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ADMINISTRATIVE LAW

*S S Jaswal**

I INTRODUCTION

ADMINISTRATIVE LAW is basically concerned with the powers of administrative authorities, the extent of such powers, the procedures prescribed for the exercise of such powers, the remedies available to the aggrieved citizens when such powers are abused or misused. Broadly speaking, the actions and at times, the non-actions of administrative bodies are impugned in judicial review proceedings. Administrative action includes rule-making, adjudication inquiry, inspection, supervision, imposition of conditions while granting leases, licences, to mention a few. Non-action relates to non-performance of a statutory duty.

The present survey deals with the cases decided by the Supreme Court of India during the year 2008 relating to administrative law. The various topics covered in this survey have been analyzed under different heads *viz*., judicial review of policy decision, delegated legislation, various factors of principles of natural justice, legitimate expectation and promissory estoppel.

II JUDICIAL REVIEW

Judicial review is the power of the courts to annul the acts of the executive and/or the legislative power where it finds them incompatible with a higher authority, such as the terms of a written Constitution. Judicial review is an example of the functioning of separation of powers in a modern governmental system (where the judiciary is one of several branches of government). This principle is interpreted differently in different jurisdictions, which also have differing views on the different hierarchy of governmental norms. As a result, the procedure and scope of judicial review differs from country to country and state to state.

Grounds for judicial review

An order which is not arbitrary, unreasonable or *mala fide*, is not subject to judicial review. In *Kisan Sahkari Chini Mills Ltd. & Ors* v. *Vardan Linkers & Ors.,*[1] the assistant cane commissioner (ACC) permitted the

* LL.M., Ph..D, Assistant Research Professor, Indian Law Institute, New Delhi.

1 (2008) 12 SCC 500.

respondent to lift 85,000 quintals of molasses from various sugar mills at a low price specified by him. Secretary to the government found that there were various irregularities in this allotment; therefore, by a reasoned order he cancelled the assistant cane commissioner's order. He also held that there was no valid contract for the said allotment. Being aggrieved, respondent approached the high court praying, *inter alia,* to issue directions to the appellants to continue the supply of molasses to him so that the entire allotted quantity of 85,000 quintals could be lifted.

A division bench of the high court, by an interim order, directed the state government to take a decision on the claim of the first respondent after giving a hearing. Pending such decision, the high court permitted the respondent to lift up to 20,000 quintals of molasses. After hearing the respondent, the secretary (sugar) held that there was no valid contract for supply of molasses to the first respondent and that therefore the allotment letter issued by the ACC was without any authority. Consequently he cancelled the same.

Aggrieved by the interim order of the high court to supply 20,000 quintals of molasses to the respondent, the appellant approached the Supreme Court which, in turn, set aside the interim order and permitted the respondent to amend the writ petition to challenge the order of the secretary (sugar). The respondent amended its writ petition accordingly. The high court held that having regard to the doctrine of part performance, legitimate expectation, estoppel and the acquiescence, the cancellation of the allotment letter issued by ACC was unsustainable. Therefore, the high court quashed the order of the secretary (sugar) and directed that the respondent should be allowed to lift 85,000 quintals of molasses less the quantity already lifted. The said judgment of the high court was challenged in the present appeal.

The questions before the Supreme Court were: (i) whether the high court was right in concluding/assuming that there was a valid contract/ and (ii) whether the high court was justified in quashing the order of the secretary (sugar)? Allowing the appeal the Supreme Court held that ordinarily, the remedy available to the party complaining of breach of contract is to seek damages. He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil court. The public law remedy, by way of a writ petition under article 226 of the Constitution, is not available to seek damage for breach of contract or specific performance of contract. The court reitreated the settled position where the contractual dispute has a public law element, the power of judicial review under article 226 may be invoked.[2]

2 *Divisional Forest Officer* v. *Bishwanath Tea Co. Ltd.,* (1981) 3 SCC 238, *State of Gujarat* v. *Meghji Pethraj Shah Charitable Trust,* (1994) 3 SCC 552*, Mahabir Auto Stores* v. *Indian Oil Corpn.,* (1990) 3 SCC 752*, Verigamto Naveen* v. *Govt of A.P.,* (2001) 8 SCC 344.

Before the court can record a finding as to whether there is a contract, it has to find out who are the parties to the contract, when and what was the offer, whether there was an acceptance, and whether the offer and acceptance were valid. None of these were addressed or answered by the high court. On facts of the present case, the apex court held that there was no material before the high court to assume that there was a concluded contract for supply of 85,000 quintals of molasses.

Rectification of *bona fide* mistake

In *Videsh Sanchar Nigam Ltd. & Anr.* v. *Ajit Kumar Kar & Ors.*[3] it was held by the apex court that *bona fide* mistake does not confer any right on any party and it can be corrected. In this case, the respondents were central government employees who were absorbed in Videsh Sanchar Nigam Limited (VSNL) when a government department, Overseas Communication Service (OCS), was converted into VSNL. The central government through its various orders issued from time to time, regulated pension of the employees absorbed in public sector undertaking like VSNL. The absorbed employees were given option to draw pension according to the central government rules. The central government subsequently revised the pay structure of VSNL employees according to the industrial dearness allowance (IDA) pattern. According to new pattern, the basic pay and the central dearness allowance (CDA) were merged before bringing the VSNL employees to IDA pattern.

The dispute in the present case arose due to the fact that pension of the retired employees (respondents) were determined with reference to their pay under the IDA pattern and in addition to this, they were mistakenly given dearness relief (DR) also at the central government rates on the pension so determined. In other words they got double benefit of merger of dearness allowance on their pension. This was contrary to the circular issued by the central government. When the VSNL realized this mistake after interdepartmental consultation, they withdrew the benefit of CDA on pension from the respondents who were retired employees.

The high court held that the benefit of ADA could not be withdrawn. Allowing the appeal of VSNL and revising the high court judgment, the Supreme Court held that the benefit of DR of CDA scales, which has been given to the respondents-retirees by mistake at the time of their retirement, is not to be given again as clarified by the government of India from time to time in their various office memoranda and the respondents-retirees are entitled to pension to be calculated on emoluments in the IDA pay scales. In this view of the matter, on the question of denial of DR on pension in case of those retired employees of VSNL who have drawn pay on IDA pay scales with IDA dearness relief is legal and just. Further, the court clarified that if any pensionary benefits have been given to respondents or to any similarly situated persons of VSNL at the time of retirement under mistaken

3 (2008) 11 SCC 591.

calculation of the pensionary benefits or in compliance with the order of the high court, such benefits shall not be recovered from them.

