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# ADMINISTRATIVE LAW

*S S Jaswal**

## I INTRODUCTION

FOR AT least half a century after the publication of Dicey's *Law of the Constitution*,[1] the term 'administrative law' was identified only with *droit adminitratif*, a separate body of rules relating to administrative authorities and officials, applied in special administrative courts.[2] As thus defined, administrative law did not exist in the common law world.[3] However, the modern approach to administrative law is depicted in the following definition formulated by Sir Ivor Jennings: '[A]dministrative law is the law relating to the administration. It determines the organisation, powers and duties of administrative authorities.'[4]

Indian jurists have ventured to define the scope, content and ambit of administrative law thus: "Administrative law deals with the structure, powers and functions of the organs of administration; the limits of their powers; the methods and procedures followed by them in exercising their powers and functions; the methods by which powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation."[5] This statement has four limbs. The first limb deals with the

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1 AV Dicey, *Law of the Constitution* (1st ed., 1885).

2 I *Halsbury's Laws of England*, para. 1 (4th ed.,1989), defining it as 'the law relating to the discharge of functions of public authorities and officers and of tribunals, judicial review of the exercise of those functions, the civil liability and legal protection of those purporting to exercise them and aspects of the means whereby extra–judicial redress may be obtained at the instance of persons aggrieved'.

3 See *Ridge* v. *Baldwin* [1964] AC 40, 72 : [1963] 2 All ER 66, 76, (HL), *per* Lord Reid, 'we do not have a developed system of administrative law – perhaps because until fairly recently we did not need it'.

4 Ivor Jennings, *The Law and the Constitution* 217 (5th ed., 1959); see also Wade and Phillips, *Constitutional Law* 547 (1977): 'Administrative law is a branch of public law which is concerned with the composition powers, duties, rights and liabilities of the various organs of government which are engaged in administration'.

5 M.P. Jain & S.N. Jain, I *Principles of Administrative Law* 12 (6th enlarged ed., 2007).

composition and powers of the organs of administration; second limb refers to the limits on the powers of administrative authorities; third limb refers to the procedures used in exercising those powers; and fourth limb refers to the control of the administration through judicial and other means.

With its initial growth in the twentieth century, administrative law has now gained an articulate and definite presence as a system in all democratic countries. The significant achievement in the sphere of rule of law is judicial review of administrative action to ascertain that the executive conferred powers under the law and acts according to law. While deciding various cases, the Supreme Court of India has upheld the importance of rule of law in serving the needs of people without violating their rights. This survey analyses cases relating to administrative law reported during the year 2010. These cases have been discussed under various heads such as administrative action, administrative review, judicial review, natural justice, promissory estoppel and delegated legislation.

## II ADMINISTRATIVE ACTION

**An illegality cannot be perpetuated**

An illegal, irregular or erroneous decision cannot form the basis for a subsequent illegality, irregularity and error. In *Union of India* v. *Kartick Chandra Mondal*,[6] the Supreme Court was faced with this very question. The respondent had been engaged as a casual labourer in the office of the ordnance factory board, Kolkata without having gone through the regular process of recruitment, *i.e.* his name was not sponsored by the employment exchange, as was the policy at the relevant time. He had worked with the factory office for a period of two years after which he was disengaged from service on the ground that his name had not been sponsored by the employment exchange at the time of his recruitment. Aggrieved, the respondent moved the central administrative tribunal (CAT) seeking his re-engagement as also regularisation of service from the concerned date. The tribunal granted the prayer on the ground that ten other similarly placed casual labourers of the ordnance factory board had been regularised in the recent past. The said other labourers had also not been recruited through the employment exchange. Though the tribunal held that his case for regularisation of service could not be allowed, he deserved to be considered favourably for re-engagement. The tribunal accordingly issued directions for the re-engagement of the respondent when a suitable vacancy arose in preference to others who had rendered lesser length of service or no service at all. This order was upheld by the High Court.

One of the questions before the Supreme Court was whether certain internal communications between the officers could have been relied on by the courts below to support the stand of the respondent. It was urged that the said

6 (2010) 2 SCC 422.

communications were merely internal notes in the course of processing of the files of the respondent and they, having not even been publicised, could not have been treated as the official communication of the competent authority. The Supreme Court accepted this submission and held that 'an order would be deemed to be a government order as and when it is issued and publicised. Internal communications while processing a matter cannot be said to be orders issued by a competent authority unless they are issued in accordance with law'.[6a] The court held that the content of the note and the background in which it was issued itself showed that it was not an order issued by the competent authority regarding absorption, recruitment and regularisation of the service of the respondent.

As to the question whether the respondent deserved to be re-engaged, the court held that 'even assuming similarly placed persons had been ordered to be absorbed in the past, the same if done erroneously cannot become the foundation for perpetuating further illegality. If an appointment was made illegally or irregularly, the same cannot be the basis of further appointments. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section'.

This principle was reiterated by the Supreme Court in *Jaipur Development Authority* v. *Mahesh Sharma*,[7] wherein it was held that an illegal and *ultra vires* order can neither be extended by a public officer to others, nor it can be legalised. With the enactment of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952, all *jagir* lands were made liable to payment of land revenue to the government. With the coming into force of the Act, certain lands under the occupation of an Idol, of which its sole priest was the manager, were vested with the government. The said lands were resumed by the government under the Act in 1960. The *mahant* was also awarded an *interim* compensation in lieu of the vesting under the Act. Despite this, a notification under section 4 and, subsequently, under section 6 of the Rajasthan Land Acquisition Act, 1953 came to be published in the Rajasthan *gazette* for the very same area of land which had already vested with the government. Pursuant to the said notification, the sole priest even filed a claim for compensation with the land acquisition officer. In spite of the lands having been already taken by the state government under the 1952 Act, an award was passed by the land acquisition officer. It was only later that the government woke up to the blunder. It took the stand that the aforesaid notification issued under the Rajasthan Land Acquisition Act as also the passing of the award by the land acquisition officer were a nullity and issued an order under section 48 of the Rajasthan Land Acquisition Act, 1953 de-acquiring the land stating therein that the possession of the land in question stood already resumed under the 1952 Jagir Act.

6a *Id.* at 427.
7 (2010) 9 SCC 782.

It was the this subsequent notification de-acquiring the lands that was challenged. Interestingly, the judgment of the Supreme Court was pronounced *ex parte* as the respondents were not represented before the court by their counsel. Considering the fact that the respondents had a decision in their favour from both the courts below and had even won the previous round of litigation which had reached the Supreme Court, it would have been advisable that the parties should at least have been heard by the court before pronouncing a verdict against them.

The court agreed with the contention of the counsel for the state that the lands in dispute already stood vested in the government; there was, therefore, no requirement or need for their subsequent acquisition by the government under the State Land Acquisition Act 1953. The Land Acquisition Act, it must be remembered, does not contemplate or provide for the acquisition of any interest belonging to the government in the land on acquisition. The government, being the owner of the land, need not acquire its own lands.

