1
ADMINISTRATIVE LAW

*S S Jaswal**

I INTRODUCTION

IN 2010 survey,[1] it had been noticed that generally the courts had shown reluctance to interfere with purely administrative matters[2] but where the need arose they did not shy away.[3] The courts had gone to the extent of holding that even an administrative practice to be good in law[4] and that it was not the form of an administrative order but its substance that was relevant.[5] The survey had revealed that the courts had been against perpetuating past illegalities.[6] Though the courts had upheld legitimate claims of promissory estoppel, they did not accept frivolous claims.[7] A major chunk of cases that the courts were required to deal during 2010 related to the application of the principles of natural justice.[8]

An attempt has been made in the present survey to study the trend shown by the courts during 2011 in the field of administrative law. Has the Indian judiciary continued to follow the path that they laid down in the previous year(s) or have they deviated therefrom? Have new milestones been laid? Have old doctrines been abandoned? These are some of the questions that the survey attempts to find answers.

---

* Assistant Research Professor, the Indian Law Institute, New Delhi. The author acknowledges the assistance of Chaitanya Safaya in the preparation of this survey.

1 See S S Jaswal, "Administrative Law," XLVI *ASIL* 1 (2010).

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

3 *Chairman, All India Railway Recruitment Board* v. *K Shyam Kumar* (2010) 6 SCC 614.

4 *Union of India* v. *Alok Kumar* (2010) 5 SCC 349.

5 *Mohd. Shahbuddin* v. *State of Bihar* (2010) 4 SCC 653.

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

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

8 *Municipal Committee* v. *Punjab SE* (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 and *Orxy Fisheries* v. *Union of India* (2010) 13 SCC 427.

The broader areas covered in this survey are administrative action, judicial review, legitimate expectation and delegated legislation.

II ADMINISTRATIVE ACTION

Nature and scope of departmental circulars

In *P.H. Paul Manoj Pandian* v. *P. Veldurai*,[9] at the time of the filing of the nomination papers by one Veldurai, another contesting candidate Manoj Pandian raised an objection that he had subsisting contracts with the government which in terms of section 9A of the Representation of Peoples Act, 1951, mandated that his nomination papers were liable to be rejected. Veldurai in his defence stated that on the date of filing of his nomination, the contracts entered into with the government had been terminated. The returning officer overruled the objections and accepted the nomination papers filed by Veldurai. In the subsequent election, Veldurai was declared elected.

The defeated candidate, Manoj Pandian, challenged the election 'on the ground that the respondent was disqualified from submitting nomination papers and consequently from contesting the election as he had subsisting contracts with the government'.[10] In support, he placed reliance on government order no. 4682 dated 16.01.1951 issued by the public works department. The said government order directed that 'the contractors who desired to stand for elections as candidates for the legislature be permitted to terminate their subsisting contracts, provided other persons acceptable to the chief engineer are available and are willing to enter a contract to execute the works under the existing terms and conditions without any loss to the government'. The question for determination before the court was as to what weight could be given to the government order.

In answering the question, the court noted that when a contract was brought to an end because the contractor was desirous of contesting in the elections, a special method had been devised by the government for terminating the existing contract. In approving the government order, the court was greatly influenced by the fact that there was no statutory enactment, rules or regulations which provide the method or the procedure in which government contracts in such situations were to be terminated. Moreover, as there was no other legislation with which the government order conflicted, there was no reason for the court to ignore it. The court observed:[11]

> Departmental circulars are a common form of administrative document by which instructions are disseminated. Many such circulars are identified by serial numbers and published, and many of them contain general statement of policy. They are, therefore, of great importance to the public, giving much guidance about governmental organisation and the exercise of discretionary powers. In themselves they have no legal effect whatever, having no statutory authority. But they may be used as a vehicle in conveying

9 (2011) 5 SCC 214.
10 *Id.* at 218.
11 *Id*. at 230.

> instructions to which some statute gives legal force. It is now the practice to publish circulars which are of any importance to the public and for a long time there has been no judicial criticism of the use made of them.

The contract of the respondent had not been terminated following the procedure provided under the government order. Admittedly, no substitute had been found by Veldurai for himself at the time of filing of the nomination papers. In view of this, the court held Veldurai to have had a subsisting government contract at the time of his filing the nomination paper. He was, therefore, held disqualified and the election result was set aside.

Nature and scope of executive instructions

The challenge in *Joint Action Committee of Air Line Pilots' Association of India (ALPAI)* v. *Director General of Civil Aviation*[12] was to certain circulars which regulated flight time and flight duty time limitations for pilots in the air line industry. In terms of an aeronautical information circular of 1992, the flight time and flight duty time limitations had been defined and fixed depending upon the distance of destination and number of landings. However, the rest period to which the pilots were entitled, had been substantially altered to the benefit of the pilots by the civil aviation requirements circular of 2007. A large number of airlines made a representation to the director general of civil aviation that it was not practically possible to ensure compliance with the 2007 circular. The new circular was, therefore, kept in abeyance by the authorities and the earlier circular of 1992 revived.

The joint action committee of air line pilots' association of India, which represented several airlines operating in India, challenged the order putting the 2007 circular in abeyance. It was contended that the 2007 circular could not be put in abeyance without following the procedure prescribed by law, which provided that where a circular was revised the draft of the circular be posted on the authorities website for inviting objections or suggestions. The objections so received were to be analysed and, if found acceptance, incorporated in the circular.

The court, however, rejected the challenge holding that the circular was not a subordinate legislation but merely an executive instruction and, as executive instructions do not have the force of law, they can be 'altered, replaced and substituted at any time'. The law merely prohibited the issuance of directions which were contrary to the Act or the statutory rules. The court accordingly rejected the challenge to the order putting the circular in abeyance.

Failure of a statutory authority to act within reasonable time

In *Delhi Development Authority* v. *Ram Prakash*,[13] one Ram Prakash, along with his mother and wife, had purchased a particular property in their favour in an open auction from the Delhi Development Authority (DDA). A lease deed in their favour was also executed. In terms of the lease deed, they were required to construct a building on the plot within a period of two years. In inspections carried out subsequently, the purchasers were found to be using the plot in contravention of the

12 (2011) 5 SCC 435.
13 (2011) 4 SCC 180.

prescribed usage. A show cause notice was, therefore, served on them to which they duly replied. No further action was taken by DDA on the show cause notice. However, a few years later, another show cause notice was issued on them for misusing the premises. Another inspection was carried out and a few more show cause notices were issued. However, no action was taken by the DDA. They were allowed to continue on the lease.

After the death of both his wife and mother, Ram Prakash applied for mutation of the property in the name of the legal heirs. In response, after almost 15 years of the last show cause notice had been issued, DDA raised a demand on the purchaser to pay misuser charges amounting to almost Rs. 2 crores. This was challenged before the court.

The court set aside the demand notice and rightly so holding that it was not permissible for a statutory authority to take such a belated action claiming misuser charges, when the purchaser had not been even intimated of the demand before. True, it noted, show cause notices had been issued, but no follow up action had ever been taken. The court held that even where no period of limitation had been indicated, a statutory authority was required to act within a reasonable time.