Arbitrariness and unfairness

Man Singh v. *State of Haryana & Ors.*[4] reiterates the settled law that equality is synonym of fairness. In this case appellant was serving as sub-inspector in police department, Rohtak. In July 1996, he was deputed as incharge of the police party for taking two government vehicles from Chandigarh to Hyderabad for repair. The driver of one of the vehicles purchased 12 bottles of Indian-made foreign liquor and concealed the same in the dickey of the car without the knowledge and consent of the appellant. On checking of the vehicle by the excise staff these bottles were recovered and a case was registered against the driver for transporting liquor in violation of prohibitory orders of the state government. Departmental inquiry was ordered against the appellant and driver charging the appellant with improper control over his subordinates amounting to dereliction of duties and for lapse of discipline as police officer. The inquiry officer found the appellant guilty. A show-cause notice was issued to the appellant calling upon him to show cause why penalty of dismissal from service be not imposed upon him. He was also directed to file his reply within 15 days from the receipt of the show cause notice. The appellant, accordingly, filed a detailed reply denying the allegations of misconduct and dereliction of duties on his part. Keeping in view the length of his service and unblemished service record, punishment of stoppage of two annual future increments with cumulative effect was imposed on the appellant. He filed a statutory appeal against the order which was rejected by appellate authorities.

All lower courts up to the high court dismissed the appellant's plea on the ground that the scope of interference in departmental enquiry was very limited. The Supreme Court, however, took note of iniquitous treatment given to the appellant and held that it is well-settled that the civil court cannot sit in appeal over the departmental proceedings or an order of punishment passed by the punishing authority. Any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in article 14 of the Constitution of India embraces the entire realm of state action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and

4 (2008) 12 SCC 331.

reasonableness. The apex court, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play.[5] While allowing the appellant's appeal the court invoked the power of complete justice under article 142 with a view to avoiding further delay.

Objection as to jurisdiction

Objections as to jurisdictional issue should be raised at the earliest opportunity. In *H.V.Nirmala* v. *Karnataka State Financial Corporation &Ors.*[6] it was held by the apex court that there is a difference between inherent lack of jurisdiction and jurisdictional error. Where an authority lacks jurisdiction, the order passed by it is a nullity. The court further held that the jurisdictional issue must be raised at the earliest available opportunity. In this case the respondent-corporation was constituted under the State Financial Corporations Act, 1951. Appellant was appointed as trainee assistant manager in the corporation. She was promoted and posted as branch manager. A disciplinary proceeding was initiated against her for her alleged sanction and disbursal of loan in four cases. Four charges were framed against her. The disciplinary proceedings were initiated by the managing director of the corporation, wherein a legal advisor of the company was appointed as the enquiry officer.

A finding of guilt was arrived at by the enquiry officer and the management dismissed her from service. The appellant preferred an appeal before the board which was dismissed by it. Aggrieved by it she filed a writ petition before the High Court of Karnataka. A single judge of the court dismissed the writ petition. An intra-court appeal was preferred thereagainst which was dismissed by a division bench of the high court.

Dismissing the appeal, the apex court held that the appellant did not raise any objection in regard to the appointment of the enquiry officer. She participated in the enquiry proceeding without any demur whatsoever. A large number of witnesses were examined before the enquiry officer. They were cross-examined. Appellant examined witnesses on her own behalf. The high court had held that the appellant had failed to establish that any prejudice had been caused to her by reason of appointment of a legal advisor as an enquiry officer. As the appellant had participated in the enquiry proceeding, she could not be permitted to raise the contention of lack of jurisdiction at this belated stage.

Doctrine of unreasonableness is giving way to proportionality

In *Moni Shankar* v. *Union of India and Another,*[7] the appellant was working as booking supervisor with the central railways. In the course of checking he was found to have overcharged a sum of Rs.5/- on the ticket issued to a decoy passenger. A departmental disciplinary proceeding was

5 *Id.* at 337.
6 (2008) 7 SCC 639.
7 (2008) 3 SCC 484.

initiated against him. Charges were held proved against him. The appellant was booked for various charges on the basis of a pre-arranged trap. The decoy passenger was a member of the railway protection force and the other witness was the head constable of RPF. One of the grounds taken by the appellant was that trap was not arranged as per requirements of paragraphs 704 and 705 of the Railway Vigilance Manual (the Manual) and, therefore, there was no independent witness to prove the charges. His grievance was also that the enquiry officer in the garb of questioning him generally on the circumstances appearing against him, posed leading question, which was not permissible in law.

The appellant's application was allowed by the administrative tribunal on account of various infirmities found in inquiry proceeding but the high court reversed the order of the tribunal. Allowing the appeal with cost the apex court observed that the departmental proceeding was a quasi-judicial one. Although the provisions of the Evidence Act, 1872 are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising the power of judicial review are entitled to consider whether relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom while probing misconduct. Inference on facts must be based on evidence which meets the requirements of legal principles. The tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the tribunal was within its domain to interfere. Doctrine of unreasonableness is giving way to the doctrine of proportionality. It is settled law that on certain aspects, even judicial review of facts is also permissible.[8] The court also considered the legal sanctity of executive instructions contained in the vigilance manual.

Examining opinion formation

In *Bhikhubhai Vithlabhai Patel & Ors*. v. *State of Gujarat & Anr.*[9] the Government of Gujarat in exercise of its power conferred under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 constituted Surat Urban Development Authority (SUDA) which prepared a draft development plan whereby the lands belonging to the appellants were proposed for designating the use of the lands for residential purposes. The state government having considered the draft development plan submitted by SUDA sanctioned the plan in the modified form on 31.1.1986 whereby the

8 *State of U.P.* v. *Sheo Shanker Lal Srivastava,* (2006) 3 SCC 276 and *Coimbatore District Central Cooperative Bank* v. *Coimbatore Distarict Central Cooperative Bank Employees Association and Anr.,* (2007) 4 SCC 669 2007.

9 (2008) 4 SCC 144.

appellant's lands in question was reserved for "education complex of South Gujarat University". The final development plan was accordingly brought into force with effect from 31.3.1986. Neither the area development authority nor the authority for whose purpose lands have been designated in the final development plan initiated any steps to acquire the lands of the appellants. The appellants having waited for a period of 10 years from the date of coming into force of the final development plan got served a notice on the authority concerned requiring it to acquire the land within six months from the date of the service of such notice. However, no steps were taken by any of the authorities proposing to acquire the lands. Instead SUDA in purported exercise of its power under section 21 of the Act sought to revise the development plan by reserving the lands in question once again for education complex of South Gujarat University.