The court held that the issuance of notification under section 4 and section 6 of the Land Acquisition Act as also the subsequent award passed by the land acquisition officer were nullity and the subsequent actions of the government de-acquiring the land by issuance of notifications under section 48 was just and proper as that was an action for rectification of a mistake, as the illegal and erroneous decision of the past could not be perpetuated.

**Decision of an individual minister not equivalent to decision of government**

In *MRF Ltd.* v. *Manohar Parrikar*,[8] the challenge was to the legality and validity of two notifications issued by the government of Goa in purported exercise of powers conferred upon it by section 23 of the Electricity Act, 1910 in respect of grant of 25 per cent rebate to low tension, high tension and extra high tension industrial consumers of electricity as a policy of the state government on the grounds that they were not issued in compliance with the requirements of article 154 read with article 166 of the Constitution of India and the business rules of the government of the state framed by the Governor and hence void *ab initio*.

Under article 166, an executive action taken by way of an order or instrument shall only be expressed to be taken in the name of the Governor of the state in whom the executive power of the state vests. Clause (3) of the said article further authorises the Governor to make rules 'for the more convenient transaction of the business of the Government of the State.' It was contended that the impugned notifications were not in compliance of the business rules framed by the Governor of Goa under the clause. Rule 3 of the business rules of the Government of Goa so framed provided that the Business of the Government 'shall be transacted with, in accordance with the Rules'.

8 (2010) 11 SCC 374.

Under rule 7, it was provided that no department 'shall without the concurrence of the Finance Department issue an order which may involve any abandonment of Revenue or otherwise have a financial implication whether involving expenditure or not.' Rule 7(2) states that no proposal which requires the previous concurrence of the finance department but in which the finance department has not concurred may be proceeded with unless the council of ministers has taken a decision to that effect.

The Supreme Court struck down the impugned notifications and held that a decision to be the decision of the government must satisfy the requirements of the provisions of article 166(3) of the Constitution. The court further held that the decisions leading to the impugned notifications did not comply with the requirements of the business rules framed by the Government of Goa under the provisions of article 166(3) and the notifications were the result of the decision taken by the power minister at his own level. The decision of an individual minister could not be treated as the decision of the state government and the notifications issued as a result of the decision of the individual minister which were in violation of the business rules were void *ab initio*.

Another interesting argument had been urged before the court for defending the two notifications. It was urged that the doctrine of indoor management, also known as the 'Turquand rule'[9] applying in the law of companies should also be imported to the realm of public law. The said doctrine lays down that a person dealing with a company is not bound to inquire into the regularity of any internal proceedings of the company. In other words, a person contracting with a company is entitled to assume that the officers of the company have observed the provisions of its articles in their dealings.

The Supreme Court, without even going into the question whether the doctrine operating in the sphere of private law could be transported into the realm of public law, held that suspicion of irregularity had been widely recognised as an exception to the said doctrine. It accordingly held that, applying the exception to the scenario at hand, there was sufficient doubt with regard to the conduct of the power minister in issuing the impugned notifications.

It is, however, submitted that the said doctrine of private law, attempt of which was made to transfer to the realm of public law, has no place here. It has its unique origin and background in the law of companies and needs to be confined to that sphere only. There is a danger of this decision being

9 See *Royal British Bank* v. *Turquand* [1856] 6 E. and B. 327 (The directors of a company had issued a bond to Turquand. However, under the articles of the company, they could issue such a bond only when they were authorised by a resolution passed by the shareholders at a general meeting of the company. No such resolution was ever passed. It was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution was passed).

interpreted wrongly by the courts of the future as having impliedly accepted the application of the doctrine even to the realm of public law, something which must be guarded against at all cost.

***Ex post* ratification of a decision**

Can an *ex post* approval to an act or a decision validate act or decision? The Supreme Court in *Ashok Kumar Das* v. *University of Burdwan*[10] was faced with the question as to whether when approval is required from the government under the statute, would an *ex post* ratification be permissible. The executive council of the respondent Burdwan University proposed, by a resolution, 'seniority cum efficiency' criteria for promotion to different grades of non-teaching staff against which a writ petition was preferred by the appellants before the High Court. The High Court noted that under section 21(xiii) of the Burdwan University Act, 1981, the executive council was empowered to determine, with the approval of the state government, the terms and conditions of service of non-teaching staff of colleges other than government colleges but no approval of the state government had been taken in respect of the resolution of the executive council of the University. The High Court directed the University to seek the approval of the government to the said resolution. The government granted its approval. This was challenged in appeal before the Supreme Court.

The Supreme Court, speaking through A.K. Patnaik J, held that an approval to an act or a decision could also be subsequent to the said act or decision. In coming to this conclusion, the court took support from the *Black's Law Dictionary* which defines the word 'approval' as 'the act of confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another.' Making reference to the relevant section 21(xiii) of the Burdwan University Act, 1981, the court noted that the words used therein were not 'with the *permission* of the government' or 'with the *prior* approval of the government' but simply 'with the approval of the government.' Had the words been with the 'permission' of the government, then, without its permission the executive council of the University could not have determined the terms and conditions of service of the non-teaching staff. Similarly, had the words used been with the 'prior approval' of the government, the council could not have determined the terms and conditions of service without first obtaining the approval of the state government. But since the words used were simply 'with the approval', the executive council could first determine the said terms and conditions of service of the non-teaching staff and then obtain the approval of the state government subsequently and only if the state government did not grant approval, would an action taken on the basis of the decision of the executive council be invalid and not otherwise.

10 (2010) 3 SCC 616.

**Administrative practice**

Could an administrative practice which was not opposed to the Constitution, any statute or public policy, be accepted in law? The question for consideration before the Supreme Court in *Union of India* v. *Alok Kumar*[11] was whether or not under the relevant rules and provisions of the Railways Act, 1890 the railway authorities had the jurisdiction to appoint a retired employee of the department as an 'enquiry officer' within the ambit of rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968. The relevant rule read:

Rule 9. Procedure for imposing major penalties-

> (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof.

The competent authority in the department of railways had also issued certain circulars specifically contemplating preparation of a panel of former officers/employees of the railway department, who could be appointed as enquiry officers to conduct the departmental enquiry. It had been contended that the said circulars issued by the department were contrary to the language of rule 9(2) as the rule itself could not have contemplated appointment of former employees of the railways as enquiry officers. The court, however, rejecting this submission, held that the circulars issued were only supplementing rule 9(2) as they only provided that retired officers of the department who satisfied the eligibility criteria could be appointed as enquiry officers. The court noted that with the passage of time and practice, the competent authority and even the delinquent officers in disciplinary cases had given effect to these circulars and they had been treated as good in law. The court observed that it was not opposed to any cannons of service jurisprudence that a practice could not adopt the status of an instruction provided it was in consonance with the law and had been followed for a considerable time. The court held:[12]

> A practice adopted for a considerable time, which is not violative of the Constitution or otherwise bad in law or against public policy can be termed good in law as well. It is a settled principle of law, that practice adopted and followed in the past and within the knowledge of the public at large, can legitimately be treated as good practice

11 (2010) 5 SCC 349.
12 *Id.* at 373.