Effect of void administrative orders

In *Krishnadevi Malchand Kamathia* v. *Bombay Environmental Action Group*,[14] though the question did not arise directly for consideration but since it had a bearing on the matter, the Supreme Court expressed *obiter* opinion on whether a party could choose to ignore administrative orders or notifications, which in its opinion are void *ab initio.*

The Government of Madras had by a notification declared the mangroves areas belonging to the petitioner as forests. In view of the notification, the petitioner could not restart salt manufacturing on his lands, though he had been doing it since 1959. It had been contended that as the notification did not disclose the provision of law which had conferred the power on the statutory authority to issue the notification, the notification was *non est* in law with no effect. Categorically rejecting this submission, the court held: [15]

> … even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person; it may not be so for another purpose or another person.

However, as the merits of the challenge to the notification had been pending before the Bombay High Court, the Supreme Court did not express any opinion on it.

14 (2011) 3 SCC 363.
15 *Id*. at 369-70.

Administrative decision made subject to approval by the court

Priyadarshini Dental College and Hospital v. *Union of India*[16] is perhaps the sort of case that could arise only under India's unique constitutional jurisprudence. Priyadarshini Dental College and Hospital had been granted permission for establishing a new dental college in 2007 under section 10-A(4) of the Dentists Act, 1948. Annual renewal of permission had also been granted by the government for two subsequent years. This unique litigation had its seeds sown when the college sought permission for the fourth year of its operation. Initially the central government seemed a bit reluctant in granting the permission. But finally, after considerable delay, when the government granted the permission, it was only a conditional one. The relevant portion of the order reads thus:[17]

> The Central Government has accepted the above recommendation of the Committee and the permission of the Central Government is granted to Priyadarshini Dental College and Hospital, Thiruvallur Taluk and District, Tamil Nadu, for admission of 100 students in the 4th year of the BDS course for the academic year 2010-2011. However, since the last date of grant of such permission has already expired on 15-7-2010, *the above Central Government permission to the institute is subject to the condition that the institute obtains the orders of the Supreme Court to the effect that such permission would not violate the earlier order of the Hon'ble Supreme Court to the effect that 15th July would be the last date for grant of such permission in the relevant academic year*.

Accordingly, the order granting permission was subject to the approval of the Supreme Court. The college left with no option approached the Supreme Court under article 32 of the Constitution 'seeking a direction that the conditional permission granted to it by the central government on 17-8-2010 under section 10-A (4) of the Act for the academic year 2010-2011 be made "absolute" by declaring that the permission did not violate the order of this court in *Mridul Dhar* v. *Union of India'*.[18] The central government was of the view that the decision in *Mridul Dhar* case[19] had directed that 15th July should be the last date for the grant of such permissions. The Supreme Court came down heavily on the central government for shrugging its responsibility and shifting it on the Supreme Court. In the court's view, the order passed by the government raised 'issues of propriety and violation of the constitutional scheme relating to separation of powers and independence of judiciary'. This was more so when the exercise of power by the government under the Act was not subject to control or supervision of the court. The statute had no requirement of the orders passed being made subject to confirmation or approval of the Supreme Court. The court wondered whether the Supreme Court could itself be made a part of the decision making process. Could the government shift the

16 (2011) 4 SCC 623.
17 *Id.* at 626.
18 (2005) 2 SCC 65.
19 *Ibid.*

responsibility of taking the decision to the Supreme Court? The tone of dissatisfaction was evident in the court's voice when it said: [20]

> A stipulation by an authority entrusted with the power to consider and grant permissions/recognitions, while granting such permission/recognition, that the applicant should seek and obtain an order from a court, approving the grant of such permission/recognition, as a condition precedent to give effect to such grant, would be improper and irregular. It amounts to failure to take responsibility or shirking the responsibility in exercising the power in accordance with the Act and the Regulations. Further, such a requirement by the executive, amounts to attempting to make the judiciary a part of the decision-making process by the executive. Judiciary has no role to play under the Act or the Rules in granting permission or renewal of permission. The power of judicial review is not intended to be exercised to grant "advance rulings of administrative approvals" to validate executive orders. Neither the Central Government, nor DCI, can shift the onus of decision-making to the courts, blurring and obliterating the line of separation between the executive and the judiciary. Any attempt by the executive authority to provide itself a protective cover against challenges or criticism to its action, by "passing the buck" to the judiciary in regard to final decisions, should be resisted and avoided. The orders of the Central Government granting or refusing permission are subject to judicial review at the instance of any affected party, and the same cannot be pre-empted by making the Supreme Court a party to the decision-making process of the executive… .

What is even more intriguing is that the decision in *Mridul Dhar* case[21] had not even directed that permission be given before a particular date. The court was categorically of the view that the paragraph in *Mridul Dhar* case[22] 'referring to a time schedule stipulating 15th July as the last date for issue of letter of permission by the central government does not relate to dental colleges nor to permission/ renewal of permission to dental colleges. The said time schedule is not even a direction of this court, but is only an extract from the Medical Council of India Establishment of Medical College Regulations, 1999 applicable only to medical colleges'.[23] In fact, subsequent to the decision, the dental council of India had, in consultation with the central government, framed the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Courses of Study or Training and Increase of Admission Capacity in Dental College) Regulation, 2006 which itself provided that the last date for grant of permission by the government and renewal of permission by the government was 15th July. There was, therefore, no case for the court directing that the permission be granted only before 15th July. In fact, the regulations themselves contemplated that the government

20 *Supra* note 16 at 628-629 (emphasis supplied).
21 *Supra* note 18.
22 *Ibid.*
23 *Supra* note 16 at 629.

could modify the time schedule, for reasons to be recorded in writing, in respect of any class or category of applications. Having regard to the circumstance of the case, the court held:[24]

> If the Central Government was of the view that a dental college deserved renewal of permission in accordance with the Act and the Regulations, it should grant such permission. If it was of the view that the dental college did not deserve renewal of permission, it should refuse the permission. If the Central Government felt that the last date for granting renewal of permission was over and there was no justification for extending the time schedule, it could refuse the renewal of permission on that ground. On the other hand, if the Central Government was of the view that the applicant College had complied with the requirements and was not at fault, and it was not responsible in any manner for the delay in considering the application, and there were other applicants of similar nature, it could have recorded those reasons in writing and extended the time schedule for that category of applicants and then granted the renewal of permission, provided the last date for admissions had not expired…

The court accordingly quashed the condition requiring the approval of the court. As the court had refused to grant the approval, not to put the petitioner college through further hardship, the court moulded the relief in favour of the petitioner. In the facts and circumstances of the case, the court was of the view that the order granting permission should be deemed to have been made after modifying the time schedule in terms of the 2006 regulations. The court accordingly held that the granting of permission be considered to have been validly made.

