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ADMINISTRATIVE LAW

*SS Jaswal**

I INTRODUCTION

FAIRNESS AND accountability in the functioning of administration are the cardinal principles of any administrative process. Over the years, Indian judiciary has ensured a conscious process of developing a comprehensive system of administrative law which regulates and controls abuse of power. Our courts have expanded the grounds and scope of judicial review in order to include proportionality, irrationality, illegality and procedural impropriety.[1] In order to protect human rights violation, our courts have actively and rigorously looked for principles of natural justice. The scope of judicial remedy has been enlarged,[2] the principle of legitimate expectation have time and again challenged and questioned governmental morality,[3] rules pertaining to *locus standi* has been widened.[4] It has been ensured that need for a speaking order are stressed upon in administrative decision making process. The courts have now even enforced constitutional boundaries on administrative actions in order to ease out any inevitable tension between executive and judiciary.[5] The focus is to meet ends of justice and for that matter procedural as well as substantive satisfaction of the government is not beyond judicial scrutiny.[6] Having said this withdrawal of courts from policy issues, having enormous social and economic consequences for people, is a concern having future repercussion.[7]

The year 2015 has witnessed how courts have shown reluctance in the matters concerning policy; although whenever a need arose they did not shy away. The great legacy of developing new rules and principles has taken a back seat. However, this

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1 See SS Jaswal, Administrative Law, XLVIII *ASIL* 1 (2012).

2 *Supreme Court Advocates-on-Record Association* v. *Union of India,* AIR 2016 SC 117.

3 *Pratap Kishore Panda* v. *Agni Charan Das,* 2015 (11) SCALE 609.

4 *Rajendra Shankar Shukla* v. *State of Chhattisgarh,* AIR 2015 SC 3147.

5 *Sanjiv Rajendra Bhatt* v. *Union of India,* 2015 (10) SCALE 651.

6 See SS Jaswal, Administrative Law, XLX *ASIL* 1 (2014).

7 *Union of India* v. *N.S. Rathnam & Sons* (2015) 10 SCC 681.

did not by any means diminish the role judiciary in contributing towards contemporary constitutional development-both in perception and performance.[8]

II EXECUTIVE ACTION

Enquiry will be vitiated if documents and list of witnesses are not supplied

Executive agencies must be rigorously held to the standards by which it professes its action to be judged. In *Pawan Kumar Agrawala* v. *General Manager-II and Appointing Authority State Bank of India*,[9] disciplinary proceedings were initiated against the appellant by issuing charge sheet alleging that he had influenced branch manager of respondent bank to sanction cash credit facility without disclosing an earlier loan of the borrower, therefore, failed to protect the interests of the bank. Another charge was relating to illegal grant of cash facility, which was sub divided into six allegations. Charges were denied by appellant, hence, an enquiry officer was appointed for the disciplinary proceeding. Certain allegations were proved; therefore, appellant was removed from service without giving an opportunity to appellant. The case came *via* appeal against the ruling passed by the division bench of high court and the apex court after referring various national and international cases[10] and taking guidance from *Deepali Gundu Surwase* v. *Kranti Junior Adhyapak Mahavidyalaya*,[11] set aside the orders of the division bench imposing the penalty of reduction of one increment to the appellant for one year restored and modify the order of the single judge with regard to award of reinstatement with full back wages for the period from the date of removal till the date of the appellant attaining the age of superannuation, on the basis of periodical revisions of salary to the appellant herein and deduct the pension amount from the back wages payable to the appellant.

Trial court to work on the merits

In *Rajdeep Sardesai* v. *State of Andhra Pradesh*,[12] the Supreme Court took cognizance of the argument that the reputation of a person is as important as the freedom of press and hence one cannot be given preference over the other. The apex court held that it is important for the trial court to work on the merits of the case and

8 See IP Massey, "Administrative Law," XLV *ASIL* 2 (2009).

9 2015 (13) SCALE 45.