The appellants challenged re-reservation of the lands for South Gujarat University on various grounds which ultimately culminated in the judgment of apex court in *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd. and Others*.[10] The court in clear and categorical terms laid down that section 21 of the Act may impose statutory obligations on the part of the state and the appropriate authority to revise the development plan but under the garb of exercising the power to revise the development plan "the substantial right conferred upon the owner of the land or the person interested therein" cannot be taken away. It observed:[11]

> Section 21 does not envisage that despite the fact that in terms of sub-section (2) of section 20, the designation of land shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or *take away the right acquired by a landowner under Section 22 of getting the land defreezed.*

The revised development plan submitted by SUDA was awaiting the sanction of the state government. The state government in exercise of powers conferred by the proviso to sub-clause (ii) of clause (a) of section 17(1) of the Act proposed modifications in the draft revised development plan submitted by SUDA and proposed to designate the land under section 12(2)(o) for "educational use". The appellants challenged the action on the part of state government in issuing notification dated 22.7.2004 on various grounds. During the pendency of the writ petition the state government came out with final notification dated 28.9.2004 designating the land in question for educational use under section 12(2)(o) of the Act. The appellants sought leave of the court to challenge the said notification also. The final notification was set aside on the ground that there was no material before the

10 (2003) 2 SCC 111.
11 *Id.* at 125.

government on the basis of which the decision to designate the lands for educational purposes could have been arrived at. The matter was remitted for fresh consideration in the light of the observations and the directions issued by the high court.

The court came to the conclusion that on consideration of the facts and the material available on record, it is established that the state government took the action proposing to make substantial modifications to the plan without forming any opinion, which is a condition precedent for the use of power under proviso to section 17(1)(a)(ii). The power, to restrict the use of land by the owners thereof, is a drastic power. The designation or reservation of the land and its use results in severe abridgment of the right to property. Statutory provisions enabling the state or its authorities to impose restrictions on the right to use one's own land are required to be construed strictly. The legislature has, prescribed certain conditions to prevent the abuse of power and to ensure just exercise of power. Section 17 and more particularly the proviso to section 17 (1) (a) (ii) prescribes some of the conditions precedent for the exercise of power. The order proposing to make substantial modifications, in breach of any one of those conditions, would undoubtedly be void. On a successful showing the order proposing substantial modifications and designating the land of the appellants for educational use under section 12 (2) (o) of the Act has been made without the state government applying its mind to the aspect of necessity or without forming an honest opinion on that aspect will be void.[12]

Further, the court observed that the appellants are deprived of their right to use the land for residential purposes for over a period of more than a quarter century. The authority included the land in the residential zone but the state government reserved the land for the purposes of South Gujarat University but the authority for whose benefit it was required failed to acquire the land leading to re-reservation of the land for the very same purpose which was ultimately struck down by the apex court in *Bhavnagar University*.

Allowing the appeal the apex court held that the present move of the state government to designate the land for the educational use under section 12 (2) (o) of the Act is declared *ultra vires* and void and this shall put an end to the controversy enabling the appellants to utilize the land for residential purposes. The authorities including the state government shall accordingly do the needful, without creating any further hurdle in the matter.

Sympathy or sentiment cannot override a reasoned order

In *Chairman & MD V.S.P. & Ors*. v. *Goparaju Sri Prabhakar Hari Babu,*[13] the respondent was appointed as a technician (mechanical). He was placed on probation for a period of 12 months. During the period of

12 *Supra* note 9 at 161.
13 (2008) 5 SCC 569.

probation, he was found to be habitually absent from his duty without permission but still appellant let him off by taking a lenient view. In response to the last charge-sheet the respondent admitted that he absented himself unauthorizedly. In view of his admission, enquiry was closed and penalty of removal from service was imposed on him by a reasoned order. His writ petition was dismissed by a single judge bench of the high court but the division bench reversed it, observing that removal order violated principles of natural justice inasmuch as the respondent's explanation that he absented himself due to his mother's illness was not considered.

Disagreeing with the division bench, the Supreme Court held that the respondent was a habitual absentee. He in his explanation, in answer to the charge sheet pleaded guilty admitting the charges. In terms of section 58 of the Indian Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed. Before the enquiry officer, he did not submit the explanation that his mother was ill. He, despite opportunities granted to report for duty, did not do it. He failed to explain even his prior conduct. Judicial admissions can be made the foundation of the rights of the parties. A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings. The court ruled that a well reasoned order of departmental enquiry cannot be interfered on the ground of sympathy.

Policy decision

In case of judicial review of policy decision the scope of judicial inquiry is confined to the questions (a) whether the decision taken by the government is against any statutory provisions, (b) it is violative of the fundamental rights of the citizens, and (c) it is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the government does not appear to be agreeable to the court, it cannot interfere. Policy decision must be left to the government as it alone can adopt which policy should be adopted after considering all points from different angles. So long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matter.[14] In assessing the propriety of a decision of the government the court cannot interfere even if a second view is possible from that of the government.

No interference unless there is violation of constitutional or statutory provisions

In *Basic Education Board, U.P.* v. *Upendra Rai & Ors.,*[15] the question was about the qualification of the respondent for being appointed as assistant

14 *State of U.P. & Ors.* v. *Chaudhari Ran Beer Singh & Anr.,* (2008) 5 SCC 550.
15 (2008) 3 SCC 432.

master in junior basic schools in U.P. The essential academic qualification prescribed for the post of assistant master or assistant mistress of junior basic schools in U.P. is mentioned in rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act, 1972.The respondent got appointment after the circular dated 11.8.1997 and hence this circular applied to him. In this circular it was mentioned that it has been decided by the government after sufficient consideration that in accordance with the provisions of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 the posts of the assistant teacher in the primary school of the board be filled up only with those candidates who are trained in U.P.Government Institutes and possess BTC or Hindustani Teaching Certificate or Teaching Certificate of Junior Teachers or Teacher. It was also specifically mentioned in the aforesaid circular that equivalence to BTC granted earlier to other certificates was cancelled with immediate effect.

Before the single judge the challenge was to the advertisement and the government circular dated 11.8.1997. The single judge dismissed the writ petition, but in appeal the division bench set aside the judgment and also the impugned government circular and the advertisement and allowed the appeal. Against the judgment of the division bench, this appeal was filed by special leave.

The apex court held that it was a policy decision of the U.P. Government, and it is well settled that the court cannot interfere with policy decisions of the government unless it is in violation of some statutory or constitutional provision. Therefore, the respondent was not entitled to be appointed as assistant master of a junior basic school in U.P. Grant of equivalence and / or revocation of equivalence is an administrative decision which is in the sole discretion of the concerned authority, and the court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the government, and the court does not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it. Therefore, the policy decision cannot be interfered with by the court unless it violates constitutional or statutory provisions.

Similarily, in *Satyanarayana & Ors.* v. *S. Purushotam & Ors.*,[16] the question was whether after fixing quota for promotion of 14:1, it was open to the government to put a ceiling that number of persons promoted from category of private secretaries should be confined to 10 posts. The respondents filed an original application before the Andhra Pradesh State Administrative Tribunal, questioning the validity of the notification providing for promotion to the post of assistant secretary from the cadre of PSs. These were allowed by the tribunal. Appellants aggrieved by and dissatisfied therewith-filed writ petitions before the Andhra Pradesh High Court by

16 (2008) 5 SCC 416.

holding that the said rule was not unconstitutional providing for promotion to the post of assistant secretary also from the cadre of PSs.