Having said all this and knowing fully well how the case arose before it, the Supreme Court did not feel uncomfortable in suggesting a modified time schedule for granting of permissions in future. In the court's view, it was necessary to emphasise the distinction between the application for fresh permission and application for renewal of permission. The court accordingly suggested thus:[25]

> In view of the fact that the inspection and verification in regard to renewal of permission for the second, third, fourth and fifth years will be restricted only to the consideration of the additional faculty and additional infrastructure, it may not be necessary to apply the lengthy time schedule prescribed for initial permission, to renewal of permissions during the next four years. The DCI Regulations presently contemplate almost similar time schedules in regard to applications for establishment of new dental colleges, for opening of higher courses of study, for increase of admission capacity and for renewal of permissions, with 15th July being the last date both for grant of permission or renewal of permission. DCI and the Central Government may consider amendment to the DCI Regulations suitably to provide for a shorter and distinct time schedule for renewal of permissions,

24 *Id.* at 631-632.
25 *Id*. at 634.

> so that the dental colleges could file applications till the end of February and the process of grant or refusal of renewal is completed by 15th of June.

One wonder as to who is to blame for the conditional order granted in this case - the executive which shies from performing its duties, or the judiciary which is more than happy to pass directions at the drop of a hat.

Non-interference in policy matters

Public authorities must have freedom in framing policies. It is true that discretion in such matters is not unfettered and judiciary has control over all executive actions, but it cannot be denied that the courts are ill-equipped to deal with these matters. In complex social, economic and commercial matters, decisions have to be taken by government authorities keeping in view several factors, and it is not possible for courts to consider competing claims and conflicting interests and to conclude which way the balance tilts.[26]

The decision in *Union of India* v. *J.D. Suryavanshi*[27] arose out of a public interest litigation filed by a practising advocate before the Gwalior bench of the Madhya Pradesh High Court praying for issue of certain directions to the railways which included rescheduling train timing of certain trains, adding new AC coaches to certain trains and diverting the routes of certain trains. The high court had passed a series of *interim* orders in compliance with which the railways made changes in the timings of several trains. They also added AC coaches to several trains. In some cases, the railway administration had no choice but to inform the high court that the demand for further coaches could not be met either due to technical reasons or lack of full capacity utilisation in regard to the existing coaches. The high court unfortunately was not satisfied. The appeal before the Supreme Court arose from one such order of the high court directing the railway administration to provide full AC coaches in the intercity express. While issuing the said direction, the high court had observed 'needless to say the benches of this prestigious high court are smoothly functioning at both cities, viz., Gwalior and Indore,' thereby implying that AC coach was necessary in the intercity express because the Madhya Pradesh High Court had benches at Gwalior and Indore.

The Supreme Court found the approach of the high court very objectionable. 'We shudder to think what would happen if every high court starts giving directions to the railways to provide additional trains, additional coaches and change timings wherever they feel that there is a shortage of trains or need for better timing'. The tone of dissatisfaction with the conduct of the high court was visible when the court said:[28]

> This Court has repeatedly warned that courts should resist the temptation to usurp the power of the executive by entering into arenas which are exclusively within the domain of the executive. How many coaches should

26 See *Bennett Coleman & Co.* v. *Union of India* (1972) 2 SCC 788 at 801; *Ranjit Singh* v. *Union of India* (1980) 4 SCC 311, 313-314 and *State of Maharashtra* v. *Lok Shikshan Sanstha* (1971) 2 SCC 410.

27 (2011) 13 SCC 167.

28 *Id.* at 173.

> be attached, what types of coaches are to be attached, on which lines what trains should run, what should be their timings and frequency, are all matters to be decided by the Railway Administration using technical inputs, depending upon financial, administrative, social and other considerations. This Court has repeatedly held that courts should not interfere in matters of policy or in the day-to-day functioning of any departments of Government or statutory bodies. Even within the executive, the need for separation of roles has been voiced.…
>
> The record of the case shows that Railways had made all efforts to comply with the requirements/earlier directions of the High Court. Courtesies extended by the Railways should not be taken as readiness to comply with impractical suggestions and unreasonable directions…

In view of this, the court not only set aside the *interim* order but also requested the high court to dispose of the writ petition itself without any further directions of the similar nature.

One wonders who really is to blame for the attitude and the approach of the high court. Can the Supreme Court itself claim that it has not taken such tasks in the past? The only difference being that there are no appeals from such *interim* orders passed by the Supreme Court.

The facts from which the decision in *State of Jharkhand* v. *Ashok Kumar Dongi*[29] arose are also not different. The State of Jharkhand framed the Jharkhand Primary Teachers Appointment Rules, 2002 providing for appointment of teachers in primary schools. In terms of the rules, the Jharkhand public service commission issued an advertisement inviting applications for filling up the vacancies of the teachers in government primary schools. Writ petitions were filed before the Jharkhand High Court praying that the state government be directed to consider the case of the petitioners for appointment against the entire vacancies of primary school teachers and not to restrict their candidature only to the vacant posts of physical trained teachers. The high Court allowed the writ petition directing the state government to make appointment of physical trained teachers at least on five per cent posts of the total vacancies of the primary teachers. While coming to this conclusion, the high court relied upon the policy followed in the State of Bihar which operated in the State of Jharkhand before it came into existence as a separate state.

The Supreme Court in appeal set aside the decision of the high court. In the court's view, how many posts of primary school teachers be filled up by physical trained candidates was essentially a question of policy for the states to decide. The court held that it was not advisable for the courts to direct the government to adopt a particular policy which it deems fit and proper. The court also expressed the view that lack of resources at its disposal prevented it from taking a decision on such policy issues. It said:[30]

> … Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the courts do not

29 (2011) 13 SCC 383.

30 *Id.* at 389.

> have the satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.
>
> … Further, we do not have the statistics as regards to the number of primary schools, the resources which the Government can spend for providing physical trained teachers and their need. In such a situation, any direction in matters of policy is uncalled for.

The Supreme Court accordingly held that the High Court erred in directing the state government to fill up five per cent of vacancies of primary school teachers from physical trained teachers.

Change of policy with the change of government

In *State of T.N.* v. *K. Shyam Sunder,*[31] appeals had been preferred against the decision of the Madras High Court striking down section 3 of the Tamil Nadu Uniform System of School Education (Amendment) Act, 2011 and directing the state authorities to implement the provisions of the Tamil Nadu Uniform System of School Education Act, 2010. In the State of Tamil Nadu, there had been different boards imparting basic education to students up to 10th standard, namely, state board, matriculation board, oriental board and anglo-indian board. Each board had its own syllabus and prescribed different types of textbooks. In order to remove disparity in the standard of education under different boards, the state government appointed a committee for suggesting a uniform system of school education. The committee submitted its report in 2007. Another committee was appointed to implement its recommendations. Meanwhile, the Right of Children to Free and Compulsory Education Act, 2009 was enacted by the Parliament which provided for free and compulsory education to every child of the age of 6 to 14 years in a neighborhood school till 8th standard. The Act further provided that the curriculum and the evaluation procedure would be laid down by an academic authority to be specified by the state government.

