidable” concept in relation to the breach of natural justice.¹⁶ Discussion of fair hearing, one of the essential aspects of natural justice, in case of dismissal, removal and reduction in rank of government servants¹⁷ is the speciality of the book.

Rights *sans* remedies are of no use. The author has given adequate place to the machinery of judicial review and remedies for administrative faults. Chapters X, XI and XII deal with such issues and the author has discussed both ordinary remedies in the form of injunction and declaratory reliefs as well as extraordinary judicial remedies through different kinds of writs. The author rightly appreciates expansion of the scope of the writ of *certiorari* brought by *A.K. Kraipak*.¹⁸ For issuing *certiorari* distinction between judicial and administrative functions has become blurred, as *Kraipak* has almost pulled down the traditional barriers between the judicial or quasi-judicial and administrative powers. The author has discussed the machinery for judicial review¹⁹ and touched upon the issue of *locus standi*.²⁰ He has noted the trend of the High Courts and the Supreme Court entertaining representative petitions by liberalisation of the rule of *locus standi*. He rightly cites the Supreme Court decisions in, (i) *National Textile Workers' Union v. P.R. Ramakrishna*²¹ allowing workers' appearance before the court against the winding up of a company; (ii) *S.P. Gupta v. President of India*,²² allowing lawyers *locus standi* to challenge the presidential actions of transferring High Court judges and refusal to reappoint an additional judge ; and (iii) *People's Union for Democratic Rights v. Union of India*,²³ allowing a special organisation to petition against injustice done to weaker sections of people like illiterate and unorganised workers. But such cases are mere illustrations of liberal outlook of the judiciary. The issue of public interest litigation or social action litigation needs a thorough and sustained study. The fate of public interest litigation is not very much clear, as the doubts raised by Justice S. Murtaza Fazal Ali in *S.P. Gupta* have not been cleared by the larger bench of the Supreme Court.²⁴ Until the broad contours of public interest litigation are determined, there appears to be much force in Baxi's terminology—judicial populism.²⁵ The author closes

15. *Supra* note 4 at 176. See also S.N. Jain, “Effect of Failure of Natural Justice: The Ultimate Relief”, 26 *J.I.L.J.* 13-24 (1984).

16. *Id.* at 173-175.

17. *Id.* at 179-180.

18. *Supra* note 12; *id.* at 210.

19. Ch. 10.

20. *Id.* at 193-195.

21. A.I.R. 1983 S.C. 75.

22. A.I.R. 1982 S.C. 149.

23. A.I.R. 1982 S.C. 1473.

24. For different issues relating to public interest litigation see, S P. Sathe, “Public Participation in Judicial Process: New Trends in Law of Locus Standi with Special Reference to Administrative Law”, 26 *J.I.L.J.* 1-12 (1984).

25. Upendra Baxi, “Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India”, *The Review* 37-49 (Dec. 1982).

the topic with the wishful thinking that "[w]ith proper judicial restraint and Government response, the liberal *locus standi* is bound to effectuate the concept of equal justice."²⁶ He does not discuss what the court can do in regard to defiant governmental agencies against whom it has issued directions. The present reviewer is of the opinion that the author should have taken care of such issues.

In the modern welfare state the liability of the state cannot be very much different from that of individuals. Chapter XIII deals with proceedings involving the state and discusses its tortious and contractual liabilities. In addition, the chapter examines the power of the government to withhold documents in light of the noted decision of the Supreme Court in *S.P. Gupta*.²⁷ The author rightly notes the general trend towards "openness in the government"²⁸ and freedom of information. This chapter also examines the principle of promissory estoppel with its most progressive application in *Hardwari Lal v. G.D. Tapase*.²⁹

Public corporations are becoming the most important vehicle of national economic life and chapter XIV of the book discusses different aspects of public corporations along with judicial and parliamentary control therefor. Chapter XV deals with a matter of most topical interest, *i.e.*, Indian ombudsman. In view of growing demands to expose the misdeeds of high dignitaries the institutions of *Lokpal* and *Lok Ayukta* are becoming more and more desirable. This last chapter of the book analyses the fate of the institution of ombudsman in India.

The wide coverage given to the field of administrative law without being bulky and examination of up-to-date relevant High Court and Supreme Court decisions are the special qualities of the book. It is handy with an attractive appearance. The author has put in a great deal of labour in writing the book and his insight into the subject may immensely help the students of law classes.

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26. *Supra* note 4 at 195.

27. *Supra* note 22.

28. *Supra* note 4 at 240.

29. A.I.R. 1982 P. & H. 439.

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