10 See generally, *State Bank of India* v. *K.P. Narayanan Kutty* (2003) 2 SCC 449; *S.A. Venkataraman* v. *UOI*, AIR 1954 SC 375; *Union of India* v. *T.R. Varma* AIR 1957 SC 882; *Rashid Ahmed* v. *Municipal Board, Kaira-na,* AIR 1950 SC 163 (A); *K.S. Rashid and Son* v. *The Income-tax Investigation Commission,* AIR 1954 SC 207 (B); *Punjab National Bank* v. *Kunj* (1998) 7 SCC 84; *William Vincent Vitarelli* v. *Fred A. Seaton, Secretary of the Interior* 359 U.S. 535 (1959); S*ecurities and Exchange Commission* v. *Chenery Corporation* 318 U.S. 80; *Service* v. *Dulles* 354 U.S. 363; *R.D. Shetty* v. *International Airport Authority* 1979 (3) SCC 489; *Hindustan Tin Works Private Limited* v. *Employees of Hindustan Tin Works Private Limited* (1979) 2 SCC 80; *J.K. Synthetics Ltd.* v. *K.P. Agrawal* (2007) 2 SCC 433.

11 (2013) 10 SCC 324.

12 AIR 2015 SC 2182.

examine all the evidences, and the order of High Court of Andhra Pradesh saying that the initiation of proceedings cannot be quashed, is purely legal and does not need any revision. The Supreme Court further observed that other than what is stated, the appeal does not raise any substantial question of law and hence, there is no scope for any interference according to the appellate jurisdiction as defined under the Constitution. In this case the appeals were directed against the common judgment passed by the High Court of Andhra Pradesh dismissing the journalists pleas against the order summoning them by the additional metropolitan sessions judge (in Andhra Pradesh) in a case filed under sections 499 and 500 (defamation) read with 120B of the Indian Penal Code, 1860 (IPC) for allegedly making false implication against a senior officer of Hyderabad police in connection with Sohrabuddin encounter case in 2007. The appellant's primary contention was that their names had not been specifically mentioned in the sanction order issued by the state government and that the state public prosecutor cannot, therefore, make a complaint under section 199(2) of Code of Criminal Procedure (Cr PC), 1973 against an individual in respect of whom no sanction has been accorded by the state government as required under sec-tion 199(4) of the Cr PC.

Effect of retrospective legislation on vested rights

In *M. Surender Reddy* v. *Govt. of Andhra Pradesh,*[13] the questions that arise for deter-mination were whether G.O. MS. 124 dated March 7, 2002 is retrospective in nature in order to make it applicable to the posts for which selection process has already started pursuant to 1999 advertisement, and (b) If the said G.O. MS. is retrospective, whether it is required to review the entire select list disturbing the appointments already made during the period between the 2001 and March 7, 2002. The apex court while considering the question as to whether an Act is to be made operative prospectively or retrospectively referred *Shah Bhojraj Kuverji Oil Mills and Ginning Factory* v. *Subhash Chandra Yograj Sinha,*[14] wherein it was held that:[15]

> …a section may be prospective in some parts and retrospective in other parts. While it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent.

The apex court was of the view that in the absence of any express or necessarily implied provision in the statute, normally statute affects the rights prospectively.[16] A statutory provision is held to be retrospective either when it is so declared by express terms, or the intention to make retrospective clearly follows from the relevant words and the context in which they occur.

13 2015 (2) SCALE 548.

14 AIR 1961 SC 1596.

15 *Id*. at 1601.

16 *Mst. Rafiquennessa* v. *Lal Bahadur Chetri,* AIR 1964 SC 1511.

Article 32 and administrative orders

Article 32 will not interfere with an administrative order where the constitutionality of the statute or the order made there under is not challenged on the ground of contravention of fundamental rights. In *DM Wayanad Institute of Medical Sciences* v. *Union of India*,[17] the college was granted provisional affiliation for starting the MBBS course for the academic session. It appears that a surprise inspection was made by Medical Council of India (MCI) and many deficiencies were pointed out. The Executive Committee of MCI after considering the inspection report recommended disapproval of the college. The central government directed the MCI to reconsider the matter. However, the MCI reiterated its stand of not recommending the renewal of permission. The college has challenged the decision. The court made it clear that if the validity of the provisions of statute is challenged on the ground other than the contravention of fundamental rights, court will not entertain that challenge in a proceeding under article 32 of the Constitution. The court found that the decisions of MCI are based on the inspection reports submitted by the teams of MCI. The jurisdiction of MCI or the Central Government to grant or refuse to grant permission has not been challenged. Hence, it is well within the jurisdiction of MCI which is statutory body to take a decision based on the inspection of the college to satisfy itself with the compliance of various provisions of the acts, rules and regulations. The court also held that under article 32 of the Constitution, it is not supposed to go into finding of facts recorded by the authorities and to come to a different conclusion. The rights so claimed by the petitioners are not fundamental rights; hence the same cannot be agitated directly before this court under article 32 of the constitution. Expatiating on the scope of article 32 *vis-à-vis* article 226, the bench said:[18]