The cabinet of the State of Tamil Nadu took a decision to implement the uniform system of school education in all schools in the state, form a common board by integrating the existing four boards, and introduce textbooks providing for the uniform syllabus in standards I and VI in the academic year 2010-2011 and in standards II to V and VII to X in the academic year 2011-2012. To give effect to the decision of the cabinet, the Tamil Nadu Uniform System of School Education Ordinance, 2009 was promulgated by the state government in 2009. The Ordinance came to be replaced by the 2010 Act. The Act provided for the establishment of a state common board of school education. The Act *inter alia* made provisions for the imposition of penalties for willful contravention of its provisions. It also enabled the state government to issue binding directions to the board. Section 3 of the Act, which provided for the commencement of the Act, stated that the Act would commence 'in standard I and VI from the academic year 2010-2011' and 'in standards II to V and VII to XI from the academic year 2011-2012'.

31 (2011) 8 SCC 737.

The 2010 Act was challenged before the Madras High Court. The high court struck down certain provisions of the Act. At the same time, it directed the government to bring the provisions of the 2010 Act in consonance with the 2009 Act of Parliament. It was directed to suitably amend and implement the provisions of the Act. An appeal against the decision to the Supreme Court was dismissed.

However, there was a change in the state government following the general elections to the state assembly in 2011. The new government amended the 2010 Act by 2011 amendment, by which it substituted section 3 by a new section providing that the Act would commence only from such academic year as the state government may notify. In effect the new government delayed the implementation of the provisions of the Act. The amendment was challenged before the high court. The high court stayed the operation of the 2011 amendment but gave liberty to the government to conduct a study on the common syllabus and common textbooks. In appeal to the Supreme Court, the government was directed to constitute an expert committee to implement the uniform education system under the 2010 Act. The recommendations of the committee were to be examined by the high court. An expert committee was accordingly constituted which submitted a joint report before the High Court of Madras. The high court, after considering the report, struck down section 3 of the 2011 amendment Act with a direction that the government shall distribute the textbooks printed under the uniform system of education to enable the teachers to commence classes. In appeal, the Supreme Court affirmed the view of the high court *inter alia* holding:[32]

> … unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of the rule of law.

A similar argument had been unsuccessfully urged in *ITC Limited* v. *State of Uttar Pradesh*.[33] The New Okhla Industrial Development Authority (NOIDA) had allotted plots for the construction of 5, 4 and 3 star hotels. However, soon after the allotment of the plots, writ petitions were filed in the High Court of Allahabad challenging the allotment of the hotel sites by NOIDA on the ground that the allotment had been made at very low prices. The high court directed the government to exercise its power of revision under section 41(3) of the UP Urban Planning and Development Act, 1973 read with section 12 of the UP Industrial Area Development Act, 1976 and take an independent re-look at the allotments. The state government examined the matter and concluded that the allotments made were irregular. It was revealed that the allotments of commercial plots had been made for industrial purposes at industrial rates without getting the land use changed from commercial to industrial in accordance with the regulations and without obtaining the permission of the state government. It was further revealed that plots earmarked for commercial

32 *Id.* at 761.
33 (2011) 7 SCC 493.

use in a commercial area were allotted at rates applicable to industrial plots without calling for competitive bids. It, therefore, directed NOIDA to cancel the allotments. NOIDA implemented the directions by issuing cancellation letters. This cancellation of allotments came to be challenged before the court. It was contended that the decision to cancel the allotment had been taken merely because there had been a change in the government. As the allotments had been made by the previous government, the new government did not wish to approve any of its policies. Rejecting the said submission, the court held:[34]

> …This is not a case where as a consequence of change in Government, the new Government has reviewed the decision relating to hotel site allotment, merely because it was a decision of the previous Government. Nor is it a case where any new policy of the new Government, being at variance with the policy of the previous Government. …
>
> The orders dated 8-9-2008 were made in view of the final order of the High Court and the interim order of this Court directing reconsideration. We therefore, reject the contention that the decisions dated 1-8-2007 and 8-9-2008 of the State Government were the result of any ulterior motive to interfere with the policies or decisions of the earlier Government. The decision of the State Government in revision, is not based on any different policy, but based on its finding that the existing regulations and policies of Noida Authority were violated.

***Quasi*-judicial authorities**

A tribunal 'includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions'.[35] Though tribunals are clad in many of the trappings of a court and they exercise *quasi*-judicial functions, they are not full-fledged courts.[36] The primary question for determination before the Supreme Court in *Secretary, APD Jain Pathshala* v. *Shivaji Bhagwat More*[37] was whether the state government could, by an executive order, create a quasi-judicial authority. In answering this question, the court had regard to the relevant constitutional provisions. The court noted that chapter VI of the Constitution dealt with subordinate courts. Article 233 relates to the appointment of district judges. Article 234 relates to the recruitment of persons other than district judges to the judicial services and provides that no such appointment shall be made by the Governor without consultation with the state public service commission and with the high court. Article 247 provides that Parliament may by law provide for the establishment of additional courts for the better administration of laws with respect to a matter enumerated in the union list. Part XIV-A of the Constitution deals with tribunals. Article 323A provides for the creation of administrative tribunals. Article 323B provides that the

34 *Id.* at 523.
35 *Durga Shankar Mehta* v. *Raghuraj Singh* (1955)1 SCR 267.
36 *Bharat Bank* v. *Employees* (1950) SCR 459.
37 (2011) 13 SCC 99.

appropriate legislature may by law provide for the adjudication or trial by tribunal of any disputes, complaints or offences with respect to all or any of the matters specified in clause (2) thereof, with respect to which such legislature has power to make laws. The matter enumerated in article 323B(2), the court noted, does not include disputes relating to employees of educational institutions. But the court was aware that article 323A and 323B enabling the setting up of tribunals, were not to be interpreted as prohibiting the legislature from establishing tribunals not covered by the said articles as long as they had legislative competence.[38] In this background, the court held:[39]

> Apart from constitutional provisions, tribunals with adjudicatory powers can be created only by statutes. Such tribunals are normally vested with the power to summon witnesses, administer oath, and compel attendance of witnesses and examine them on oath and receive evidence. Their powers are derived from the statute that created them and they have to function within the limits imposed by such statute. It is possible to achieve the independence associated with a judicial authority only if it is created in terms of the Constitution or a law made by the legislature.
>
> Creation, continuance or existence of a judicial authority in a democracy must not depend on the discretion of the executive but should be governed and regulated by appropriate law enacted by a legislature…

In coming to this conclusion, the court seems to display an apprehension of the executive constituting and setting up quasi-judicial authorities. The court noted thus:[40]

> If the power to constitute and create judicial tribunals by executive orders is recognised, there is every likelihood of tribunals being created without appropriate provisions in regard to their constitution, functions, powers, appeals, revisions and enforceability of their orders, leading to chaos and confusion. There is also very real danger of citizen's rights being adversely affected by ad hoc authorities exercising judicial functions, who are not independent or competent to adjudicate disputes and render binding decisions. Therefore, the executive power of the State cannot be extended to creating judicial tribunals or authorities exercising judicial powers and rendering judicial decisions.

In view of this, the court held that it was not permissible for the state to set up *quasi*-judicial authorities by executive orders.