> acceptable in law. What has been part of the general functioning of the authority concerned can safely be adopted as good practice, particularly, when such practices are clarificatory in nature and have been consistently implemented by the concerned authority, unless it is in conflict with the statutory provisions or principal document. A practice which is uniformly applied and is in the larger public interest may introduce an element of fairness. A good practice of the past can even provide good guidance for future. This accepted principle can safely be applied to a case where the need so arises, keeping in view the facts of that case....

The court, accordingly, held that there was no doubt that the practice of appointing former employees had been implemented for quite some time in the department. To bar such a practice, in the opinion of the court, there needed to be a specific prohibition in the statute, in the absence of which the practice would be considered to be good in law. In fact, the delinquent officers who participated in the entire enquiry, without any protest, themselves admitted to the established practice of appointing former railway employees as enquiry officers.

The court was also of the opinion that by the issuance of the circulars by the railways large public interest was being served. The court noted that the background under which the circulars were issued, namely that a large number of cases of departmental enquiry were pending and had not attained finality, primarily for the non-availability of enquiry officers was sufficient to tilt the balance in favour of this practice being accepted in law.

**Nomenclature**

The impact of wrong mentioning of relevant provisions in an order on its validity was considered by the Supreme Court in *Mohd. Shahbuddin* v. *State of Bihar*.[13] The appellant in this case was aggrieved by a notification issued by the Patna High Court in exercise of its administrative powers conferred under section 9(6) of the Code of Criminal Procedure, 1973 declaring the that the premises of the district jail, Siwan would be the place of sitting of the court of sessions for the sessions division of Siwan for the expeditious trial of sessions cases pending against the appellant. The relevant notification issued by the state government apart from referring to the provisions of section 9, Cr PC also referred to the provisions of section 14(1) of the Bengal, Assam and Agra Civil Courts Act, 1887.

The state government could not have while issuing the said notification exercised powers under the provisions of sections 13 and 14(1) of the Bengal, Assam and Agra Civil Courts Act, 1887. It was submitted that this reference to a statute which has no relevance to it, pointed to the non-application of

13 (2010) 4 SCC 653.

mind by the competent authority and on that ground the notification was illegal and void.

Mukundukum Sharma J in his separate opinion, however, rejecting this contention held that merely because the notification quotes a wrong section and refers to a wrong provision, it could not be held to be invalid if its validity could be upheld on the basis of some other provision The court noted that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision or rule, and the validity of an order must be judged on a consideration of its substance and not its form. Courts must ascribe the act of a public servant to an actual existing authority under which it would have validity rather than to one under which it would be void. In such cases, the court would always rely upon section 114, illustration (e) of the Evidence Act, 1872 to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts would uphold such state action.

**Quasi-judicial powers**

The power conferred on an authority is held by that authority in trust and must be exercised for legitimate purposes after proper application of mind. In *East Coast Railway* v. *Mahadev Appa Rao*,[14] the respondent had been the successful candidate of a typewriting test conducted by the appellant. The competent authority on a representation by the unsuccessful candidate cancelled the test and conducted a second test. The respondent challenged the cancellation of the test in writ proceedings.

The Supreme Court held that the order of cancellation passed by the competent authority had not been preceded by even a *prima facie* satisfaction about the correctness of the allegations. The court observed that the minimum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view it was taking. The court emphasised that it was absolutely essential that the authority making the order was alive to the material on the basis of which it purported to take the decision. It could not act mechanically or under an impulse for a public authority holds the power it exercises in trust to be exercised only for legitimate purposes. The court reiterated that an order passed by a public authority exercising administrative, executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. And the infirmity arising out of the absence of reasons could not be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of such an

14 (2010) 7 SCC 678.

order was challenged. The court accordingly directed that the matter should be re-examined by the competent authority and if it came to the conclusion that the test suffered from any infirmity, it would be free to pass fresh orders cancelling the said examination after recording such a finding.

The Supreme Court in *Kranti Associates (P) Ltd* v. *Masood Ahmed Khan*[15] summarised the principles on the recording of reasons by a quasi-judicial or administrative authority. The case arose from an order passed by the national consumer disputes redressal commission. The commission had by the impugned order dismissed the revision petition of the appellant without giving any reasons. The two line cryptic order read: "Heard. In view of the concurrent findings of the State Commission, we do not find any force in this revision petition. The revision petition is dismissed." The Supreme Court held that the national commission could not have dismissed the revision petition without having given any reasons. In support, the court made a thorough analysis of the powers of the commission under the Consumer Protection Act, 1986 and came to the conclusion that the commission was a high-powered quasi-judicial forum having the trappings of a civil court. And, it was well settled that an order passed by quasi-judicial authority or even an administrative authority must be a speaking order. The court not only referred to Indian cases but also English and American judicial pronouncements on the requirement of recording of reasons by a quasi- judicial authority and summarised the position thus:[16]

(*a*) In India, the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(*b*) A quasi-judicial authority must record reasons in support of its conclusions.

(*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well.

(*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

15 (2010) 9 SCC 496.
16 *Id.* at 512.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process, it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. …

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(*o*) In all common law jurisdictions, judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process."

The court accordingly set aside the order of the national commission and remanded the matter to it for deciding it again by passing a reasoned order in the light of the observations recorded in the judgment.

This principle of law was reiterated in *G Vallikumari* v. *Andhra Education Society*.[17] In this case, the appellant was working as a clerk with the respondent which was a registered society formed with the primary object of imparting education to the children belonging to the Andhra community living in Delhi. In 1992, the appellant had been granted permission by the

17 (2010) 2 SCC 497.

management for doing a postgraduate diploma in human resource development. After some time, the appellant applied for a study leave for attending a training programme and also for preparing for the examinations. She, however, reported for duty after three days of expiry of the leave period but the management refused to accept her joining and instead initiated an enquiry against her. The enquiry officer thereafter submitted his report with a finding that all the charges except one against the appellant had been proved. After considering the report and the appellant's reply, the disciplinary committee recommended the appellant's removal. The managing committee accepted the same and requested approval from the director of education as required under the statutory rules. The director, however, declined approval. In spite this; the chairman of the managing committee removed her from service. This was challenged before the court.

The Supreme Court was of the considered opinion that the order passed by the chairman of the managing committee was vitiated due to violation of statutory rules as well as principles of natural justice and it could have, therefore, remitted the matter back to the tribunal with a direction to consider whether or not the penalty of removal from service imposed on the appellant was disproportionate to the misconduct found against her, but that would not have been proper to adopt such a course as 13 years had passed since her removal from service.

The court, accordingly, held that the needs of justice would be met by substituting the punishment of removal from service with the penalty of stoppage of three increments without cumulative effect and directing that she would be paid only 20 per cent of the back wages. The court, unfortunately, passed the above order even though in the earlier part of the judgment it had held that the chairman of the managing committee took the decision of her removal even without adverting to the contents of her representation or giving a semblance of indication of application of mind. The court had itself noted that 'there is no escape from the conclusion that the order of punishment was passed by the chairman without complying with the mandate of the relevant statutory rules and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected persons is one of the recognised facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.'