> The sole object of Article 32 is the enforcement of Fundamental Rights guaranteed by the Constitution. It follows that no question other than relating to the Fundamental Right will be determined in a proceeding under Article 32 of the Constitution. The difference between Article 32 and 226 of the Constitution is that while an application under Article 32 lies only for the enforcement of Fundamental Rights, the High Court under Article 226 has a wider power to exercise its jurisdiction not only for the enforcement of Fundamental Rights but also ordinary legal right.

Pre-conditions of enforceability of executive guidelines

In *Dharam Chand* v. *Chairman, New Delhi Municipal Council*,[19] since 1965 the appellant was squatting in the area of Chandni Chowk as a hawker selling cloths and thereafter Tehbazari of selling tea was given to him by the NDMC at Bhagwan

17 (2016) 2 SCC 315.

18 *Id.* at 321.

19 AIR 2015 SC 2819.

Das Road and he remained there till 1982. Then he was shifted to the present place opposite to the Supreme Court. Court while relying on the affidavit filed by the Deputy Commissioner of Police, Supreme Court Security, which prohibited vendors to squat along the perimeter of the Supreme Court due to security reasons, concluded that there are various circumstances justifying the refusal to run the business. Apex court was of the view that a constitutional right of a citizen is subject to certain restrictions, particularly concerning safety and security, and, therefore, it cannot direct the administration to allow such a kiosk, especially when fresh site is already allocated.

No doubt that Indian judiciary is one of the most vital installations in the country and is protected by multiple layers of security cover. While acknowledging the importance of security cover and increasing the threat perceptions, the state is equally bound to protect squatters.

Discretionary powers on an administrative authority

In *Kerala Bar Hotels Association* v. *State of Kerala*,[20] the apex court held that pursuant to *Khoday Distilleries Ltd.* v. *State of Karnataka*,[21] the concept of *res extra commercium* was accepted and applied to the business of manufacture and trade in potable liquor. The court referred to constitutional provision[22] and agreed with state government's policy measure. The court stated that how a policy is to be implemented, modified, adapted or restructured is the province of government and not of the judiciary. The court found no illegality or irrationality with intention of state to clamp down on public consumption of alcohol. The court opined that policy does not suffer from arbitrariness. In this regards court referred the judgment of *Balco Employees Union (Regd.)* v. *Union of India*, [23] wherein it was held that in a democracy it is the prerogative of the elected government to implement and follow its own policy, even if it adversely affected some vested interests, and the court may not strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Further apex court referred the judgement passed by V.R. Krishna Iyer J in *P.N. Kaushal* v. *Union of India*,[24] wherein it was observed that "dealing in liquor is business and a citizen has a right to do business in that commodity, but the state can make a law imposing reasonable restrictions on the said right, in public interest."

The apex court earlier also held that if the legislative policy is clear and definite and has an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation.[25] The court cautioned the use of discretionary

20 2016 (1) SCALE 70.

21 (1995) SCC 1 574.

22 Constitution of India, 1950, art. 47. Apex court referred art. 47 with respect to art. 14 and 19(6).

23 AIR 2002 SC 350.

24 1978 3 SCC 558.

25 See *In Re: The Special Courts Bill, 1978,* AIR 1979 SC 478.

power as discriminatory power and held that the power given to the executive body would import a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute.