Administrative and *quasi*-judicial authority

The question for determination before the Supreme Court in *Automotive Tyre Manufacturers Association* v. *Designated Authority*[41] related to the nature of

38 See *State of Karnataka* v. *Vishwabharathi House Building Coop. Society* (2003) 2 SCC 412.

39 *Supra* note 37 at 109.

40 *Id.* at 110.

41 (2011) 2 SCC 258.

proceedings before the designated authority appointed by the central government for the purpose of levy of anti-dumping duty under section 9A of the Customs Tariff Act, 1975. The court was aware that even though the aim of both administrative and *quasi*-judicial decision was to arrive at a just decision, it was not easy to draw a line between the two.

In answering the question, the court examined in detail the scheme of the 1975 Act as well as the Custom Tariff (Identification, Assessment and Collection of Anti Dumping Articles and determination of Inquiry) Rules, 1995 and came to the conclusion that the designated authority exercised *quasi*-judicial functions. The court noted that the designated authority determined the rights and obligations of the interested parties by applying objective standards based on the material produced by the parties by applying the procedure and principles laid down under the 1995 Rules. The court held that it was manifest that while determining the existence, degree and effect of the alleged dumping, the designated authority determined a *lis* between persons supporting the levy of duty and those opposing the said duty. In this background, the court held:[42]

> Rule 5 of the 1995 Rules provides that the DA shall initiate an investigation so as to determine the existence, degree and effect of any alleged dumping upon the receipt of a written application by or on behalf of the domestic industry; sub-rule (4) thereof empowers the DA to initiate an investigation suo motu on the basis of information received from the Commissioner of Customs or from any other source.
>
> When the DA has decided to initiate an investigation, Rule 6 requires that a public notice shall be issued to all the interested parties as mentioned in Rule 2(*c*) of the 1995 Rules, as also to industrial users of the product, and to the representatives of the consumer organisations in cases when the product is commonly sold at the retail level. It is manifest that while determining the existence, degree and effect of the alleged dumping, the DA determines a "lis" between persons supporting the levy of duty and those opposing the said levy.
>
> Further, it is also clear from the scheme of the Tariff Act and the 1995 Rules that the determination of existence, effect and degree of alleged dumping is on the basis of criteria mentioned in the Tariff Act and the 1995 Rules, and an anti-dumping duty cannot be levied unless, on the basis of the investigation, it is established that there is: (*i*) existence of dumped imports; (*ii*) material injury to the domestic industry; and (*iii*) a causal link between the dumped imports and the injury.
>
> Rule 10 of the said Rules lays down the criteria for the determination of the normal value, export price and margin of dumping, while Rule 11 deals with the determination of injury which according to Annexure II to the 1995 Rules is based on positive evidence and involves an objective

42 *Id*. at 292.

examination of both: (*a*) the volume and the effect of the dumped imports on prices in the domestic market for like products; and (*b*) the consequent impact of these imports on domestic producers of such products… It is evident that the determination of injury is premised on an objective examination of the material submitted by the parties. Moreover, under Rule 6(7) of the 1995 Rules, the DA is required to make available the evidence presented to it by one party to other interested parties, participating in the investigation.

It is also pertinent to note that Rule 12 of the 1995 Rules which deals with the preliminary findings, explicitly provides that such findings shall "contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected".

A similar stipulation is found in relation to the final findings recorded by the DA under Rule 17(2) of the 1995 Rules. Above all, Section 9-C of the Tariff Act provides for an appeal to the Tribunal against the order of determination or review thereof regarding the existence, degree and effect of dumping in relation to imports of any article, which order, obviously has to be based on the determination and findings of the DA.

The cumulative effect of all these factors leads us to an irresistible conclusion that the DA performs quasi-judicial functions under the Tariff Act read with the 1995 Rules.

III JUDICIAL REVIEW

Judicial review may be defined as the 'courts power to review the actions of other branches or levels of government; especially, the courts power to invalidate legislative and executive actions as being unconstitutional'.[43] The object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eyes of law.[44] For 'the very concept of administrative discretion involves a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred'.[45]

Appointment of the central vigilance commissioner

The decision in *Centre for PIL* v. *Union of India*[46] was perhaps the most highlighted case of the year under survey. The challenge there was to the appointment

43 *Black's Law Dictionary* 864 (8th Edn., 2004).

44 See *Sterling Computers Ltd.* v. *M & N Publications Ltd.* (1993) 1 SCC 445 and *Mahesh Chandra* v. *Regional Manager, U.P. Financial Corpn.* (1993) 2 SCC 279.

45 *Secy. of State for Education & Science* v. *Tameside Metropolitan Borough Council*, 1977 AC 1014.

46 (2011) 4 SCC 1.

of P. J. Thomas as the central vigilance commissioner (CVC). The decision blurred the very boundaries of what can and what cannot be reviewed by the courts. In sum and substance, the court struck down the appointment of P. J. Thomas on the ground that the selection committee, on the basis of whose recommendation the appointment had been made, did not have all the relevant materials on the background of the person they were recommending to the post. This background included information as to the pending criminal proceedings against the person and recommendations by authorities to initiate disciplinary proceedings against him.

P.J. Thomas had been appointed to the India Administrative Service (Kerala cadre). During the early 90's, he served as the Secretary, Department of Food and Civil Supplies, State of Kerala. There were allegations that the government in power then, had committed certain irregularities in the import of palmolein oil. These irregularities were the subject matter of report of the comptroller and auditor general of India (CAG) as well as the report of the Kerala Legislative Assembly. After the change of government in the subsequent elections, FIRs came to be registered against the then chief minister and other persons involved in the matter. P. J. Thomas was also one of the accused. Both the Kerala High Court and the Supreme Court rejected petitions seeking to quash criminal proceedings. The criminal proceedings are still pending before a special court. The CVC, on a reference being made to it, suggested that disciplinary proceedings be initiated against two civil servants involved in the whole affair, including P. J. Thomas. Despite several file notings indicating that departmental proceedings be initiated against P. J. Thomas, no proceedings were ever initiated. However, the commission changed its view subsequently when it noted that no formal case had been made against P. J. Thomas. That is where the matter stood.

The Department of Personnel and Training empanelled three officers including P. J. Thomas and forwarded the list of names to the selection committee under the Central Vigilance Commission Act, 2003 for the appointment of the CVC. The background note by the DoPT on P. J. Thomas which was put forward before the selection committee did not contain the reference to the adverse notings nor was reference to the earlier view of the CVC suggesting disciplinary proceedings placed before it. The selection committee by a majority recommended the appointment of P. J. Thomas to the post of the CVC. The prime minister approved the recommendation and the President accordingly appointed him to the post of CVC. This appointment came to be challenged before the Supreme Court.