Declaring the GOMs as *ultra vires*, the Supreme Court held that the validity or otherwise of a quota rule cannot be determined on surmises and conjectures. Whereas the power of the state to fix the quota keeping in view the fact situation obtaining in a given case must be conceded, the same, however, cannot be violative of the constitutional scheme of equality as contemplated under articles 14 and 16 of the Constitution of India. There cannot be any doubt whatsoever that a policy decision and, in particular, legislative policy should not ordinarily be interfered with and the superior courts, while exercising its power of judicial review, shall not consider as to whether such policy decision has been taken *mala fide* or not. But where a policy decision as reflected in a statutory rule pertains to the field of subordinate legislation, indisputably, the same would be amenable to judicial review, *inter alia,* on the ground of being violative of article 14 of the Constitution of India.[17] The court, thus, allowed the appeal with costs.

Zoning of Delhi courts

In *Delhi Bar Association* v. *Union of India & Ors*.[18] a writ petition under article 32 was filed by the petitioners challenging the validity of the notification dated 28.6.2000, dividing NCT of Delhi into nine civil districts. The effect of the notification was that district courts in Delhi stood divided into nine different areas. The bar association challenged the notification on different grounds.

The apex court held that the decision taken by the government cannot be faulted with unless it suffers from unreasonableness, arbitrariness or unfairness or it is beyond the legislative powers of the state or is beyond the constitutional limits. In the present case, not only the policy decision taken by the NCT of Delhi is founded on prolonged and in-depth deliberation between the NCT of Delhi, the Lt. Governor and the Delhi High Court which is directly concerned with the division of Delhi into judicial districts, but is also a result of directions issued by the Supreme Court. The Lt. Governor of Delhi being the representative of the National Capital Territory of Delhi was competent to divide the territory of Delhi under his administration into civil districts.

Unreasonableness and proportionality

Judicial review of recruitment process is limited. Decisions taken by one government should not be upset by the successor government. But illegalities committed by previous government can be set right by the successor government. The question in *Jitendra Kumar & Ors.* v. *State of*

17 Also see, *Vasu Dev Singh & Ors.* v. *Union of India & Ors.* , 2006 (1) SCALE 108 and *State of Kerala & Ors*. v. *Unni & Anr.* (2007) 2 SCC 365.

18 (2008) 13 SCC 628.

Haryana & Anr.[19] was whether the newly elected government in the respondent state could suspend recruitment process by reducing cadre strength and deny appointment to candidates who had already been selected by public service commission. Legal issue was whether such an action of the government was *bona fide* exercise of power. Dismissing the appeal the Supreme Court held that there is no reason to interfere with the notification of reducing the cadre strength. What would be the need of the state and how an administration should be run is within the exclusive domain of the state. The power to judicial review in such matter is very limited. The superior judiciary ordinarily would not interfere in a matter involving such policy decision. It is not meant to say that the policy decision of the state is beyond the realm of judicial review. However, power of judicial review can be exercised only on the basis of known legal principles.

It is established principle that, doctrine of unreasonableness is giving way to doctrine of proportionality.[20] But, the development of law in this field can be applied only if a case is made out. If the state is right in its contention that the selection process being shady, no appointment can be made, the court by invoking any doctrine cannot ask the state to do so unless it arrives at a positive and definite finding that the state's stand is fraught with arbitrariness. There is no arbitrariness in its act.

Permissibility, scope and grounds

In *Karnataka Bank Ltd*. v. *State of A.P.*,[21] the respondent state enacted the Andhra Pradesh Tax on Profession, Trades, Callings and Employment Act, 1987, which according to the Constitution and entry 60 of list II, falls within legislative competence of the state legislature. The dispute in this case however related to definition of 'person' in explanation appearing in section 2(j) of the Act. The explanation provided that every branch of firm, company, corporation, etc 'shall be deemed to be a person' for the purpose of levy of tax. The question before the court was whether it was competent for the state legislature to device its own definition of 'person' which was at variance with the General Clauses Act, 1897. In order to resolve the dispute, the apex court considered (i) law making power of legislature and constitutional limitations, and (ii) whether the explanation in the Act was *ultra vires* article 276 for the reason that the word 'person' as defined in the Act is at variance with the definition given in the General Clauses Act.

Article 265 of the Constitution prohibits levy of collection of a tax except by an authority of law, which means only a valid law. The implied limitation is that the law providing for levy of tax should be one which is a valid law. The state legislature is competent to make law relating to taxes for

19 (2008) 2 SCC 161.

20 *Indian Airlines Ltd.* v. *Prabha D. Kanan*, (2006) 11 SCC 67 and *State of U.P.* v. *Sheo Shanker Lal Srivastava and Others,* (2006) 3 SCC 276.

21 *Karnataka Bank Ltd*. v. *State of A.P.,* (2008) 2 SCC 254.

the benefit of the state or other local authorities therein in respect of professionals, traders, callings or employments. It is traceable to entry 60 of list II of the seventh schedule but that power of the legislature to make such a law to levy and collect profession tax is made subject to the restrictions as provided for under article 276(2) of the Constitution. Purpose of article 276 is not to amend power of state legislature but merely to provide that such tax is not invalid on the ground that it relates to a tax on income. Norms of judicial review of an administrative policy are more exacting and intrusive than the legislative policy. In case of administrative policy there is more need of scrutiny and balancing. Courts are very reluctant to strike down legislation unless there is a clear violation of constitutional provisions. Courts are not concerned with wisdom of the legislature but only with its legislative competence, and courts will uphold the policy irrespective of their own view.

The court further held that there is no merit in the contention that the legislature lacks legislative competence to define "person" who is liable to pay profession tax etc. which includes every branch of a firm, company, corporation or other corporate body, any society, club or association. The term "person" is not defined in the Constitution. But article 367 of the Constitution provides that the definitions contained in the General Clauses Act apply for the interpretation of the Constitution. The definition of "person" in the General Clauses Act would not restrict the power of state legislature to define the term "person" and adopt a meaning different from the definition in the General Clauses Act.[22]

Price fixation of flats

An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the *nitty gritties* of the policy, or substitute one with the other but it will not be correct to contend that the court shall take its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review if: (a) it is unconstitutional; (b) it is *de hors* the provisions of the Act and the Regulations; (c) the delegate has acted beyond its power of delegation; (d) it is contrary to the statutory or a larger policy. In *DDA* v. *Joint Action Committee, Allottees of SFS Flat*s[23] the price fixation in respect of self-financing housing scheme (SFS) was under consideration. In terms of this scheme, estimated cost as well as rights and liabilities of the parties were laid down in the invitation to offer and the allotment letter. These appeals pertained principally to the interpretation of clause 4 of the letter of allotment. Ingredients of clause 4 pertained to payment schedule.

22 *Id.* para 36.
23 (2008) 2 SCC 672.