Exercise of discretion on part of state in the matters of economic and fiscal regulations

In *Union of India* v. *N.S. Rathnam & Sons*,[26] the Supreme Court held that customs duty is leviable on the goods under section 3 of the Customs Tariff Act, 1975 which is to be paid under any of the two methods. When two methods are permissible under the statutory scheme itself, option is that of the assessee to choose in all those methods to pay the custom duty. Merely because with the adoption of one particular method the duty that becomes payable is lesser would not mean that two such persons belong to different categories. The important factors for the purposes of parity are same in the instant case, *viz.*, the goods are same, they fall under the same heading and the custom duty is leviable as per the Act which has been paid. Therefore, the notification giving exemption only to those persons who paid a particular amount of duty would not mean that such persons belong to a different category and would be entitled to exemption and not other persons like the respondent in this case who paid the duty on the same goods under the same Act. The court held that the appellants have not supported the withdrawal of exemption by any cogent explanation, and expressed their agreement with the high court. The only option to bring parity was to demand duty on differential amount, which should have been incorporated to save the notification from the vice of arbitrariness. Thus, while upholding the view taken by the high court, the apex court modified the same only to the extent that the respondent shall also be entitled to the benefit of the exemption notification subject to the condition that the duty already paid by the respondent, would be taken into account and only the balance out of it would be subject to excise duty. Benefit of exemption is to be extended to all similarly situated persons and government cannot create sub classification excluding one sub category, even when both sub categories are of the same genus. Judicial review of such notifications is permissible in order to undertake the scrutiny as to whether the notification results in invidious discrimination between two persons though they belong to the same class. Classification of assessee into two categories on the basis of method adopted by the assessees for payment of customs duty and grant of different exemption benefits on the basis of such classification, not permissible.

III JUDICIAL REVIEW

Constitutional amendment is subject to judicial review

In *Supreme Court Advocates on Record Association* v. *Union of India*,[27] the question before the court was the validity of the Constitutional Amendment and the NJAC Act, 2014 displacing the collegium system of appointment of judges. The court

26 *Supra* note 7.

27 *Supra* note 2.

held the amendment and the Act is violative of the independence of judiciary, a basic structure of the Constitution, and hence struck down. The court relied on constituent assembly debates and subsequent developments to conclude that the framers intended an independent judiciary free from executive interference. The same reasoning led the apex court to conclude that the expression consultation would have to be interpreted contextually to mean vesting primacy with the judiciary. This interpretation is, in effect, turning the word consultation into concurrence. The apex court relied on the memorandum of procedure for appointment of judges dated June 30, 1999 to say that executive is not completely kept out of the process. It has been the contention of the Union of India, that an amendment to the Constitution, passed by following the procedure expressed in the proviso to article 368(2), constituted the will of the people, and the same was not subject to judicial review. The same argument had been repeatedly rejected by this court by holding, that article 368 postulates only a *procedure* for amendment of the Constitution, and that, the same could not be treated as a power vested in the Parliament to amend the Constitution, so as to alter, the core of the Constitution, which has also been described as, the basic features/basic structure of the Constitution. Court opined that every constitutional amendment passed by the Parliament, either by following the ordinary procedure contemplated under article 368(2), or the special procedure contemplated in the proviso to article 368(2), be treated as the will of the people, but there are declared limitations, on the amend-ing power conferred on the Parliament, which cannot be breached. The apex court opined that even though the Parliament may have passed the Constitution (121st Amendment) Bill, with an overwhelming majority, it is imperative to hold, that the every constitutional amendment, would be subject to judicial review on the touchstone of the basic structure of the Constitution.

Judicial review of public functions

In *Janet Jeyapaul* v. *SRM University*,[28] the appellant was destined as a senior lecturer in the university which had recently acclaimed status of deemed university status *via* a notification under UGC Act, 1956 passed by the Central Government. The relevant fact was that the appellant was removed by the university under the charges of failure to take assigned classes. The appellant challenged the decision by filling a writ petition in the high court, to which single judge bench allowed the petition by quashing the notice and directing the respondents to reinstate the appellant into service. The respondent appealed against the said order before the high court. By impugned judgment, the division bench of the high court allowed the appeal, against which the present appeal was raised in the Supreme Court. The apex court framed two issues—first, whether the decision made by the enquiry committee regarding expulsion from services against the appellant is amenable under article 226 of Constitution of India; second, if amenable, whether the appellant be directed at to approach the tribunal and file a dispute before the tribunal. The Supreme Court while allowing the appeal