The real question that the court had to grapple was not whether P. J. Thomas was a capable person for the post to which he had been appointed but what was the scope of review that the courts exercise in such cases? Fortunately, the court had a precedent to guide to the direction they should take in the form of decision in *N. Kannadasan* v. *Ajoy Khose*.[47] Unfortunately, despite the guidance, the court in *Centre for PIL*[48] failed to appreciate the real purport of the decision. It seems to have taken the observations in *N. Kannadasan*[49] "the superior courts must take into

47 (2009) 7 SCC 1.
48 *Supra* note 46.
49 *Supra* note 47.

consideration as to what is good for the judiciary as an institution and not for the Judge himself "to its heart. In setting aside the recommendation of the selection committee for the appointment of P. J. Thomas, the court held:[50]

> *We should not be understood to mean that personal integrity is not relevant. It certainly has a co-relationship with institutional integrity*. The point to be noted is that in the present case the entire emphasis has been placed by the CVC, the DoPT and the HPC only on the biodata of the empanelled candidates. None of these authorities have looked at the matter from the larger perspective of institutional integrity including institutional competence and functioning of the CVC. Moreover, we are surprised to find that between 2000 and 2004 the notings of the DoPT dated 26-6-2000, 18-1-2001, 20-6-2003, 24-2-2004, 18-10-2004 and 2-11-2004 have all observed that penalty proceedings may be initiated against Shri P. J. Thomas. Whether the State should initiate such proceedings or the Centre should initiate such proceedings is not relevant. What is relevant is that such notings were not considered in juxtaposition with the clearance of the CVC granted on 6-10-2008. Even in the brief submitted to the HPC by the DoPT, there is no reference to the said notings between the years 2000 and 2004. Even in the CV of Shri P. J. Thomas, there is no reference to the earlier notings of the DoPT recommending initiation of penalty proceedings against Shri P. J. Thomas. Therefore, even on personal integrity, the HPC has not considered the relevant material. The learned Attorney General, in his usual fairness, stated at the Bar that only the curriculum vitae of each of the empanelled candidates stood annexed to the agenda for the meeting of the HPC. The fact remains that the HPC, for whatsoever reason, has failed to consider the relevant material keeping in mind the purpose and policy of the 2003 Act.…
>
> We may reiterate that the *institution is more important than an individual*. This is the test laid down in SCC para 93 of *N. Kannadasan case*. In the present case, the HPC has failed to take this test into consideration.[51]

Exercise of discretion by a statutory authority

In *State of Rajasthan* v. *Sanyam Lodha,*[52] Sanyam Lodha had filed a public interest litigation before the High Court of Rajasthan complaining of discriminatory disbursement of relief under the Rajasthan Chief Minister's Relief Fund Rules, 1999. It was alleged that 'during the period January 2004 to August 2005, challans/ charge-sheets were filed in 392 cases relating to rape of minor girls; that out of them, 377 minor girls did not get any relief or assistance from the relief fund; 13 were granted relief ranging from Rs.10,000 to 50,000; one victim was given Rs.3,95,000 on 11-8-2004 and another victim was given Rs.5,00,000 on 25-6-2005'.[53] It had been contended that if the chief minister was of the view that monetary

50 *Supra* note 46 at 22.
51 *Ibid.*
52 (2011) 13 SCC 262.
53 *Id*. at 265.

relief should be granted to such victims, all similar victims of rape should be given monetary relief. The victims, it was urged, should be similarly treated. The high court allowed the writ petition holding that all minor victims of rape are required to be treated equally for the purpose of grant of relief by the chief minister under the relief fund. The Supreme Court in appeal reversed the decision.

A reference in this regard to the 1999 rules is essential to properly understand the controversy. Rule 4 of the 1999 rules provides that the annual income from the chief ministers fund should be spent for the following purposes:

(i) Famine, flood and accident relief;
(ii) hospital development and medical assistance;
(iii) general assistance;
(iv) security services' welfare assistance;
(v) child welfare relief and
(vi) development of the State, in the proportion of 50%, 25%, 10%, 5%, 5% and 5% respectively.

Rule 5 which gives discretion to the Chief Minister in the disbursement of funds states:

> This fund would be under the control of the Hon'ble Chief Minister and he would be able to sanction financial assistance up to any limit in any manner from this fund.

In view of this, the primary question for determination before the court was 'whether a rule could be interfered with merely on the ground that it vests unguided discretion'? In answering this question, the court noted that the chief minister was the head of the state government and was in charge of the day-to-day functions of the government. In situations where there was a need to immediately respond, the court noted, by providing relief, regular government machinery may be found to be slow and wanting, as it was bound by rules, regulations and procedures. Moreover, it may be possible that the existing law may not provide for grant of relief in some circumstances to needy victims. It was in such circumstances, the court noted, that the chief minister's relief fund was necessary and useful. In this background, the court concluded:[54]

> Whenever the discretion is exercised for making a payment from out of the Relief Fund, the Court will assume that it was done in public interest and for public good, for just and proper reasons. Consequently, where anyone challenges the exercise of the discretion, he should establish prima facie that the exercise of discretion was arbitrary, mala fide or by way of nepotism to favour undeserving candidates with ulterior motives. Where such a prima facie case is made out, the Court may require the authority to produce material to satisfy itself that the discretion has been used for good

54 *Id*. at 272.

> and valid reasons, depending upon the facts and circumstances of the case. But in general, the discretion will not be open to question.

However, habitual as the court has become to giving suggestions to the legislature, the court noted: [55]

> We may however note that the six specified purposes and their sub-heads enumerated in the Relief Fund Rules for grant of relief do not specifically include victims of ghastly/heinous crimes. It may be appropriate to include a sub-category relating to such victims under Category (*i*) or (*iii*) of Rule 4 of the Relief Fund Rules. Be that as it may.

IV LEGITIMATE EXPECTATION

The doctrine of legitimate expectation is the 'latest recruit' to a long list of concepts fashioned by courts for the review of administrative actions. 'A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice'[56] The doctrine made itself first felt in the English case of *Schmidt* v. *Secy. of State of Home Affairs,*[57] wherein it was held that an alien who was granted leave to enter United Kingdom for a limited period had a legitimate expectation of being allowed to stay for the permitted period. The courts have never look back since then.[58]

The State of Haryana had announced an industrial policy for the period of 01.04. 1988 to 31.03. 1997 by which incentive by way of sales tax exemption was to be given to the industries set up in backward areas in the state. The schedule to the Haryana General Sales Tax Rules, 1975 provided for a negative list of industries which were not to be covered by the exemption. Initially, 'solvent extraction plant' had not been in the negative list. In January, 1996, notice was given of the intention of the government to amend the rules. A draft for the information of persons likely to be affected by it was also circulated. Amendment in terms of the draft rules were notified on 16.12. 1996, whereby 'solvent extraction plant' was put in the negative list of industries not entitled to exemption. 'note 2'

---

55 *Id.* at 273.

56 *Halsbury Laws of England* (4th Edn.,) Re-issue, vol 1(1), paras 81, 151.

57 (1969) 2 Ch D 149.

58 See *Food Corporation of India* v. *Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71; *Union of India* v. *Hindustan Development Corpn.* (1993) 3 SCC 499; *National Building Construction Corpn.* v. *S. Raghunathan* (1998) 7 SCC 66; *Pawan Alloys and Casting (P) Ltd.* v. *U.P. SEB* (1997) 7 SCC 251; *Punjab Communications Ltd.* v. *Union of India* (1999) 4 SCC 727 and *Chanchal Goyal (Dr.)* v. *State of Rajasthan* (2003) 3 SCC 485.

appended thereto provided that 'the industrial units in which investment has been made up to 25% of the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefits related to the extent of investment made up to 03.01.1996'.