The applicants in the first batch applied for allocation of flats under the self-financing scheme of DDA. DDA sought to levy certain additional amounts over and above the disposal price from the allottees of flats in South Delhi, and adopted current cost formula. The registrants submitted that the same being contrary to the regulations were not sustainable in law inasmuch as rights of the writ petitioners crystallized on issuance of the allocation letter and not when the actual allotment of flat took place. That the levy of surcharge amounted to a levy of tax or cess, wherefor there was no authority in law.

The impugned circulars have three distinct elements:

1. Price of South Delhi flats would be worked out by adding 20% surcharge in terms of the office order dated 16.8.1996 duly approved on 22.8.1996.
2. 20% surcharge will have to be paid in case where there is a small delay, in which case only interest has to be paid.
3. In all other cases original cost + 18% or the current cost whichever is higher would be payable.

Allowing the appeals of the registrants with costs, the Supreme Court held that when a contract emanates from a statute or is otherwise governed by the provisions thereof, the superior court could also exercise the power of judicial review. Although, the superior courts ordinarily would not interfere in the price fixation but there does not exist any absolute ban. In a case where fixation of price is required to be made in a particular manner and upon taking into consideration the factors prescribed and if price is fixed *de hors* the statutory provisions, judicial review would be permissible. The court ruled that state action must satisfy the test of reasonableness and fairness

Parameters of judicial review

In *State of Madhya Pradesh* v. *Hazarilal*,[24] the respondent was convicted on a criminal charge and sentenced to be imprisoned for one month. On an appeal preferred by him, the sentence was reduced to a fine of Rs.500/- only. A revision against it was filed by the respondent before the high court. A show cause notice was issued to the respondent as to why disciplinary action shall not be taken against him in view of the judgment of conviction passed against him in this criminal case. His service was terminated by the deputy director. The respondent preferred an appeal in terms of the Madhya Pradesh State Services Act. However, no order was passed therein. A revision was filed by him before the deputy director, public education. During the pendancy of his revision application, his criminal revision petition filed before the high court was dismissed. The prayer of the

24 (2008) 3 SCC 273.

respondent that he be reinstated in service was rejected in terms of the order passed by the deputy director, public education. The respondent thereafter filed an original application before the state administrative tribunal. His application was allowed. Against this a writ petition was filed before the high court by the appellant which was dismissed.

On appeal, the apex court observed that while taking a disciplinary action against someone, it is necessary to determine the reasonableness of the punishment awarded, just as is done in a normal court of law. The authority conferred with statutory discretionary powers is bound to take into consideration all the circumstances of the case before imposing the order of punishment. And while imposing such punishment the disciplinary committee must act reasonably and fairly.

In this case the respondent was merely a peon and his continuation in service in no manner would bring bad name to the state. The decision of the disciplinary committee to terminate his services was excessive. On the matter of judicial review the court held that the legal parameters of judicial review has undergone a change. *Wednesbury's* principle of reasonableness is now replaced by the principle of proportionality. Thus, the punishment imposed on the delinquent employee should be reasonable and proportional. It is interesting to note the view taken by the apex court in this case that conviction by a court of law is by itself not a ground for imposing punishment of dismissal.

Parity claim of service benefits

Courts do not ordinarily interfere with the decision of expert bodies unless it is perverse and against evidence. In *Ramesh Singh* v. *UOI & Others*,[25] the grievance in the writ petition under article 32 of the Constitution was that there should be parity in the matter of service benefits so far as the army personnel and officers working in the General Reserve Engineering Force are concerned. Stand of the petitioners was that they are serving in the border road organization and the government is bound to treat them on a par with the members of the armed force and there should not be any distinction as regards facilities and benefits including allowance, pay etc. Reliance was placed on *R. Vishwan* v. *U.O.I.,*[26] to contend that the court had, in this case, directed such a course to be adopted. It was further contended that under a misconception the fourth and the fifth pay commissions had not considered the connected issues in the proper perspective. Dismissing the writ petition the apex court held that the scope for judicial interference is extremely limited in such cases because the court does not normally substitute its views with those of expert bodies like the pay commission unless some glaring infirmities are established.

25 (2008) 5 SCC 173.
26 (1983) 3 SCC 401.

Promotion 'process'

In *Surinder Shukla* v. *UOI and Others*[27] the selection method of candidates eligible for promotion in defence services was in question. The appellant contended that his service records were better than that of his batch mates who ultimadely were selected for promotion. The appellant had made statutory complaints against the decisions of competent authority which was rejected. He filed a writ petition in the high court regarding this matter which was dismissed. The Supreme Court held that considerations which generally apply to promotions on the civilian side do not necessarily apply to defence service. Mere fact that the appellants' records appeared better than that of others was not enough for promotion. There are other relevant factors like war reports, battle awards etc. that are to be taken into account. When the selection board makes its recommendations it has no idea who the candidate is as anonymity is maintained to ensure objectivity in selection. And since the appellant had not alleged *mala fide* and as the selected candidates were also not impleaded as respondents, the Supreme Court did not interfere with the selection process and dismissed the appeal.

III DELEGATED LEGISLATION

Delegated legislation or subordinate legislation means the rules, regulations, byelaws and orders that are made under various legislation/Acts. The Act under which the rules etc. are made is called the parent Act. The rules are made by the authority which is given such powers under the Act. Delegated legislation helps the administration to provide for all the details and technical specifications that are required to carry out the purpose of an Act. Delegated legislation should not violate a person's fundamental rights or be unreasonable. They cannot go against the provisions of the parent Act.

UCO Bank Officer Employees (Discipline and Appeal) Regulations

The court, while interpreting a statute, must bear in mind that the legislature is supposed to know law and the legislation enacted is a reasonable one. The court must also bear in mind that where the application of a parliamentary and a legislative Act comes up for consideration, endeavour shall be made to see that provisions of both the Acts are made applicable. It is now a well-settled principle of interpretation of statutes that the court must give effect to the purport and object of the Act. Rule of purposive construction should, subject of course to the applicability of the other principles of interpretation, be made applicable in a case of this nature. [28] These principles were highlighted in the case which arose out of a review petition filed against the judgment rendered in *Rajinder Lal Capoor*,[29] with

27 (2008) 2 SCC 649.
28 *UCO Bank & Anr*. v. *Rajinder Lal Capoor*, (2008) 5 SCC 257.
29 *Ibid.*

reference to the UCO Bank Officer Employees, (Discipline and Appeal) Regulations, 1976. One of the questions which arose for consideration before the court was whether in the absence of any chargesheet, the disciplinary proceeding could be initiated in view of the earlier decisions of the apex court.[30] It was held that disciplinary proceedings could not be initiated against an employee after his retirement unless there was a provision to this effect in the relevant rule. It was contended in the review petition that disciplinary proceedings were "deemed to be pending" against the respondent in view of the Regulation 20 (3) (ii) of the UCO Bank Officers Employees, (Discipline and Appeal) Regulations, 1979, and therefore, the conclusion drawn in main judgment should be reconsidered.