28 AIR 2016 SC 73.

relied upon the *ratio decidendi* of judgment in *Zee Telefilms Ltd.* v. *Union of India*,[29] which held that the event like discharging public function by way of imparting education, the status of deemed university which made all the provisions of the UGC Act applicable to respondent, which *inter alia* provides for effective discharge of the public function *i.e.*, education for the benefit of public and as it is declared as deemed university, all functions and activities are governed by the UGC Act, 1956 and alike other universities then it is an authority within the meaning of article 12 of the Constitution, consequently making it amenable to writ jurisdiction of high court. This judgment was the great instance of judicial review of the public function.

Judicial review of administrative decisions

In *Elektron Lighting Systems Pvt. Ltd.* v. *Shah Investments Financial Developments and Consultants Pvt. Ltd.*,[30] the dispute was commercial in nature regarding the legality of work order in which the court has to determine the limitation of scope of judicial review of administrative actions. The apex court relying on various cases,[31] highlighted the need for considering the scope, limit and the caution necessary while having the judicial review of administrative actions.

In *Ram Singh* v. *Union of India*,[32] the Supreme Court set aside the notification published in the gazette of India bearing No.63 dated 4-3-2014 where Jat community were in-cluded in the central list of Other Backward Classes (OBC) for States of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Bhartpur and Dholpur Districts of Rajasthan, Uttar Pradesh and Uttarakhand. The notification was issued pursuant to the decision taken by the union cabinet to reject the advice tendered by the National Commission for Backward Classes (NCBC) to the contrary on the ground that the advice did not adequately take into account the ground realities. The apex court was of the view that the backwardness can be manifested by presence of various circumstances like social, cultural, economic, educational *etc.* Generally, under Hindu society backwardness is associated with the caste as it is prominent factor for easy determination of backwardness of a social group. Courts has been discouraging such an identification of a group, as it deems necessary that new methods have to be followed to move away from caste centric definition of backwardness.

The apex court also recognised the need for including the third gender as a socially and educationally backward class of citizens as held in *National Legal Services Authority* v. *Union of India*,[33] and states that it is a significant development. In the light of such observations, the apex court opined the need for the states to consider

29 (2005) 4 SCC 649.

30 2015 (12) SCALE 538.

31 *Sanjay Kumar Shukla* v. *Bharat Petroleum Corporation Limited* (2014) 3 SCC 493; *Tata Cellular* v. *Union of India* (1994) 6 SCC 651; *AIR India Ltd*. v. *Cochin International Airport Ltd* (2000) 2 SCC 617; *Jagdish Mandal* v. *State of Orissa* (2007) 14 SCC 517; *B.O.I. Finance Ltd.* v. *Custodian* (1997) 10 SCC 488; *Shin Satellite Pub-lic Co. Ltd.* v. *Jain Studios Ltd* (2006) 2 SCC 628.

32 (2015) 4 SCC 697.

33 (2014) 5 SCC 438.

other forms and instances of backwardness, especially for these emerging new groups. Further, court opined that constitutional power should be concentrated to discover such groups rather than to enable groups of citizens to recover lost ground in claiming preference on historical prejudice. The apex court while referring article 16(4)[34] of the Constitution and *Indra Sawhney* v. *Union of India*,[35] wherein the court considered that educational and economic backwardness can contribute to social backwardness. Under article 15(4)[36] and 16(4) a self-declared socially backward class of citizens cannot continue to be constitutionally permissible method to determine backwardness. Looking into these reasons and observations and suggestions, the apex court concluded that the view taken by union government that Jats in the nine states in question needs reservation cannot be sustained. While appreciated the NCBC's report where in it did not accept the findings of Haryana State Government, the court also observed that the data submitted would be at least a decade old and outdated statistics cannot provide accurate parameters to measure the backwardness for including a particular community in the list of OBC.

