

THE BOOK¹ is another addition to the literature on administrative justice. It is written by a person who has put in more than two decades of service in Indian Administrative Service and the work is based on the theme on which Radhakant Nayak worked for his doctoral study. This blending of practical experience with academic flavour is a welcome approach in the writings on Administrative Law.

The book opens with brief historical background. Nayak starts from Dicey, Robson and moves down to Franks recommendations. The *Counseil d'Etat* and the evolutionary history of the American administrative justice have a very brief treatment. In the Indian position, Nayak concentrates on the constitutional recognition of administrative adjudication. The present writer feels that the historical retrospect could have been dealt with in greater detail. Further Nayak does not highlight the conclusions from his comparative insight into the subject-matter. This would have been useful in restructuring the future growth of administrative justice in India.

Next comes the contextual overview where Nayak takes Orissa as a model for his study. He explains the phenomenal growth in the administrative adjudicatory agencies with the help of a chart of legislations from 1836 to 1975. The most fertile decade was from 1956 to 1965 when more than 280 such agencies came into existence. Such expansion, according to Nayak was due to the "exigencies of the time" and "the growing problems of public benefit."

In view of the multi-facet functions performed by the tribunal, it is difficult to put it into a water-tight compartment. This problem is faced not only by the scholars but also by the judiciary. Nayak, gives seven characteristics of a tribunal and concludes that it is a "special court with judicial power".² It is submitted that once the tribunal is termed as a 'Court' then the well settled distinction between 'judicial' and quasi-judicial bodies, would vanish. Even the author himself has categorised tribunals into four: the administrative courts, executive tribunals, judicial tribunals and miscellaneous authorities, as all the above tribunals cannot be put under the aegis of 'Court'. The distinctions between tribunal and court, judicial and quasi-judicial bodies and administrative adjudicatory body and tribunal of inquiry are explained with the help of illustrations from Orissa. This makes the study interesting and more easy to understand. The Chapter ends with the merits of adjudicating agencies. It may be pointed out that the present part needs rearrangement of the materials and a point-wise treatment is necessary to make the contextual approach more meaningful.

The third chapter deals with 'Organisational Analysis'. The detailed

1. Radhakant Nayak, *Administrative Justice in India* (1989).

2. *Id.* at 50-51.

analytical approach reflects the hard work put in by the author in the area. It is in this part that the readers will get detailed information about the different modes and ways adopted by the State of Orissa in the constitution of tribunals. It is a difficult job to deal with the organisational structure of a variety of tribunals under one head. The Book classifies the tribunals under the four heads mentioned above. Whilst Nayak has confined himself to the legislations of the State of Orissa he has not missed any important State legislation. The discussion centres round nearly sixty State legislations. The large number of legislations came under the head of Executive Tribunals followed by Administrative Courts, Miscellaneous Tribunals and finally, the Judicial Tribunals. There are multiple tribunals, single tribunals, state governmental tribunals, grassroot tribunals etc. The chapter ends with a resume which fails to crystallize the complete picture. However, one can see Nayak's concern about increasing the number of executive tribunals and administrative courts in the absence of detailed guidelines for appointment of members and without a firm and consistent approach on judicial environment. Nayak has unfortunately not taken note of the constitutional provisions on tribunals and the Administrative Tribunals Act, 1985. The Act requires that for the constitution of a tribunal there should be expertise in the concerned field with judicial experience. This will remove the common apprehension of people that in administrative justice, justice is meted out by the administration. Further, when administrative justice is accepted as an important organ of the administration of justice, law must come out with detailed guidelines for the organisational set up. This will leave little scope for the executive to manoeuvre the course of justice.

After the constitution of a tribunal, the next problem is of the procedure to be followed by the tribunal. The procedure should be so formulated that due significance is accorded to the principles of natural justice. The procedural problem in the actual functioning of the tribunal has in the main been ignored by researcher. Nayak however deserves appreciation in this respect. The author has analysed the procedure followed by various tribunals and has come to the conclusion that in India "there is...no uniform, comprehensive and systematic procedure" which "is an important component in the administration of justice". It is time that Parliament and the State Legislatures should come forward with a general procedure to be followed by the tribunals whilst may be delegating the minor details to the executive. Such an approach will curtail the wide discretion given to the concerned government to lay down the procedure "as it thinks fit". There may be difficulties in implementing the above suggestions but such implementation should increase the faith of the people in administrative justice. The tribunals have tried to follow the principles of natural justice liberally and whenever they have gone wrong the judiciary has remedied matters. It is true that a tribunal is not a court of law but in view of this distinction the principles of natural justice cannot and should not have a different operation in the case of tribunals. The application should be fair,

just and adequate. Nayak's case studies on the functioning of a few tribunals in Orissa bring out two important shortcomings of administrative justice. One that the adjudicating process takes much more time than expected. And two that it is expensive. However these findings should not be a cause for disappointment. As Nayak's data also shows that out of 80 judgments of different tribunals, 60 cases were upheld in part or full on appeal and only 16 cases were overruled.

The tribunals have an important role to play in administrative justice. They have, to a great extent, succeeded in this task. However at times they have travelled beyond their jurisdiction, not complied with the principles of natural justice, not performed their statutory duties made and apparent errors of law. All these irregularities need a supervisory control. Herein the role of judicial review is of immense importance. Articles 32, 136, 226 and 227 are important checks on the extensive power conferred upon the tribunals. *Nayak* has given detailed illustration from Supreme Court and High Courts cases to show as to when the scope of judicial review was available and where the judiciary did not interfere with the course of administrative justice. On the whole, the courts have adopted a balanced approach. In view of the effective judicial control, Nayak opines, "we have not come across any serious instance of unfettered administrative action".³ The case law discussed by the author contains many directions which the tribunals must take into account whilst administering justice. These directions should minimise the need for adjudication by the Supreme Court and the High Courts in the present area.

The present work closes with certain 'conclusions and suggestions'. One can see here Nayak's concern for justice. At times he is over optimistic in his suggestions by recommending radical changes in the existing system of administrative justice.⁴ Apart from these suggestions the entire work deserves the attention of the legislature, the judiciary, the tribunals and all the concerned authorities for a healthy growth of administrative justice in India.

Nayak must be congratulated for exposing the readers to the intricate issues emanating from the actual functioning of the tribunals and providing vital information over which ordinarily only bureaucrats have a monopoly. The Book has the following shortcomings. Though the work is titled 'Administrative Justice in India' it only concentrates on Orissa. Such a misnomer could be seen as misleading or exploiting the readers and thus should be avoided. Secondly, the present publication is of the year 1989, whereas, most of the information and references given to the readers date upto the year 1970. Since S.N. Jain's work⁵ many authorities have made important contributions in the present field. The present work has an

3. *Id.* at 167.

4. *Id.* at 180-181

5. *Administrative Tribunals in India: Existing and Proposed*, (1977).

outdated base. This is also evident from the 'Select Bibliography' appearing at the end of the Book. Another unfortunate aspect of the present volume is that it completely omits a discussion on the Administrative Tribunals Act, 1985 and its aftermath.

In the end a word of appreciation for SAGE Publications for the fine get up, minimum errors and moderate price.

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