However, in May, 1997, the said rules were amended *inter alia* by omitting 'note 2' deeming to have always been omitted. Mahabir Vegetable Oils Private Limited applied for sales tax exemption which was rejected in terms of the omission of 'note 2'. In *Mahabir Vegetable Oils (P) Ltd.* v. *State of Haryana*[59] the Supreme Court had held that Mahabir Vegetable Oils had the legitimate expectation of being entitled to sales tax exemption pursuant to 'Note 2'. The government, the court had held, could not retrospectively omit 'Note 2' by which certain rights had accrued on the industrial units.

The question for determination before the Supreme Court in the second round of litigation was as to the quantum of exemption to which Mahabir Vegetable Oils was entitled to as the said question had been expressly left open by the court. The court had then noted that it was 'not concerned with the quantum of exemption to which the appellants may be entitled to, but only with the interpretation of the relevant provisions which arise for consideration before' it.[60] Based on that decision, the lower level screening committee held Mahabir Vegetable Oils entitled to exemption only till 16.12.1996, i.e., till the date of the amendment, putting the unit in the negative list. On appeal, the appellate authority affirmed the order. This order was challenged before the high court which held that once Mahabir Vegetable Oils had been held entitled to exemption, there was no need to further classify the benefit of the investment up to the date of amendment putting the unit in the negative list.

Accordingly, in the second round of litigation when the matter came up before the Supreme Court in *State of Haryana* v. *Mahabir Vegetable Oils Private Ltd.,*[61] the question for consideration was whether 'the exemption had to be granted upon the entire investment or the investment made up till 16.12.1996, i.e., the date of amendment putting the unit in the negative list'.[62] In reversing the judgment of the high court granting the unit the exemption for the entire investment, the Supreme Court held that the doctrine of promissory estoppel would not be applicable to the case before it as the unit had been put in the negative list in public interest as the industry concerned was a polluting industry. The court further held that 'an exemption is nothing but a freedom from an obligation which an assessed is otherwise liable to discharge' and 'the beneficiary of a concession has no legally enforceable right against the government to grant a concession except to enjoy the benefits of the concession during the period of its grant. The right to exemption or concession is a right that can be taken away under the very power in exercise of which the exemption or concession exemption is granted'. The

59 (2006) 3 SCC 620.
60 *Id*. at 631.
61 (2011) 3 SCC 778.
62 *Id.* at 781.

clinching factor however which disentitled Mahabir Vegetable Oils to grant of exemption beyond 16.12.1996, in the courts opinion was that:[63]

> Furthermore, in the fact of the instant case, it cannot be said that the respondent had altered its position relying on the promise inasmuch as even before steps were taken by the respondent for laying the solvent extraction plant, the petitioner had made its intention clear through its notice dated 03.01.1996 that it was likely to amend the law/Rules in respect whereof a draft was circulated for information of persons likely to be affected thereby so as to enable them to file objections and suggestions thereto. Amendments in the terms of the said draft Rules were notified on 16-12-1996 substituting Schedule III appended to the Rules whereby and whereunder the solvent extraction plant was included therein.

In *AP Transco* v. *Sai Renewable Power*,[64] the Supreme Court held that 'for the principle of estoppels to be attracted, there has to be a definite and unambiguous representation to a party which then should act thereupon and then alone the consequences in law can follow'. In the court's view, representations were mere proposals sent by the central government to the state government, which the state government undertook to consider as per their needs, could be treated as nothing more than policy guidelines. The court held as there had been no 'definite and clear promise' to the developers by the authorities who were seeking exemption from payment of tariff, they could not rely on the principle of promissory estoppel. The court emphasised that contractual rights trumped over estoppel rights which arose primarily from equity. Even if it was assumed that there was some sort of an unequivocal promise or representation to the developers, the review of tariffs had been taken only after the periods specified under agreements entered into by them with the authorities was over. Once those agreements were signed and became enforceable, contractual obligations could not be frustrated by the aid of the doctrine of promissory estoppel.

V DELEGATED LEGISLATION

Laying of notification before the legislature

As per the facts in *K.T. Plantation (P) Ltd.* v. *State of Karnataka*[65] poet Rabindranath Tagore's grand-niece Devika Rani Roerich and her Russian born husband Svetoslav Roerich owned a large estate in Bangalore. Some of it they owned and some were given by the state. The estate was so large that it would have been subject to the ceiling limit of the Land Reforms Act, 1961, had the land not been utilised for linaloe cultivation by the couple. Section 107 of the Act *inter alia* exempted lands 'used for the cultivation of linloe'. However, this section was made subject to section 110 which granted the state government power to 'direct that any lands referred to in sections 107 and 108 shall not be exempt from' the application

63 *Id.* at 789.
64 (2011) 11 SCC 34.
65 (2011) 9 SCC 1.

of the Act. The provisions of the Act further required that the notifications made under the Act, including those made under section 110, to be laid before the state legislature.

Throughout their life, the couple enjoyed the benefits of the exemption under the Act and were, therefore, not required to surrender their excess lands to the state. However, as the couple had no heirs, to prevent the estate from falling into the wrong hands, the state government sought to acquire the estate of the couple to preserve it. In March, 1994, the government issued a notification under section 110 withdrawing the exemption granted for the lands used for cultivation of linaloe under section 107. The notification was never laid before the state legislature. Petitions were filed challenging the acquisition of land by the withdrawal of the acquisition. When the matter came up for hearing before the Supreme Court it, pending disposal of the matter, it directed: [66]

> Pending hearing and final disposal of these civil appeals and in view of the judgment of this Court in *Quarry Owners' Assn.* v. *State of Bihar*,[67] we hereby direct the State Government to place before both the Houses of the State Legislature the Notification dated 08.03.1994 issued under Section 110 of the Karnataka Land Reforms Act, 1961, as published in the Karnataka Gazette on 11.03.1994, with all relevant documents/information annexed to the affidavit dated 22.02.2011, filed by the Principal Secretary, Revenue Department, Government of Karnataka, Bangalore.

The court at the time of the pronouncement of the judgment noted 'that non-laying of the notification dated 08.03.1994 before the state legislature has not affected its validity or the action taken precedent to that notification'. As it had by its order directed the state government to place the notification before both the houses of the state legislature, the defect, if any, of not placing the notification got cured. As to the challenge to the notification on other grounds, the court noted:[68]

> We also find no force in the contention that opportunity of hearing is a precondition for exercising powers under Section 110 of the Act. No such requirement has been provided under Section 107 or Section 110. When the exemption was granted to the Roerichs no hearing was afforded so also when the exemption was withdrawn by the delegate.
>
> It is trite law that exemption cannot be claimed as a matter of right so also its withdrawal, especially when the same is done through a legislative action. Delegated legislation which is a legislation in character, cannot be questioned on the ground of violation of the principles of natural justice, especially in the absence of any such statutory requirement. Legislature or its delegate is also not legally obliged to give any reasons for its action while discharging its legislative function. …

66 *K.T. Plantation (P) Ltd.* v. *State of Karnataka* (2011) 9 SCC 146.
67 (2000) 8 SCC 655.
68 *Supra* note 65 at 29.

