



ADMINISTRATIVE LAW (6th ed. 1998). By S.P. Sathe. Butterworths, New Delhi.
Pp. lxxviii + 557. Price Rs.695.

ADMINISTRATIVE LAW became a part of the curriculum of the Indian Law Schools with the introduction of three years LL.B. course in Indian universities during the second half of the sixties of this century. Initially the Bar Council of India had prescribed it as an optional subject, but keeping in view the importance and growth of the subject, recently it has been made a compulsory subject in the LL.B. syllabi. S.P. Sathe was perhaps the second author, after M.C. Jain Kagzi¹ to bring out a comprehensive anthology on the subject in 1970. The book has been extremely popular with the teacher and taught right from the beginning. The author has brought out the sixth edition of the book,² which was overdue, after a gap of 7 years. The book is one of the best treatises on the subject and this edition has further taken it towards the goal of excellence. It has been brought out, as the author claims, keeping in view the changed perception of Indian economy from the controlled to the liberalised one. There are considerable improvements and additions in this edition besides updating the book with case law and relevant legislation. Relevant English and American law is given in a lucid manner.

'What is administrative law' is not discussed in sufficient detail in the introductory chapter. The discussion is completed within just one page and a few lines. Similarly, 'Rule of Law' is succinctly dealt with. Indian case law highlighting it as an essential feature of the Constitution is not adequately reflected. It needs more elaboration. On the other hand, the topic of 'Separation of Powers' is very articulately brought out with reference to the provisions of the Constitution and judgments of the Supreme Court of India. Chapter 2 is on 'Legislative Powers of the Administration'. The chapter is nicely stuffed with necessary facts and case law on the subject.

In chapter 3, "Control of Delegated Legislation", Sathe takes a practical view when he opines that the minority view in *Prag Ice and Oil Mills*' case³ is correct. Article 31-B of the Constitution should protect not only the Act included in the Ninth Schedule but also the subordinate legislation framed thereunder. The nature and status of administrative directions are quite appropriately discussed in an exhaustive manner.

Considerable space is devoted to classification of administrative action in chapter 4. Though the rigidity of functional distinction does not survive, the author has justified the dealing of this topic in an exhaustive manner. The distinction between hearing given in legislative (rule-making), e.g., rate fixing and hearing to be given in administrative (quasi-judicial) function has been precisely brought

1. *Indian Administrative Law* (1969).

2. S. P. Sathe, *Administrative Law* (6th ed. 1998).

3. *Prag Ice and Oil Mills v. Union of India*, (1978) 3 SCC 459. See, *id.* at 90.



forth. Quasi-judicial decision is correctly defined as “an administrative decision, some stage or some element of which possesses judicial characteristics.”

Chapter 5 discusses the rules of natural justice in a lucid and cogent manner. Effect of non-compliance with principles of natural justice is discussed by referring to a number of cases while other authors on the subject have mostly restricted the discussion to *Nawabkhan's* case.⁴ Chapter 6, ‘Judicial Review of Administrative Action’ highlights finality provisions in the Constitution and the statutes. While discussing tribunalisation in India, the author has discussed in sufficient detail the Administrative Tribunals Act 1985 and Election Commission. A fair idea is given about other Commissions under the Constitution and those created by the statutes though it is not as detailed and exhaustive as is available in V.G. Ramachandran’s book.⁵

Chapter 8 deals with the scope and extent of writ jurisdiction. Here the author is not happy with the indiscriminate use of article 32 of the Constitution.⁶ He pleads for economic and not liberal use of this article. Similarly he finds that the Supreme Court has not been as demanding as it ought to have been in scrutinising the special leave petitions under article 136 at the threshold.⁷ He pleads for sparing use of this power by the Supreme Court. Invocation of article 142 to claim much larger powers for the Supreme Court has also not been relished by the author. The scope of this article has been discussed exhaustively citing all the Supreme Court authorities on the subject. He rightly cautions after citing *Ashok Hurra*⁸ and *Abubaker*⁹ judgments that such use of article 142(1) could spell disaster for the rule of law. It should not be exercised disregarding statutory provisions. Thus all the special powers with the Supreme Court under different constitutional provisions should be cautiously and sparingly exercised. The topic is discussed incisively and completely.

Scope of PIL is also explained in this chapter very appropriately under different sub-heads. While discussing ‘person aggrieved’, *Adi Pheroze Shah Gandhi v. H. M. Seervai*¹⁰ is referred to. Sathe has rightly sided himself with the minority saying that the majority has interpreted the words ‘a person aggrieved’ rather too narrowly¹¹ and the advocate general should have the standing to appeal to the Bar Council of India against the decision of the State Bar Council. The author has noted that PIL is becoming legislative.¹² Various authorities are cited where the Supreme Court has issued directions of a legislative nature. The author seems to appreciate this development but he has not taken a definitive stand either in favour or against it. The prerogative writs are summarily dealt with.¹³ Similarly a brief reference is made to remedies under private law.

4. *Nawabkhan v. State of Gujarat*. AIR 1974 SC 1471.

5. *Administrative Law* (2nd ed. 1984).

6. *Supra* note 2 at 301-3.

7. *Id.* at 390. See also, *id.* at 453.

8. *Ashok Hurra v. Rupa Bipin Zaveri*. AIR 1997 SC 1266.

9. *Abubaker v. Mahalakhmi Trading Co.*, (1998) 2 SCC 753.

10. AIR 1971 SC 385.

11. *Supra* note 2 at 400.

12. *Id.* at 417-18.

13. *Id.* at 427-41.



Discussing the writ of *habeas corpus*, it is mentioned¹⁴ that the detaining authority must show that the law authorising the detention is valid. But there is a general rule of presumption as to the validity of a law, so that person questioning the law must prove that it is invalid. Burden of proof is on the person questioning the validity of a law.

Various government privileges in litigation are dealt with in chapter 9. Privilege to withhold documents from litigation is very nicely analysed. Various judicial pronouncements alongwith dissenting opinion¹⁵ of Subba Rao J. in *Sodhi Sukhdev Singh's case*¹⁶ are referred to. Reference is usefully made to the Official Secrets Act and necessity of law regarding right to information is rightly emphasised.

The last chapter concerns *Lokpal*. It sums up the various abortive attempts to have a *Lokpal* in India at the union level. However, the author has not deemed it proper to include *Lokpal/Lokayukat* mechanism working at the state level.

The imprint of Butterworths, the publishers, is evident from the beautiful get up of the book. Use of high quality paper and flawless printing with large letters has added to its prestige. Highlighting of important points by putting dots, which helps the reader to quickly understand and absorb, has enhanced its utility. The book has not become bulky; it is quite manageable unlike some other publications on the subject. But the table of cases running into 45 pages could have been reduced by giving it in small type letters just like the earlier edition of the book. It may have been given in two horizontal parts of the page. The index at the end is quite economical. It runs only to six and a half pages.

This edition has taken away the book from the reach of an ordinary student. The price is quite exorbitant making it a library edition only. A student edition should be made available at a cheaper rate in paper back on the pattern of Justice Thakkar (Takwani)'s book¹⁷ which is available in two versions.

The subject being fast changing and ever expanding, frequent editions of the book should come up.

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14. *Id.* at 428.

15. *Id.* at 508.

16. *State of Punjab v. Sodhi Sukhdev Singh*, AIR 1961 SC 493.

17. C.K. Thakkar, *Administrative Law* (1982).

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