It is submitted that the order of the court itself suffers from the arbitrariness it criticised the order of the chairman of the managing committee. It is submitted that recording of reasons by every authority entrusted with the task of passing an order adversely affecting an individual is one of the facets of natural justice which must have been complied by the Supreme Court while imposing the penalty of stoppage of three increments without cumulative effect and directing that the appellant be paid only 20 per cent of her back wages.

**Show cause notice**

In *Orxy Fisheries* v. *Union of India*,[18] the appellant was a private limited company engaged in the production, procurement and processing and export of seafoods. The proceedings before the Supreme Court arose when the chairman, marine products export development authority issued a notice on the appellants calling upon them to show cause as to why their certificates of registration should not be cancelled. The relevant portion of the show cause notice read thus:

> At the meeting it was convincingly proved that the cargo shipped by you to the above mentioned buyer was defective and you have not so far settled the complaint. Therefore, in exercise of the powers vested in me ... I hereby call upon you to show cause why the Certificate of Registration as an Exporter granted to you should not be cancelled for reasons given below:
>
> 1. It has been proved beyond doubt that you have sent substandard material to M/s Cascade Marine Foods, LLC, Sharjah.
> 2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of defective cargo sent by you and have now evaded from the responsibility.
> 3. This irresponsible action have brought irreparable damage to India's trade relation with UAE.
>
> Your reply should reach the undersigned within 10 days from the date of receipt of this letter failing which it will be presumed that you have no explanation to offer and we will proceed with action for cancellation of your registration certificate without further notice to you....

The appellant replied to the show cause notice refuting the allegations levied upon it. Subsequently, the respondent, without giving any reasons and personal hearing to the appellant, held that the registration certificates of the appellant stood cancelled. The relevant portion of the said order read as under:

> 1. It has been proved beyond doubt that you have sent sub-standard material to M/s. Cascade Marine Foods, L.L.C., Sharjah.
> 2. You have dishonoured your written agreement with M/s. Cascade Marine Foods, L.L.C, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent

18 (2010) 13 SCC 427.

of the value of the defective cargo sent by you and have now evaded from the responsibility.

3. This irresponsible action has brought irreparable damage to India's trade relation with UAE.

Your reply dated 04/02/2008 to the Show Cause Notice is not satisfactory because the quality complaint raised by M/s. Cascade Marine Foods, L.L.C, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me ... I hereby cancel the Registration Certificate No. MAI/ME/119/06 dated 03/03/2006 issued to you. The original Certificate of Registration issued should be returned to this office for cancellation immediately.

The appeal preferred against the said order was rejected and the High Court too refused to interfere with the order. The question for consideration before the Supreme Court was whether the respondents in cancelling the registration certificate of the appellants acted fairly and in compliance with the principles of natural justice and also whether the respondents acted with an open mind.

The court held that it was well settled that a quasi-judicial authority while acting in exercise of its statutory power must act fairly and with an open mind while initiating a show cause proceeding. A show cause proceeding was meant to give the person proceeded against a reasonable opportunity of making objection against the proposed charges indicated in the notice. At the stage of show cause, the authority issuing the charge-sheet cannot, instead of telling the charges, confront him with definite conclusions of his alleged guilt If that is done, the entire proceedings get vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

The court, accordingly, set aside the show cause notice issued by the competent authority as also the order cancelling the registration certificate of the appellant.

## III ADMINISTRATIVE REVIEW

In the absence of statutory provisions for review, a review application cannot be entertained and in the garb of a clarification, the earlier order cannot be modified. In *Kalabharti Advertising* v. *Hemant Vimalnath Narichania*,[19] the appellant who was carrying on a business of advertisement hoardings within the city of Bombay approached the Anand darshan co-operative housing society for grant of permission to erect a hoarding advertisement in

19 (2010) 9 SCC 437.

its compound. The society accordingly passed a resolution permitting the appellant to erect the hoarding. The appellant also applied to the municipal corporation for grant of necessary permission for erecting the same. The said application was allowed by the corporation. Subsequent thereto, an agreement was executed between the appellant and the society for a period of three years. The said agreement was renewed from time to time.

There had been some disputes between the society and some of its members who raised objection against the erection of the hoardings. These members also approached the cooperative court challenging the resolution passed by the society in favour of the appellant for granting permission to erect the hoarding. The cooperative court, however, dismissed the application. Being aggrieved, writ petitions were filed in the Bombay High Court praying for cancellation of the permission granted in favour of the appellant. However, during the course of hearing the municipal corporation filed an affidavit before the court to withdraw the earlier order approving the erection and for permission to pass a fresh order in accordance with law. The court accepted the said affidavit and permitted the corporation to withdraw its earlier order with liberty to pass fresh orders. Accordingly, a fresh order was passed by the respondent corporation not approving the erection of hoardings which had earlier been approved.

When the matter reached the Supreme Court, it was held that unless the statute or the rules permit, a review application was not maintainable against a judicial or a quasi-judicial order. In the absence of any provision in the Act granting an express power of review, a review could not be made and the order in review, if passed, would be *ultra vires* and without jurisdiction. Entertaining an application of review in the grab of a clarification, modification or correction was not permissible.

The court went further to note that the High Court could not have allowed the corporation to recall its earlier order and pass a fresh order. Review being a statutory remedy, the court could not confer jurisdiction upon any authority; being a purely legislative function and the same could not be conferred either by the court or by the consent of the parties. Such an order passed by the High Court was without jurisdiction and a nullity and the order passed in pursuance thereof also remained unenforceable. The corporation, the court held, could not therefore have passed the order recalling its earlier order.

## IV JUDICIAL REVIEW

In *Chairman, All India Railway Recruitment Board* v. *K Shyam Kumar*,[20] the appellants had challenged the order of the High Court whereby the decision taken by the board in conducting a re-test was held to be violative of articles 14, 16 and 21 of the Constitution and the board was directed to go

20 (2010) 6 SCC 614.

ahead with recruitment process on the basis of the first written test against which there were serious allegations of irregularities and malpractices. The High Court, in coming to the said decision, had applied the Wednesbury principle of unreasonableness.

The Supreme Court, however, upheld the decision of the board in conducting the re-test applying both the 'Wednesbury principle of unreasonableness' as well as the 'proportionality principle'. The court, applying both the principles, held that the High Court was in error in holding that the materials available relating to leakage of the question papers were limited and had no reasonable nexus to the alleged large scale irregularities. Even a minute leakage of the question papers would be sufficient to set aside the written test and go for a re-test so as to achieve the ultimate object of a fair selection.

The court found no infirmity in the decision taken by the board in conducting the second test for those who had obtained minimum qualifying marks in the first test rather than going ahead with the first written test. The court, accordingly, directed the board to regularise the results of the second test and the appointments of the selected candidates.