Status of statutory regulations

PEPSU road transport corporation was constituted under the Road Transport Corporation Act, 1950. Section 45 of the Act authorizes the corporation to frame regulations for the administration of the affairs of the corporation. In exercise of the powers conferred by the said section, the corporation framed the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992 for the purpose of regulating the pension scheme formulated by the corporation. Regulation 4 envisages the condition of exercise of the option within a period of six months from the date of issue of regulations by an employee in order to avail the pensionary benefits under the scheme. Regulation 4 entitled an employee joining after leave or suspension to exercise his option for pension scheme within the period of six months from the date of his joining.

In *PEPSU RTC* v. *Mangal Singh*[69] the Supreme Court considered whether the persons before it were eligible under the pension scheme despite their non-compliance with the conditions of exercising the option within a stipulated time period under the 1992 Regulations. It had been contended before the court that the persons were ineligible to claim any benefit under the regulations framed by the corporation. The court held:[70]

> It is well-settled law that the regulations made under the statute laying down the terms and conditions of service of the employees, including the grant of retirement benefits, have the force of law. The regulations validly made under the statutory powers are binding and effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms and conditions laid pensionary benefits under the pension scheme since they had failed to comply with the conditions stipulated under the regulations. In this background the court was also required to deal with the nature of down in the regulations as a legal compulsion. Any action or order in breach of the terms and conditions of the regulations shall amount to violation of the regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.

The court accordingly held that the regulations being statutory in nature, compliance with them was mandatory and could not be waived off.

VI PROCEDURE FOR APPOINTMENT OF MEMBERS OF ADMINISTRATIVE TRIBUNALS

The central government framed rules in the year under survey for the appointment of members of the tribunal in relation to the central administrative tribunal and state administrative tribunals constituted under the Administrative Tribunals Act, 1985.

---

69 (2011) 11 SCC 702.

70 *Id.* at 713.

Composition of the selection committee

Selection of members of the central administrative tribunal

As per rule 3(1), a selection committee for the purpose of selection of members of the central administrative tribunal shall consist of (i) a sitting judge of the Supreme Court nominated by the Chief Justice of India as chairman; (ii) Chairman, Central Administrative Tribunal as member; (iii) Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) as member; and (iv) Secretary to the Government of India, Ministry of Law and Justice (Department of Legal Affairs) as member.

Selection of members of the state administrative tribunals

Rule 3(2) provides that selection committee of the concerned state government for the purpose of selection of members of the concerned state administrative tribunal consist of (i) Chief Justice of the High Court of the concerned state as chairman, (ii) Chief Secretary of the concerned state government as member; (iii) Chairman of the State Administrative Tribunal of the concerned state as member; and (iv) Chairman of the Public Service Commission of the concerned state as a member.

Procedure for inviting applications and proceeding of candidature

Central administrative tribunal

Rule 5(1) provides that the selection committee referred in sub-rule (1) of rule 3 shall devise its own procedure or lay down guidelines for inviting applications and for the selection of members of the central administrative tribunal. The selection committee shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training after writing to the various cadre controlling authorities. The central government shall, after taking into consideration the recommendations of the selection committee, and in consultation with the Chief Justice of India in accordance with the provisions contained in sub-section (3) of section 6, make a final list of persons for appointment as members of the central administrative tribunal.

State administrative tribunal

According to rule 5(2), the selection committee referred to in sub-rule (2) of rule 3, the concerned state government shall devise its own procedure or lay down guidelines for inviting applications and for the selection of the members of the administrative tribunal of the state concerned. The selection committee shall recommend persons for appointment as members from amongst the persons on the list of the candidates prepared by the Chief Secretary or Secretary, General Administration Department or Personnel Department of the state government after writing to the various cadre controlling authorities of the state. The state government shall, after taking into consideration the recommendations of the selection committee, make a list of persons selected and send the same with its recommendations to the central government who shall in consultation with the Chief Justice of India and in accordance with the provisions contained in sub-section (4) of section 6, appoint members of the administrative tribunal of the state concerned.

There is serious doubt whether it is practicable to send the list of the selected candidates with its recommendations to the central government which shall consult the Chief Justice of India for the appointment of member of the administrative tribunal of the concerned state.

Meeting of the se1ection committee

The selection committee shall normally hold its meetings at New Delhi in the case of the central administrative tribunal and at the state capital of the state concerned in the case of the state administrative tribunal or at such other place as may be decided by the chairman of the concerned selection committee by recording reasons for the change of the venue of the committee. The notice or agenda for meeting of the selection committee shall be issued in advance. The date and venue for the meeting shall be fixed in consultation with the chairman of the committee. The quorum for the meeting at a selection committee shall be the chairman and at least one other member.

Consultation with the Chief Justice of India

For selection of a member of the central administrative tribunal, Chief Justice of India shall be consulted in accordance with the provisions of sub-section (3) of section 6 and the recommendation of the selection committee referred to in sub-rule (1) of rule 3 shall accordingly be placed before him for his views. The recommendations of the selection committee, together with the views of the Chief Justice of India, shall be submitted to the competent authority for orders.

Consultation with the Governor

For selection of a member of state administrative tribunal, the Governor of the concerned state shall be consulted by the state government and, for this purpose, the recommendations of the selection committee referred to in sub rule (2) of rule 3 shall be placed before him. After consulting the concerned Governor under sub-rule (l), the recommendations of the selection committee together with the views of the Governor shall be forwarded to the central government and that government shall seek the orders of the competent authorities.

This provision seems to be too complicated and time consuming. So far as the constitution of state administrative is concerned, central government should not have any interference in this regard.

VII CONCLUSION

What has the survey revealed then? Is the pattern consistent? Does the court speak with one voice when it comes to issues dealing with administrative law? The stand of non-interference of the court with policy decisions has remained firm.[71] Situations where it has interfered were clearly where the need for interference existed.[72] The jury is still out on whether the court over-stepped limits in certain

71 *Union of India* v. *J D Suryavanshi* (2011) 13 SCC 167 and *State of Jharkhand* v. *Ashok Kumar Dongi* (2011) 13 SCC 383.

72 *Supra* note 31.

situations.[73] It has made itself clear that it would not permit the executive to hide behind it while taking decisions.[74] It still shows reluctance in trusting completely the executive.[75] But the court has not lightly interfered with a validly taken decision,[76] especially, not on technical grounds.[77] It has also not allowed fanciful claims of legitimate expectation.[78]

73 *Supra* note 46.
74 *Supra* note 16.
75 *Supra* note 37.
76 *Supra* note 52.
77 *Supra* note 65.
78 *State of Haryana* v. *Mahabir Vegetable Oils Pvt. Ltd.* (2011) 3 SCC 778 and *A P Transco* v. *Sai Renewable Power* (2011) 11 SCC 34.