The apex court observed that ordinarily no disciplinary proceedings could be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceedings despite the officers reaching the age of superannuation must be a statutory rule. Court should not presume a *casus omissus* but if there is any, it should not supply the same.

Exemption notification

In *Union of India* v. *Ranbaxy Laboratories Ltd. & Ors.*[31], the first respondent was a pharmaceutical company engaged in the manufacture, *inter alia,* of the bulk drug pentazocine in the formulation of pentazocine injection with the brand name 'Fortwin'. Sale and marketing of the said drug were controlled by the Drugs (Price Control) Order, 1995 (1995 Order). The said order was made by the central government in exercise of its powers under section 3 of the Essential Commodities Act, 1955. The central government in exercise of its powers conferred upon it by paragraph 23 of the 1995 order issued guidelines for the purpose of grant of exemption in terms of paragraph 25 specifying that a manufacturer who had been given a price exemption for bulk drug should submit an application in prescribed form for fixation of price of such bulk drug and formulation four months before the expiry of the period of the exemption. It was furthermore stipulated: - "However, if there is an existing notified price for bulk drug or ceiling price for formulations, the manufacturer shall follow the same on the expiry of the exemption and obtain price approval for non-ceiling packs of formulation (s) based on that bulk drug." A similar provision was made for grant of exemptions in respect of new delivery system, in terms whereof a manufacturer was required, where there was an existing notified price, to follow the same on the expiry of the exemption. The exemption granted in favour of the first respondent had expired on 31.10.1999.

30 *Union of India etc. etc.* v. *K.V. Jankiraman, etc. etc.,* AIR 1991 SC 2010, *Union of India and Ors*. v. *Sangram Keshari Nayak*, 2007 (6) SCALE 348, and *Coal India Ltd. and Ors*. v. *Saroj Kumar Mishra,* 2007 (5) SCALE 724.

31 (2008) 7 SCC 502.

The short question which arose for the consideration of the court was whether the exemption notification would apply in respect of drugs which were manufactured upto 31.10.1999 or manufactured and sold upto this date.

The court held that while construing an exemption notification the court cannot lose sight of the ground realities including the process of marketing and sale.[32] The exemption order dated 29.8.1995 was clear and unambiguous. By reason thereof what has been exempted is the drug which was manufactured by the company and the area of exemption was from the operation of the price control. They have a direct nexus and they are co-related with each other.

A manufacturer would not know as to when the drug would be sold. It has no control over it. Its control over the drug would end when it is dispatched to the distributor. The court, adopting a purposive interpretation held that unless the exemption is extended to sale also it would not serve the desired purpose.[33]

Again a notification issued under the Customs Act, 1962 was in question in *Commissioner of Customs (Preventive), Gujarat* v. *M/s Reliance Petroleum Ltd.*[34] The dispute was whether a crane when placed on a vehicle which the appellant wrongly stated to be a 'motor vehicle' would fulfil the description of a mobile crane or a 'material handling equipment'. The apex court held that it is well settled that interpretation of an exemption notification would depend upon the nature and extent thereof. The terminologies used in the notification would have an important role to play. Where the exemption notification *ex facie* applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.

IV NATURAL JUSTICE

The principles of natural justice have evolved under common law as a check on the arbitrary exercise of power by the state. As the state powers have increased, taking within their ambit not just the power of governance but also activities in areas such as commerce, industry, communications and the like, it has become increasingly necessary to ensure that these powers are exercised in a just and fair manner. The common law, which is a body of unwritten laws which govern the legal systems of England, USA, Canada, Australia and other commonwealth countries including India, has responded to this need to control the exercise of state powers through applying the principles of natural justice to the exercise of such powers.

32 *Id.* at 507.
33 *Id.* at 508.
34 (2008) 7 SCC 221.

Applicability and meaning

The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarized in one word: fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on the situation and the context.[35] The question to be asked in every case to determine whether the rules of natural justice have been violated is: have the authorities acted fairly? Originally there were said to be only two principles of natural justice: (1) the rule against bias and (2) the right to be heard (*audi alteram partem*). However, subsequently the requirement to give reasons was also added to it.

Rules of natural justice are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the state or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made.[36]

Communication of entries to employees

Principle of natural justice has an expanding content and is not stagnant. It is, therefore, open to the court to develop new principles of natural justice in appropriate cases. The apex court in *Dev Dutt* v. *Union of India & Ors.,*[37] developing the principles of natural justice held that fairness and transparency in public administration require that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other state service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This rule prevails even if there may be no rule/G.O.requiring communication of entry, or even if there is a rule/ G.O. prohibiting it, because of the principle of non-arbitrariness in state action as envisaged by article 14 of the Constitution. Article 14 overrides all rules or government orders. The court emphasized that principle of fairness and transparency should be observed in public administration.

Non-communication of entries in the annual confidential report of a public servant has civil consequences because it may affect his chances for promotion or get other benefits. Such non-communication would be arbitrary, and as such violative of article 14 of the Constitution.[38]

35 *Dev Dutt* v. *Union of India & Ors.,* (2008) 8 SCC 725.

36 *M/s Sahara India (Firm), Lucknow* v. *Commissioner of Income Tax, Central -I, & Anr.*, (2008) 14 SCC 151.

37 *Supra* note 35.

38 *Id.* at 738.

Estoppel

In *Board of Directors, Himachal Pradesh Transport Corporation* v. *K.C.Rahi,*[39] the respondent was working as inspector in Himachal Pradesh Transport Corporation. He was charge-sheeted. A notice was sent to him followed by a publication in the newspaper *Tribune*. However, the respondent did not participate in the enquiry proceedings. The enquiry was proceeded *ex parte*. He was found guilty of all the charges leveled against him. The disciplinary authority after perusing the inquiry report and after application of mind terminated the services of the respondent by its order dated 16.06.1994.

The respondent filed an original application before the state administrative tribunal. The tribunal held that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of non-compliance with the principle of natural justice. On that premise the tribunal dismissed his original application. The respondent filed a writ petition before the division bench of the high court and by the impugned order his writ petition was allowed solely on the ground that no proper service was effected upon the respondent and, therefore, there was violation of principles of natural justice.

The apex court observed that the respondent was served with a notice as recorded by the tribunal is a finding of fact. Therefore, the high court exceeded its jurisdiction by reversing the fact recorded by the tribunal in exercise of its power under article 226. Power under article 226 is to interfere only when there is miscarriage of justice or an error of law on the face of the record but not to re-appreciate the evidence recorded by the court of first instance. The principles of natural justice cannot be put in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance of the principles of natural justice, one must establish that he has been prejudiced by the non-compliance of the said principle.[40] In the instant case he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance of principles of natural justice.