The court further held that the Wednesbury principle applied to a decision which was so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. On the other hand, proportionality as a legal test was capable of being more precise and fastidious than a reasonable test. Proportionality required the courts to judge whether the action taken was really needed as well as whether it was within the range of courses of action which could be reasonably followed. Proportionality was more concerned with the aims and intention of the decision maker and whether the decision makers had achieved more or less the correct balance or equilibrium.

The court noted that the current trend seemed to favour proportionality but the Wednesbury principle had not met with its judicial burial and a state burial, with full honours, was surely not to happen in the near future. The court went on to note that it was not safe to conclude that the Wednesbury principle of unreasonableness had been replaced by the doctrine of proportionality.

The court also differed from the view taken by the Supreme Court itself on certain previous occasions to the effect that the Wednesbury principle of unreasonableness had been replaced by the doctrine of proportionality.[21]

21 *State of Uttar Pradesh* v. *Sheo Shanker Lal Srivastava* (2006) 3 SCC 276 ([W]e are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of *proportionality ... the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf.*."); *Indian Airlines Ltd.* v. *Prabha D Kanan* (2006) 11 SCC 67 ('Furthermore the legal parameters of judicial review have undergone a change. *Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality*.'); *Jitendre Kumar* v. *State of Haryana* (2008) 2 SCC 161 ([I]n some jurisdictions the doctrine of unreasonableness is giving way to doctrine of *proportionality*).

It concluded that the courts have to develop an indefensible and principled approach to proportionality and till that was done there would always be an overlapping between the traditional grounds of review and the principle of proportionality and unfortunately cases would have to be decided in the same manner whichever principle was adopted.

**No interference in purely administrative matters**

It is well established that the courts would not normally interfere in purely administrative matters like transfers and postings. In *State of Haryana* v. *Kashmir Singh*,[22] the respondents had been serving in various districts in the State of Haryana as constables, head constables, exempter constables, assistant sub-inspectors and sub-inspectors. They were ordered to be transferred to other districts and ranges by the inspector general of police. The order of transfer was challenged contending that in view of the Punjab police rules, so far as constables, head constables and exempter constables were concerned, they could not be transferred outside the district and, so far as assistant sub-inspectors and sub-inspectors were concerned, they could not be transferred outside the range.

The Supreme Court, however, analysing the provisions of the Police Act, 1861 and the Punjab Police Rules, 1934 held that the entire police establishment under the state government was one integrated police force, though for better administration, the state may have been sub-divided and, accordingly, a transfer could be done from one district to another or even from one range to another; there was no absolute prohibition against doing so.

The court further held that transfer was ordinarily an incidence of service and the courts should be very reluctant to interfere in transfer orders as long as they were not clearly illegal. In particular, the transfer and postings of policemen must be left to the discretion of the concerned state authorities which were in the best position to assess the necessities of the administrative requirements of the situation. The concerned administrative authorities may be of the opinion that more policemen may be required in any particular district than in another, depending upon their assessment of the law and order situation. These were purely administrative matters, and the courts must not ordinarily interfere in administrative matters and should maintain judicial restraint except where absolutely necessary on account of violation of a fundamental or other legal right of the citizens. After all, the state administration cannot function with its hands tied by the judiciary behind its back. The court, accordingly, upheld the transfer order of the respondents.

22 (2010) 13 SCC 306.

## V NATURAL JUSTICE

In *Indu Bhushan Dwivedi* v. *State of Jharkhand*,[23] the appellant was appointed as a sub-divisional judicial magistrate in 1996. While he was posted at Chaibase, a news item appeared in the local newspaper suggesting that he had misbehaved and manhandled an accused. The High Court of Jharkhand took cognizance of the newspaper report and passed an order whereby the appellant was placed under suspension. After five months of suspension, a regular departmental inquiry was initiated against the appellant. The inquiry officer found him guilty of manhandling the accused who had been brought before him.

The High Court accepted the inquiry report and directed that a show cause notice be issued to the appellant for imposition of a major penalty. After considering the reply of the appellant, the High Court recommended his dismissal from service. The state government accepted the recommendation and dismissed the appellant. This order of dismissal was challenged by the appellant before the High Court. He contended that the impugned order was vitiated because of non-compliance with the principles of natural justice because while recommending his dismissal from service, the High Court had considered certain un-communicated adverse remarks without informing him that the same were being relied upon for deciding the quantum of punishment and that his dismissal from service was totally disproportionate to the charge found proved against him. The High Court concluded that the punishment of dismissal imposed on the appellants was not sustainable but declined to set aside the same on the ground that substantial time had lapsed since the initiation of the inquiry and proceeded to impose punishment of compulsory retirement.

The Supreme Court with respect to the consideration of the past adverse remarks against the appellant, without giving him an opportunity to defend, held that one of the basic cannons of justice was that no one could be condemned unheard and no order prejudicially affecting any person could be passed by a public authority without affording that person a reasonable opportunity to defend himself. The court observed that while recommending or imposing punishment on an employee who is found guilty of misconduct, the disciplinary authority could not consider his past adverse record or punishment without giving him an opportunity to explain his position and considering his explanation. However, such an opportunity was not required to be given if the final punishment was lesser than the proposed punishment.

The court accordingly set aside the order of the High Court and directed the High Court of Jharkhand to consider the issue of quantum of punishment afresh and make fresh recommendations to the state government. However, if

23 (2010) 11 SCC 278.

the High Court felt that the adverse remarks should still be considered, then such remarks be communicated to the appellant and he be given an opportunity to make an appropriate representation against them.

The appellant in *Dinesh Chandra Pandey* v. *High Court of Madhya Pradesh*[24] had been appointed on 27-1- 1982 to the post of a civil judge in the M.P. Judicial Service (Class II). During his tenure as a civil judge, certain irregularities in his conduct were noticed by the competent authority and, subsequently, a charge-sheet was served upon him primarily on the ground that he was in possession of assets disproportionate to his known sources of income. It was alleged that the balance of his bank account swelled from Rs. 2,170 to Rs. 35,036 within a period from January, 1984 to May, 1988.

The allegations were denied by the appellant. It was submitted by him that he owned 37 acres of land and had agricultural income to the extent of Rs. 50,000 per month from those lands. It was out of this agricultural income that he had been depositing amounts in his bank account. The competent authority, not satisfied by his reply, decided to conduct a regular departmental enquiry. During the course of the enquiry, the appellant made an application for permission to engage a legal practitioner to assist him in the departmental enquiry. This request was, however, declined by the presiding officer. The appellant participated in the enquiry. The enquiry officer submitted his report returning a finding of guilt against the appellant.

The disciplinary authority, after receiving the said report and considering the appellants response to the same, imposed the punishment of removal from service. This order of removal as confirmed by the appellate authority was challenged by the appellant before the High Court which refused to interfere with the said dismissal.