The accuse has no right with reference to the manner of investigation or mode of pros-ecution and contempt of court

In *Sanjiv Rajendra Bhatt* case [37] the Supreme Court held that investigation into the riot cases of 2002 was completed by the Special Investigation Team (SIT) appointed by the apex court and trials are going on in accordance with the orders passed by the apex court on May 1, 2009. Supreme Court held that a petitioner cannot choose investigating agency of choice and thereafter direct court in this regard, since the same would amount to contempt of court as well. While relying on the law laid down in earlier judgments,[38] the apex court held that the accused has no right with reference to the manner of investigation or mode of prosecution.

Doctrine of proportionality

In *Madhya Pradesh Housing and Infrastructure Development Board* v. *B.S.S. Parihar*,[39] the Supreme Court partly allowed the appeal and set aside the judgment and order of the division bench of the high court. The court referred to numerous

34 Constitution of India, 1950, art. 16(4) reads: (nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State).

35 AIR 1993 SC 477.

36 *Supra* note 34 art. 16(4) laid down: (nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes).

37 *Supra* note 5.

38 See generally, *Union of India* v. *W.N. Chadha* (1993) Supp 4 SCC 260; *Ms. Mayawati* v. *Union of India* (2012) 8 SCC 106; *Dinubhai Boghabhai Solanki* v. *State of Gujarat* (2014) 4 SCC 626; *CBI* v. *Rajesh Gandhi* (1996) 11 SCC 253; *Competition Commission of India* v. *SAIL* (2010) 10 SCC 744; and *Janta Dal* v. *H.S. Choudhary* (1991) 3 SCC 756.

39 AIR 2015 SC 3436.

precedents[40] and after analyzing the facts of the instant case, held that once the appellant had made the allotment of the plot of land, the appellant is debarred from raising the cost of construction or claiming enhanced prices for the land, since it would be wholly untenable in law, especially in view of the clauses contained in the advertisement, which read that the cost of the houses shown in the advertisement were totally provisional and the final fixation of the price would be done after the completion of the scheme. The court ordered respondents to pay the difference between the tentative cost and the final sale price of the land which will be based on the fixation of the final cost of the land, within the stipulated time. Further court held that the allotment of the said plot of land in favour of the respondent is only provisional in nature and the same would be subject to the final fixation of the price of the land that will be done after the completion of the scheme.

The apex court opined that the final sale price which is fixed and intimated to the respondents are in accordance with the provisions of the Act 1972, the Rules, 1991 and the clause of the advertisement which is binding upon the respondents. The apex found high court was erroneous in law by quashing the demand notice of the appellant for the payment of the final sale price without considering the terms and conditions of the advertisement and the statutory provisions of the Act, 1972 and the Rules, 1991 towards the fixation of the cost of the land. Further the court held that the fixation of the enhanced price by the appellant has been done arbitrarily, unreasonably, unfairly and without applying the principle of the doc-trine of proportionality, and the same has to be determined on the basis of the Rules, 1962 read with the Collector's Guidelines, the Act, 1972 and the Rules, 1991, for the purpose of determination of the market value of the land, and for such determination a statutory duty was imposed upon the appellant, being the statutory board and thus amenable to article 14 of the Constitution. The apex court further directed that such determination of the final cost of the land in dispute must be in consonance with the doctrine of proportionality and not on the basis of the market price, *i.e*. fixed by the price fixation committee for the determination of guidance value of the immovable property in the district which would be arbitrary, unreasonable and unfair.

Writ of *Certiorari*

In *Radhey Shyam* v. *Chhabi Nath*,[41] the Supreme Court set aside its earlier judgment[42] and ruled that judicial orders of civil court are not amenable to writ jurisdiction under article 226 of the Constitution and that jurisdiction under article 227 is distinct from jurisdiction under article 226. The apex court observed that a writ

40 See generally *MP Housing Board* v. *Anil Kumar Khiwani* (2005) 10 SCC 796; *State of UP* v. *Sheo Shankar Lal Srivastava* (2006) 3 SCC 276; *Delhi Development Authority* v. *Pushpendra Kumar Jain*, (1994) Supp (3) SCC 494; *Tamil Nadu Housing Board* v. *Service Society* (2011) 11 SCC 13.

41 (2015) 5 SCC 423.