Fraud in securing compassionate appointment

Playing fraud may affect the applicability of the principles of natural justice. In *A.P. Social Welfare Residential Educational Institution* v. *Pindiga Sridhar*,[41] the appellant terminated the services of the respondent

39 (2008) 11 SCC 502.
40 *Id.* at 504.
41 (2008) 2 SCC (L&S) 656.

appointed on compassionate ground on the reason that when he applied for the post on compassionate ground, his mother was in service. So also when he secured the appointment order, his wife was in service since long as extension officer in rural development and was later on promoted as *Mandal Parishad* development officer. These facts clearly disclosed that the appointment on compassionate ground was secured by playing fraud. Fraud cloaks everything. In the face of such admitted facts the apex court held that there was no necessity of issuing show cause notice to him. The view of the high court that termination suffered from non-observance of the principles of natural justice was, therefore, clearly erroneous. In the given facts of this case, no prejudice whatsoever had been caused to the respondent.

Bias

The question of bias is always a question of fact. The courts have to be vigilant while applying the principles of bias as it primarily depends on the facts of each case. The court should only act on real bias not merely on likelihood of bias. In *Cantonment Executive Officer & Anr.* v. *Vijay D. Wani & Ors.,*[42] the members of the committee who conducted a disciplinary inquiry were also the members of the cantonment board where the report was to be considered to decide on the respondent's guilt. It was, therefore, contended by the respondent that participation of these three members in the committee would be prejudicial to his interests since he would not get fair justice in the matter as they would be interested in seeing their report accepted. According to the apex court the bias in this case could not be said to be unreal, as it was a very substantial one.

A person cannot be a judge in his own cause. Once the disciplinary committee finds the delinquent guilty, they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. Objectivity is the hallmark of a judicial system. Appeal was, accordingly, dismissed by the court.

***Mala fide* : duty of court**

In *M.V.Thimmaiah* v. *UPSC*,[43] the Supreme Court cautioned that as the plea of *mala fide,* favouritism and colourable exercise of power is generally raised by the interested party, the court should not draw conclusion unless allegations are substantiated beyond doubt. In this case appeal was filed by non-state civil service officers who were not selected for promotion to IAS. Their grievance was that the selection process was vitiated because the chairman of the selection committee was favoured with allotment of a plot and in return he selected some favoured candidates. The apex court held that the allegation of *mala fide* is very easy to be levelled and it is very difficult to substantiate it, specially in the matter of selection or whoever is involved

42 (2008) 12 SCC 230.
43 (2008) 2 SCC 119.

in the decision making process. People are prone to make such allegation but the courts owe a duty to scrutinize the allegation meticulously because the person who is making the allegation of animosity sometimes does so *bona fide* or *mala fide* due to his non-selection. He has a vested interest. Therefore, unless the allegations are substantiated beyond doubt, the court cannot draw its conclusion. Therefore, the court rejected the allegation of *mala fide*.

Pleadings and proof

Presumption of law is that an act is *bona fide* unless such presumption is displaced by a convincing material. In *Chandra Prakash Singh & Ors.* v. *Chairman, Purvanchal Gramin Bank & Ors.,*[44] the dispute related to irregularities alleged to have been committed in the conduct of departmental examination for promotion in the respondent bank. Main allegation was that one of the respondents, who at relevant time, was chairman of the respondent bank indulged in nepotism to help his near relatives in getting through the examination. Writ petition was filed by the unsuccessful candidates in the written test before the high court. The court found that written test was not conduced by respondent bank itself but by a third party. Affirming the decision of the high court, the Supreme Court held that the allegation of favouritism was vague, indefinite and did not contain sufficient material required under the law in support thereof. The appellants had failed to establish that the respondent chairman helped his brother and cousin to get through in the written examinitation, and later on to get the jobs in question. The court further held that burden of proving *mala fide* is very heavy on the person who alleges it. Mere allegation is not enough. Party making allegation is under a legal obligation to place specific material before the court to substantiate allegations. There has to be very strong and convincing evidence to establish allegations of *mala fide* specifically and definitely, as the same cannot merely be presumed.

Prejudice has to be established

In *Haryana Financial Corporation* v. *Kailash Chandra Ahuja,*[45] a limited controversy before the apex court was whether the high court was right in setting aside the order of punishment merely on the ground of non-supply of report of the inquiry officer to the delinquent. Relying on *B. Karunakar*[46] the court held that it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent. But it is also equally clear that failure to supply a report of inquiry officer to the delinquent employee would not *ipso facto* result in proceedings being declared null and void and order of punishment *non est* and ineffective. It is for the delinquent employee to plead and prove that non-

44 (2008) 12 SCC 292.
45 (2008) 9 SCC 31.
46 *Managing Director, CEIL, Hyderabad and Ors.,*v. *B. Karunakar,* (1993) 4 SCC 727.

supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside

In the instant case, no finding has been recorded by the high court that prejudice had been caused to the delinquent employee. Therefore, it cannot be presumed that the prejudice is 'writ large' as held by the high court.

V LEGITIMATE EXPECTATION

The theory of legitimate expectation is a branch of administrative law. It is the newest entrant to the long list of concepts fashioned by the courts for the review of administrative actions. It has been accepted by the English, Irish and Indian courts but has been outrightly rejected by Australian and Canadian courts.

Nascent addition to natural justice

The doctrine of legitimate expectation is a nascent addition to the rules of natural justice. It goes beyond statutory rights by serving as another device for rendering justice. At the root of the principle of legitimate expectation is the constitutional principle of the rule of law, which requires regularity, predictability and certainty in government's dealings with the public. "Legal certainty" is also a basic principle of the law of the European community. European law is based upon the concept of "*vertrauensschutz*" (the honoring of a trust or confidence). It is for these reasons that the existence of a legitimate expectation may even in the absence of a right of private law justify its recognition in public law.[47]

There is no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matter. Explaining this principle the court in *Jitendra Kumar* v. *State of Haryana*[48] held that the government has a right to review the decisions taken by the previous establishment and hence it can suspend the process of recruitment started by the previous government because of allegations of irregularities. This cannot be challenged on the ground of violation of legitimate expectation because legitimate expectation is different from mere anticipation, desire and hope.

Applicability

In *New Okhla Industrial Development Authority* v. *Arvind Sonekar*[49] the court considered the question of applicability of legitimate expectation. In 1993, applications for registration of plots to institutions including nursing homes and hospitals were invited by a general scheme by the NOIDA authorities. In the scheme itself, it was specifically mentioned that the rate shall be the one as prevailing at the time of allotment The registration money

47 *Official Liquidator* v. *Dayanand,* (2008) 10 SCC 1.
48 *Supra* note 19.
49 (2008) 11 SCC 31.

to be deposited along with the application in case of a nursing home was Rs.1,00,000. Pursuant to such advertisement the respondent submitted an application along with the registration money. By a letter dated 21.12.1993 issued by the NOIDA authorities to the respondent, the respondent was required to deposit certain amount within seven days so that steps could be taken to make the allotment. However, the respondent made no payment. The Town Planning Department of the NOIDA authorities, refunded to him by a letter dated 13.1.1995, the entire amount deposited as registration money. It is an admitted position that the refund was accepted by the respondent by encashing the account payee cheque without any reservation.