The primary challenge to the impugned order was that the appellant had asked for assistance of a legal practitioner which had been unfairly denied to him. This denial of legal practitioner, it was contended, was tantamount to violation of principles of natural justice and, as such, the entire departmental proceedings as well as the impugned order of punishment was vitiated.

The Supreme Court held that it was not absolutely mandatory that the disciplinary authority must permit the engagement of a legal practitioner irrespective of the facts and circumstances of the case. There was some element of discretion vested in the authority which had to be exercised properly and in accordance with the settled principles of service jurisprudence.

Besides this legal aspect of the matter, the court, even on principles of fairness, did not find that the order had caused any prejudice to the appellants. The court noted that even after the application of the appellants for appointment of a legal practitioner was refused, the appellant took no steps whatsoever to challenge the order of the disciplinary authority declining assistance of an advocate. On the contrary, he participated without any further

24 (2010) 11 SCC 500.

protest in the entire departmental enquiry and raised no objections. Further, the appellant himself being a judge was fully capable of defending himself in the departmental enquiry.

In these circumstances the court was of the considered view that no prejudice whatsoever had been caused to the interest of the delinquent officer. Being primarily rules of procedure, an element of prejudice would be one of the necessary features before departmental proceeding could be held to be vitiated on that ground

Similarly, the question for consideration before the Supreme Court in *Kanwar Natwar Singh* v. *Director of Enforcement*[25] was whether a noticee served with a show cause notice under rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 was entitled to be furnished with all the documents in the possession of the adjudicating authority including those documents upon which no reliance had been placed to issue the said show cause notice.

A complaint in writing had been filed by an officer against the appellants under the Foreign Exchange Management Act, 1999 (FEMA) in which serious allegations had been levelled against the appellants. The adjudicating authority having received the said complaint, set the law in motion and accordingly issued a notice to the appellants under the provisions of the FEMA read with the rules requiring them to show cause why an enquiry should not be held against them.

The appellants having received the show cause notice, instead of submitting their reply, required the adjudicating authority to furnish 'copies of all the documents in possession in respect of the instant case, including the 83,000 documents allegedly procured by one Virender Dayal from USA in connection with the instant case. The adjudicating authority furnished copies of all the documents on which it relied, but declined to furnish copies of other documents on which it did not rely and decided to hold an enquiry in accordance with the provisions of FEMA and the rules. The appellant moved the High Court where it was contended that a duty was cast on the adjudicating authority to disclose and supply copies of all the documents that may be available with him enabling the noticee to effectively defend and rebut the allegations mentioned in the show cause notice. The submission was that the appellant was entitled not only to the documents relied upon by the adjudicating authority but in fact to all the documents that were in the possession of the authority.

The first question before the court was whether the principles of natural justice and the doctrine of fairness required supply of the documents upon which reliance had been placed at the stage of the show cause notice itself. In considering this question, the court held that even in the application of the doctrine of fair play, there must be real flexibility. In order to ensure a fair

25 (2010) 13 SCC 255.

hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation. The court, accordingly, held that the concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue a show cause notice and to this extent the principles of natural justice and the concept of fairness were required to be read into the rules. The court held that all such documents relied on by the authority were required to be furnished to the noticee enabling him to show a proper cause as to why an enquiry should not be held against him though the rules did not provide for the same. Such a fair reading of the provision, the court held, would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.

The court, however, held that a fair reading of the statute and the rules suggested that there was no duty of disclosure of all the documents in possession of the adjudicating authority before forming an opinion that an enquiry was required to be held into the alleged contraventions. Even the principles of natural justice and the concept of fairness did not require the statute and the rules to be so read. Any other interpretation may result in defeating the very object of the Act. Duty of adequate disclosure was only an additional procedural safeguard in order to ensure fairness.

The court in conclusion held that the insistence of the appellants for supply of all the documents in the possession of the authority was based on irrelevant grounds. The only object in making such a demand was obviously to obstruct the proceedings.

Meaning and content of natural justice, though well understood in law, its principles could not be applied in a vacuum. In *Municipal Committee* v. *Punjab SEB*,[26] the municipal committee, Hosiarpur had taken an electric connection for running a tube well from the Punjab state electricity board for supplying water for daily use to the public of the locality at large. The average bill for the consumption of electricity of the said connection used to be around Rs. 5,000 per month and the said amount was paid regularly by the appellant. However, a bill to the tune of Rs. 82,300 was served upon the appellant by the board but, since the bill amount was very high, the appellant instead of making the payment filed a suit challenging the said bill.

The board, opposing the suit, contended that the initial connection had not been made properly and on proper checking, it was found that the meter was showing only one-third of the actual consumption of the energy. In view thereof, the account of the said meter was overhauled from the date of its installation and fresh bill was issued. The appellant, however, contended that no opportunity of hearing had been given to it before revising the bill nor was the inspection done in the presence of any responsible officer of the appellant.

26 (2010) 13 SCC 216.

No notice was ever given by the board to the appellant for inspection.

Both the trial court and the first appellate court held in favour of the appellant. The High Court in second appeal reversed the decisions of the courts below. When the matter reached the Supreme Court, it held that the principles of natural justice could not be applied in a vacuum without reference to the relevant facts and circumstances of the case. They could not be put in a straight jacket formulae. The court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of a particular case. The court held that there may be cases where on admitted and undisputed facts only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. However, there may be cases where the non-observance of natural justice principle may itself prejudice a person and proof of prejudice may not be required at all.

The court noted that clause 23 of the conditions of supply stipulated in the agreement of supply of energy provided that the board must issue a show cause notice to the consumer before issuing a revised bill. No such notice was, however, given to the appellant. Further, no prior intimation of the inspection had been given to the appellant nor was a report of the same supplied to the appellant. This, the court held, to be a clear violation of the principles of natural justice as well as clause 23 of the supply agreement. The court, accordingly, set aside the order of the High Court and restored the order of the trial court setting aside the revised bill.

## VI PROMISSORY ESTOPPEL

In *State of Bihar* v. *Kalyanpur Cement Ltd.,*[27] the respondent company was a public sector company incorporated in 1937 as a lime producing company. However, due to circumstances beyond its control, the company began to suffer heavy losses. It was registered with the board for industrial and financial reconstruction as a sick unit. In order to rehabilitate itself, the company sought assistance from financial institutions for restructuring packages. Its proposal for financial assistance and restructuring had been approved by various financial institutions, in principle. However, the same had been made conditional on fulfilment of certain pre-conditions. One of the conditions imposed was that the restructuring package would be made available only on the company obtaining sales tax exemption for a period of five years from the state government in terms of the industrial policy, 1995. The company submitted an application to the state government for grant of sales tax exemption under the industrial policy for a period of five years. However, the matter remained pending for consideration by the state government. Subsequently, there were a series of joint meetings of the government,

27 (2010) 3 SCC 274.

financial institutions and the company over the next three years. In all these meetings as well as correspondence, categorical assurances were given that necessary sales tax exemption notification would be issued shortly. However, no such notification was issued causing great hardship to the company. The company, accordingly, filed a writ petition praying for issuance of writ in the nature of mandamus directing the State of Bihar to issue necessary notification under the 1995 policy. In support, the company contended that it was entitled to the exemption under the doctrine of 'promissory estoppel'

The Supreme Court, however, noted that before considering the factual situation of the case, it would be appropriate to consider whether the company could have invoked the principle of promissory estoppel in support of its claim. The court held that in order to invoke the doctrine, it must be established that:[28]

> (a) that a party must make an unequivocal promise or representation by word or conduct to the other party (b) the representation was intended to create legal relations or affect the legal relationship, to arise in the future (c) a clear foundation has to be laid in the petition, with supporting documents (d) it has to be shown that the party invoking the doctrine has altered its position relying on the promise (e) it is possible for the Government to resile from its promise when public interest would be prejudiced if the Government were required to carry out the promise (f) the Court will not apply the doctrine in abstract.