42 *Surya Dev Rai* v. *Ram Chander Rai* (2003) 6 SCC 675.

jurisdiction is constitutionally conferred on all high courts, and the broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. The apex court was of the opinion that there are no precedents in India for high courts to issue writs to subordinate courts. It is in this regards apex court opined that the control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under article 227. Further it held that the orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. The court clarified that while appellate or revisional jurisdiction is regulated by statutes, power of superintendence under article 227 is constitutional, and thus the expression inferior court is not referable to judicial courts.

Judiciary cannot be included and treated as the State when it performs strictly judicial functions in contradistinction to administrative powers

In *Riju Prasad Sarma* v. *State of Assam*,[43] the Supreme Court while dismissing the appeals and petitions, held that the Kamakhya Debutter Regulations, 1998 are not a valid instrument and have no sanction of law for depriving the customary rights of the Bordeori Samaj to elect the Dolois who have been customarily exercising the right to manage the religious as well as secular affairs of the Kamakhya Temple. The apex court found no merit in the appeals of the appellants that section 25A of the Act, 1959 [44] provides for a managing committee having only a narrow and limited role. The court ordered the appellants to vacate the Kamakhaya temple premises and the premises and other properties of Kamakhya Temple that shall be placed back within the same time in possession of the Bordeories Samaj through the last elected Dolois. The court opined that the state cannot be blamed for creating two electoral colleges and confining election rolls for the post of ex-officio secretary only to the members of the Bordeori families including females. The court found that a fair treatment to others interested in the temple is assured by permitting devotees to elect as many as five members of the managing committee and the plea that rules must cover not only the temple and endowment of Kamakhya temple, but the entire complex, including Nanan Devalayas has no support or basis in law. The apex court was of the opinion that the Act permits the state to constitute a managing committee for each of the Institution covered by section 25A of the Act, 1959.[45] Further, court left the task of defining or explaining the terms Deories or Bordeories in the context of a particular institution to be done by making of rules. The court concluded that the definition of state under article 12 of the Constitution is contextual depending upon all relevant facts including the concerned provisions in part III of the Constitution. The definition is inclusive and not exhaustive.

43 2015 (7) SCALE 602.

44 Assam State Acquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959.

45 *Ibid.*

Hence omission of judiciary when the government and Parliament of India as well as government and legislature of each of the state have been included is conspicuous. The court held that judiciary cannot be a state under article 12, and only when they deal with their employees or act in other matters purely in administrative capacity, the courts may fall within the definition of the state for attracting writ jurisdiction against their administrative actions.

Essentials and principles of precedent of *stare decisis*

In *Krishnamoorthy* v. *Sivakumar,*[46] appellant was a candidate for panchayat election and was alleged to have not disclosed full particulars of the criminal cases pending against him at the time of filing his nomination form. He was elected as president of Thekampatti Panchayat, Mettupalayam Taluk, Coimbatore District in the State of Tamil Nadu. The validity of the election was challenged on the sole ground that he had filed a false declaration suppressing the details of criminal cases pending trial against him. The principal district judge of Coimbatore, the election tribunal, came to hold that nomination papers filed by him deserved to be rejected and, therefore, he could not have contested the election, and accordingly the election was declared as null and void. The High Court of Madras upheld this decision, though for certain different reasons. On appeal, the Supreme Court upheld the decision of the high court. The Supreme Court observed as under:[47]

> We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like MCOCA, U.P. Goonda Act, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral

46 AIR 2015 SC 1921.

47 *Id*. at 1954.

> turpitude. It is apt to note here that when an FIR is filed a person filling a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorates remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

The Supreme Court further observed as under:[48]

> **...**it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates**...**The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issue of the notification till the declaration of the result. **...**We have also culled out the principle that corrupt practice can take place prior to voting. The factum of nondisclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

Accordingly, the Supreme Court categorically explained that while filing the nomination form, if the requisite information relating to criminal antecedents, are not given, there is an attempt to suppress, effort to misguide and keep the people in dark. Such an attempt undeniably and undisputedly is undue influence and, therefore,

48 *Id*. at 1956.

amounts to corrupt practice.[49] Further court explained that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate, and it is on this basis a distinction between a disqualification and the corrupt practice is formed.