On a subsequent request made by the respondent a fresh allotment was made by the authorities at the rate of Rs.3600 per sq. mtr. as against the earlier rate of Rs.2750 per sq. mtr. Thereafter, on the basis of an affidavit by the respondent of having understood all the terms and conditions of allotment and an undertaking of its compliance, a lease deed was executed between the respondent and the authorities on 17.8.1996. After executing the lease deed, accepting the rate of the land at Rs.3600/- per sq. mtr. and depositing the consideration money at the aforesaid rate with the NOIDA authorities, a petition was filed before the MRTP Commission by the respondent against the NOIDA authorities under sections 10(a)(i)(1), 36A and 13 of the MRTP Act praying for instituting an enquiry and thereafter passing the cease and desist order and demanding the excess amount paid by him. The NOIDA authorities were directed by the MRTP Commission to refund the excess amount paid by the respondent, that is to say, the difference of money between Rs. 3600/- per sq.mtr. and Rs. 2750/- per sq.mtr., to him. It is this order of the MRTP Commission, which was challenged in the Supreme Court.

The apex court observed that there was no dispute that the respondent had in fact filed an affidavit clearly accepting the amount shown as the price of the plot in question and he had also given an undertaking to abide by the terms and conditions of the allotment letter. It is, therefore, not open to the respondent to claim the rate prevailing in the year 1993.The doctrine of legitimate expectation, in the facts and circumstances of the present case, cannot at all be applicable. It was not in dispute that the plot had been allotted by the NOIDA authorities to implement the public policy laid down for the allotment of sites for starting nursing homes and clinics. The only question was that to implement such policy, what should be the rate at which the allotment of the plot should be made. NOIDA authorities acted neither unjustly nor in an unfair manner by charging the rate of Rs.3600/- per sq. mtr. Therefore, the court did not find any ground on which it could hold that this doctrine was at all applicable to the facts of this case.

VI PROMISSORY ESTOPPEL

The doctrine of promissory estoppel is an equitable doctrine. Like all equitable remedies, it is discretionary, in contrast to the common law

absolute right like right to damages for breach of contract.[50] The doctrine has been variously called 'promissory estoppel', 'equitable estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel', it is neither in the realm of contract nor in the realm of estoppel.

The doctrine of promissory estoppel is premised on the conduct of party making a representation to the other so as to enable him to arrange his affairs in such a manner as if the said representation would be acted upon. It provides for a cause of action. It need not necessarily be a defence. The core of the doctrine is the 'faith of the people' in governance which has assumed tremendous importance in this era of global economy.[51]

The doctrine of 'promissory estoppel' has assumed importance in recent years though it was dimly noticed in some of the earlier cases.[52] Doctrine of "Promissory Estoppel" has been evolved by the courts, on the principles of equity, to avoid injustice.

In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the government would not be sufficient to press into aid the doctrine. The courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present in the mind of the court.[53]

Doctrine of acceptance sub silentio

In *Bharat Sanchar Nigam Ltd. & Anr.* v. *BPL Mobile Cellular Ltd. & Ors.*[54] the respondents were providers of cellular mobile services. They entered into a licence agreement with the Government of India for operating/providing cellular services in the State of Kerala. However, they did not have the requisite infrastructure. Similar agreements were entered into for interconnection links in other parts of the country. The core question involved in the present appeal pertained to the effect of the application of the internal circulars issued by the department of telecommunications (DoT) in the contracts entered into by and between the parties thereto in respect of interconnection links. The Supreme Court held that in the instant case, resources to be leased out were subject to agreement. The terms were to be

50 See I.P Massey, *Administrative Law* 519 (2008).

51 *L.M.L. Ltd*. v. *State of U.P. & Ors.,*(2008) 3 SCC 1032.

52 *Central London Property Trust Ltd.* v. *High Trees House Ltd.,* (1947) 1 KB 130, *Combe* v. *Bombe*, (1951) 2 KB 215, *Tool Metal Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.,* (1955) 2 All ER 657, *Union of India* v. *Indo-Afghan Agencies Ltd.,* AIR 1968 SC 718, *Turner Morrison and Co. Ltd.* v. *Hungerford Investment Trust Ltd.,*(1972 (1) SCC 857).

53 *State of Arunachal Pradesh* v. *Nezone Law House, Assam.,* (2008) 5 SCC 609.

54 (2008) 13 SCC 597.

mutually agreed upon. The terms of contract, in terms of section 8 of the Contract Act, fructified into a concluded contract. Once a concluded contract was arrived at, the parties were bound thereby. If they were to alter or modify the terms thereof, it was required to be done either by express agreement or by necessary implication which would negate the application of the doctrine of "acceptance sub silentio". But, there was nothing on record to show that such a course of action was taken. The respondents at no point of time were made known either about the internal circulars or about the letters issued from time to time not only changing the tariff but also the basis thereof. The basis of making a demand itself cannot be changed. Dismissing the appeal the court ruled that a circular letters cannot *ipso facto* be given effect unless they become part of the contract. They would not prevail over the public documents which are the brochures, commercial information and the tariffs.

VII CONCLUSION

Survey of the cases on administrative law reveals that the Indian judiciary is continuously working hard for rendering justice to the common man in the country. Judiciary is always keeping alive the hope of the common man. In the year under survey there has been no new development with regard to the administrative law.

Current year's survey reveals that the apex court has dealt with various cases in which it considered challenge to governments' policy decisions in various fields.[55] Analysis of these cases reveals reiteration of judicial deference to governments' policy decision except when the decision is unreasonable, arbitrary, unfair, *ultra vires* or in violation of constitutional provisions.

The court has ruled that it is not concerned with wisdom of the legislature but only with its legislative competence, and it will uphold the policy irrespective of court's own view.[56] It may be noted that the Supreme Court had earlier ruled differently on this point. The second *Indra Sawhney's* case[57] involved the issue of identification of creamy layer. The court while considering the validity of fact regarding existence of creamy layer identified by the Kerala legislature ruled that a legislative fact is not immune from judicial scrutiny.[58] It suggests that the proposition that court is not concerned with the legislative wisdom is not acceptable when it is violative of Indian constitutionalism.

55 *State of U.P. & Ors.* v. *Chaudhari Ran Beer Singh & Anr.,* (2008) 5 SCC 550, *Basic Education Board, U.P.* v. *Upendra Rai & Ors.* (2008) 3 SCC 432, *Satyanarayana & Ors.* v. *S. Purushotam & Ors.* (2008) 5 SCC 416, *Delhi Bar Association* v. *Union of India & Ors.* (2008) 2 SCC 161.

56 *Supra* note 21.

57 (1999) 5 SCC 557.

58 See, Caitline E. Borgmann, "Rethinking Judicial Defence to Legislative Fact Finding" 84 (1) *Indiana Law Journal* 2 (2009) [Opining that blanket judicial deference to legislative fact finding would not be wise as a general rule].