The court went on to observe that the company had applied to the state government on 21.11.1997 for grant of sales tax exemption under the industrial policy, 1995 and even though the company was entitled under the policy to exemption for eight years it had made an application only for five years.

From the analysis of the factual scenario of the case it was apparent that the state government had been consistently giving assurances not only to the company but also to the financial institutions that necessary sales tax notification would be issued. The court accordingly held that the company had laid a clear, sound and a positive foundation for invoking the doctrine of promissory estoppel. Therefore, it was not possible to accept that no definite promise had ever been made to the company as well as the financial institutions. It was only because the promised notification was not forthcoming that the company was constrained to approach the court.

A similar issue arose in the *Ras Resorts & Apart Hotels Ltd* v. *Union of India*.[29] The appellant was a public limited company. It approached the court seeking a direction to the respondent to grant the company interest subsidy

28 *Id* at 291.
29 (2010) 11 SCC 601.

and to pay financial institutions five per cent of the amount of the interest charged by them on the loans taken by the appellants for construction of their hotels. In support of the claim, a plea of promissory estoppel was invoked relying upon the draft seventh five year plan (1985-90) and certain communications received by the company from the government. The relevant portion of the plan read:

> It is *proposed* to subsidise interest on loan by 5 per cent. Besides, Administration offers 25 per cent subsidy on fixed assets as the territory has been declared as 'No Industry District by Government of India.'

There was no dispute that the appellants had received 25 per cent subsidy on fixed assets and the proceedings before the Supreme Court related only to the claim for five per cent interest subsidy. The court, however, rejected the plea of the appellants. It noted that rather than making huge investments and, acting on the basis of any representation made by the respondents, altering their position adversely, the appellants had tried to use the issue of interest subsidy to their advantage even though it was only a proposal that in fact never materialised into a scheme. The court noted:[30]

> We completely fail to see how the draft seventh five year plan or the annual plan for the year 1985-86 can support the appellants' claim based on the plea of promissory estoppel. The annual plan for the year 1985-86, as part of the seventh five year plan was prepared by the Administration of Dadra and Nagar Haveli in or about January 1985. The first piece of land was given on lease to the sister concern of appellant No. 1 on June 12, 1984, on the basis of an application made on May 28, 1984. The lease was for the express purpose of constructing a three-star hotel over the leased out land. It is, thus, evident that the land was taken at a point of time when there was not even a scent of any interest subsidy.

The court accordingly held that it was not open to the appellants to contend that they had made huge investments and altered their position on the basis of representation made by the respondents, especially when there was no firm offer or representation as the seventh five year plan was in the draft form and the subsidy on interest was merely a proposal.

30 *Id*. at 630.

## VII DELEGATED LEGISLATION

**Rules of interpretation when a subject is governed by two sets of rules**

In *Maya Mathew* v. *State of Kerala,*[31] the appellant was pharmacist in the homoeopathy department of the State of Kerala. The Kerala state homoeopathy services are government by special rules, namely the Kerala State Homeopathy Services, 1989 ('the special rules'). All the subordinate services in the State of Kerala including the state homeopathy services are also governed by the Kerala State and Subordinate Services Rules, 1958 ('the general rules'). Rule 3 of the special rules provided that the *ratio* of 5:1:1:1 shall be maintained in making appointments to the post of medical offices between direct recruits and transfer from nurses, pharmacist and clerks in the homeopathy department. The said special rules further provided that in the absence of candidates by transfer, those vacancies in each category would be filled up by direct recruitment from open quota and the backlog for such categories will not be restored.

The general rules, however, provided that whenever a *ratio* was fixed for different methods of recruitments to a post, the number of vacancies to be filled up by the candidates from each method shall be decided by applying the *ratio* to the cadre strength of the post. The general rule in question came into force in 1992 and the special rules, which were repugnant to the general rules, in 1999.

Writ petitions were filed before the High Court seeking a direction to the state government to report to the public service commission 32 vacancies of medical officers to be filled by appointment by transfer from pharmacist in the homeopathy department. It was contended that the total cadre strength of medical officers was 442 and that having regard to the *ratio* of 5:1:1:1 for making appointments out of the said 442 posts, 227 posts could be filled by direct recruitment and the balance of 165 posts had to be filled by transferees from the post of nurses, pharmacists and clerks in the homeopathy department at the rate of 55 each; that due to non-availability of qualified persons in the category from which appointments were to be made by transferees, only 23 from the category of nurses and clerks were holding the post of medical officers and all the other medical officers were direct recruits and as direct recruits were occupying posts in the excess of their quota, when making further recruitment, the vacancies to be filed had to be determined by applying the fixed *ratio* to the total cadre strength and not the vacancies to be filled. Reference in this regard was made to the general rules that provided that the *ratio* should be with reference to the cadre strength and not the actual vacancies existing at the time of recruitment. The respondent, however, relying on the special rules, contended that 'when in a recruitment, transfer quota posts have to be filled by direct recruitment due to non-availability of

31 (2010) 4 SCC 498.

candidates from transfer categories the backlog in regard to such transfer categories cannot be resorted in future recruitments'.

The question for determination before the Supreme Court was whether the respondents were justified in determining the number of posts to be filled by direct recruitment and posts to be filled by transfer from the three transfer categories by applying the prescribed *ratio* of 5:1:1:1 to the existing vacancies instead of the cadre strength. The court held that the rules of interpretation, when a subject is governed by two sets of rules, were settled, namely:[32]

(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the later law repeals the earlier law. The rule making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;

(ii) When two provisions of law - one being a general law and the other being special law - govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.

(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law will prevail over the prior special law.

(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.

In view of this clear enunciation of law, the court noted that having regard to the fact that several rules had been tailor made to suit and meet the special requirements of different specified services, the general rule recognised the need for special rules to prevail over the general rules. Therefore, the provisions of special rules would prevail over the provisions of the general rules. In fact, even without such a specific provision, contextually the said later special rule would have prevailed over the said prior general rule. The court went on to observe further that if the intention of the rule making authority was to establish a rule of universal application to all the services in the State

32 *Id.* at 501-502.

of Kerala for which the special rules are made, then the special rules would give way to the general rules enacted for that purpose. This, however, had to be found out from the language used in the rules which may be express or by implication. This principle, however, only applied when the general rules were made subsequent to the special rules. That not being the case before it, the court held that the said principle had no application in the present case.

The court, accordingly, held that the *ratio* of 5:1:1:1 was to be applied with reference to vacancies which were notified and not with reference to the cadre strength.

The decision of the Supreme Court in *State of Uttar Pradesh* v. *Vam Organic Chemicals*[33] related to tax concessions on high speed diesel (HSD) being used in industrial gen sets. Show cause notices were issued by the department calling upon the companies, including the respondent, to show cause as to why HSD should not be deleted as an item from their respective recognition certificates issued under the Uttar Pradesh Trade Tax Act, 1948. The High Court set aside the show cause notice.

Before the Supreme Court, it was argued on behalf of the authority that high speed diesel was only included in the list by way of a mistake and it was only to rectify the said mistake that the impugned show cause notices were issued by the department. The court held that under the 1948 Act, the assessing authority was vested with the discretionary power to amend the recognition certificates either on its own motion or on the application of the dealer. By way of a proviso, it had been clarified that no recognition certificate shall be cancelled or amended by the assessing authority on its own motion without giving the assessee a reasonable opportunity of being heard.

The court also noted that the power to grant exemption from the payment of duty was a statutory power expressly given to the authority and, while exercising that power generally, no hearing or reasons were required to be given unless the Act so provided. A proviso was inserted in the Act to provide that no recognition certificate shall be cancelled or amended by the assessing authority without giving the assessee a reasonable opportunity of being heard and it was for this reason that show cause notices were issued to all the respondent dealers calling upon them to show cause as to why HSD as an item should not be deleted from the recognition certificates. It was the pre-condition of 'sufficiency of reasons' that required a show cause notice to be given to the dealer in whose favour a recognition certificate exists calling upon him to show cause as to why an item should not be deleted in a given case.

Interestingly, the court also noted that the word rectification did not find place in the Act. The Act dealt only with the cancellation or an amendment of notification and, in the opinion of the court, rectification was conceptually different from the word amendment. The court, accordingly, held that the

33 (2010) 6 SCC 222.

ratification of registration certificates in question could not be done retrospectively. The court observed that when a recognition certificate was issued, a benefit was given to the dealer and he arranged his business affairs on those lines. Therefore, the benefit could not be withdrawn retrospectively. Such a benefit could be withdrawn only from the date of the show cause notices.

The court, therefore, set aside the judgment of the High Court and remanded the matters back to the assessing authority to consider the cases of the respondent on a case to case basis.

The question before the Supreme Court in *ICICI Bank Ltd.* v. *APS Star Industries Ltd.*[34] was whether assignment of debts by one bank to another was permissible under the Banking Regulation Act, 1949. The High Court had held that such assignment of debts by the banks *inter se* was an activity not permissible under the Banking Regulation Act, 1949. It had, however, been contended that the RBI had even issued guidelines on the purchase and sale of non-performing assets between banks. The said guidelines provided:

*Guidelines on purchase/sale of Non Performing Financial Assets Scope*

1. These guidelines would be applicable to banks, FIs and NBFCs purchasing/selling non-performing financial assets, from/to other banks/FIs/NBFCs (excluding securitisation companies, reconstruction companies).
2. A financial asset, including assets under multiple/consortium banking arrangements, would be eligible for purchase/sale in terms of these guidelines if it is a non-performing asset/non-performing investment in the books of the selling bank.
3. The reference to 'bank' in the guidelines would include financial institutions and NBFCs.

The court held that when a delegate was empowered by Parliament to enact a policy and to issue directions which have a statutory force and when the delegatee (RBI) issues such guidelines (policy) having statutory force, such guidelines have got to be read as supplement to the provisions of the Banking Regulation Act. The banking policy being enunciated by RBI could not be *ultra vires* the Act. The idea behind empowering RBI to determine the policy in relation to advances was to enable banking companies to expand their business of banking and in that sense such guidelines also defined as to what constitutes banking business.

The court noted that the guidelines issued by RBI itself authorized banks to deal *inter se* in NPAs. These guidelines having been issued by the regulator, in exercise of the powers conferred by sections 21 and 35A of the

34 (2010) 10 SCC 1.

RBI Act, had a statutory force of law. They had allowed banks to engage in trading in NPAs with the purpose of cleaning the balance sheets so that they could raise the capital adequacy *ratio*. All this came within the ambit of section 21 which enabled RBI to frame the policy in relation to advances to be followed by the banking companies and which empowers RBI to give directions to banking companies under section 21(2). The guidelines and directions following them, therefore, had a statutory force.

The court, accordingly, held that dealing in NPAs *inter se* by the banks needs to be looked in the larger framework of "Re-structuring of banking System" and assignment of debts between banks was as an activity permissible under the Banking Regulation Act, 1949.

## VIII CONCLUSION

The survey reveals that the Supreme Court has shown reluctance to interfere with purely administrative matters[35] but where the need arose it did not shy away from its responsibilities.[36] The court has gone to the extent of holding that even an administrative practice which was not opposed to the Constitution or any statute could be held good in law[37] and that it was not the form but the substance of an administrative order that was relevant.[38] The survey further reveals that the court has been opposed to perpetuating past illegalities no matter what might have been the circumstances.[39] Though it has upheld legitimate claims of promissory estoppel against the government, it has not been allowed on frivolous claims.[40] Moreover, a major chunk of the cases that the court was required to deal in this period related to the application of the principles of natural justice.[41] The stand of the court in this respect has been consistent. It has over and over again held that there was no such thing as merely technical infringement of natural justice.

35 *State of Haryana* v. *Kashmir Singh* (2010) 13 SCC 306; *East Coast Railway* v. *Mahadev Appa Rao* (2010) 7 SCC 678.

36 *Supra* note 20.

37 *Supra* note 11.

38 *Supra* note 13.

39 *Union of India* v. *Kartick Chandra Mondal* (2010) 2 SCC 422; *Jaipur Development Authority* v. *Mahesh Sharma* (2010) 9 SCC 782.

40 *State of Bihar* v. *Kalyanpur Cement Ltd.* (2010) 3 SCC 274; *Ras Resorts & Apart Hotels Ltd* v. *Union of India* (2010) 11 SCC 601.

41 *Municipal Committee* v. *Punjab SEB* (2010) 13 SCC 216; *Indu Bhushan Dwivedi* v. *State of Jharkhand* (2010) 11 SCC 278; *Dinesh Chandra Pandey* v. *High Court of MP* (2010) 11 SCC 500; *Kanwar Natwar Singh* v. *Director of Enforcement* (2010) 13 SCC 255; *G Vallikumari* v. *Andhra Education Society* (2010) 2 SCC 497; *Kranti Associates (P) Ltd* v. *Masood Ahmed Khan* (2010) 9 SCC 496; *Orxy Fisheries* v. *Union of India* (2010) 13 SCC 427.