Thus, this judgment by the Supreme Court leads to further strengthening of the election related laws. If a candidate at an election does not disclose full particulars of the criminal cases pending against him, his election result may be set aside even if he has won such election. Therefore, the candidates are required to provide full particulars of the criminal cases against him so that the voters can make an informed choice.

In another case *State of U.P.* v. *Ajay Kumar Sharma*,[50] the apex court established the importance of doctrine of precedent and *stare decisis* and highlighted that in order to save the rule of law, as held in *State of U.P.* v. *Johri Mal*,[51] where Supreme Court perused the Legal Remembrance Manual, the Code of Criminal Procedure and reiterated that the district counsel stood professionally engaged and the state government was free to determine the course of action after being satisfied of their performance, and that the courts must be circumspect in the exercise of judicial review on matters which fell within the discretion of the state government, would be binding upon the court. Further putting reliance upon numerous recent and earlier landmark judgments,[52] especially *Indira Nehru Gandhi* v. *Raj Narain*,[53] wherein it was held that doctrine of precedent and *stare decisis* has to be followed.

While exercising power of judicial review of administrative action, the court is not an appellate authority.

In *State of U.P.* v. *Anil Kumar Sharma*,[54] a substantial question of law has been raised as to what extent a high court can exercise its powers in issuing directions on

49 Representation of the People Act, 1951, s. 100(1)(b).

50 2015 (12) SCALE 658.

51 (2004) 4 SCC 714.

52 *U.P. Shaskiya Adhivakta Kalyan Samiti* v. *State of U.P*. 2012 (30) LCD 1066; *Kumari Shrilekha Vidyarthi* v. *State of UP* (1991) 1 SCC 212; *State of UP* v. *State of UP law Officers Association* (1994) 2 SCC 204; *State of UP* v. *Rakesh Kumar Keshri* (2011) 5 SCC 341; *Dr. A.R. Sircar* v. *State of UP* (1993) Supp 2 SCC 734; *AMSSMVSSJMS Trust* v. *V.R. Rudani* (1989) 2 SCC 691; *Zee Telefilms Ltd.* v. *Union of India* (2005) 4 SCC 649; *State of UP* v. *Ashok Kumar Nigam* (2013) 3 SCC 372; *Union of India* v. *Raghubir Singh* (1989) 2 SCC 754; *Chandra Prakash* v. *State of UP* (2002) 4 SCC 234; S*ub-Inspector Rooplal* v. *Lt. Governor* (2000) 1 SCC 644; *Government of Andhra Pradesh* v. *A.P. Jaiswal* (2001) 1 SCC 748; *Om Kumar* v. *Union of India* (2001) 2 SCC 386; *Centre for Public Interest Litigation* v. *Union of India* (2012) 3 SCC 117; *Deepak Aggarwal* v. *Keshav Kaushik* (2013) 5 SCC 277; *State of U.P.* v. *Satyavrat Singh* (2014) 14 SCC 548.

53 In *Indira Nehru Gandhi* (1975) Supp. SCC 1 court held that it is a matter of policy for courts to stand by precedent and not to disturb a settled point and the purpose of precedents is to bestow predictability on judicial decisions as certainty in law is an essential ingredient of rule of law and a departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and conse-quentially, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio.

54 2016 Cri LJ 213.

judicial side, relating to the procedure to be adopted in criminal trials. The apex court held that when a state action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, it must be strike down, and while doing so the courts must remain within its self-imposed limits. The court was of the view that while exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit courts to direct or advise the executive in matters of policy or to sermonise qua any matter which is under the Constitution, since it lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. The court further opined that no person, however high, is above the law, and no institution in our democratic setup is exempted from accountability, including the judiciary. Accountability of the judiciary is in respect of its judicial functions and an order is vouchsafed by provisions for appeal, revision and review of orders. The apex court while relying on various judgments[55] and after analyzing all facts of the instant case, held that the view taken by high court has clearly erred in law in treating the writ petition which was filed for quashing of first information report (FIR), becomes infructuous, since the public interest litigation, and issued sweeping directions, without there being sufficient data and material before it to pass directions lacks proper and justified authority. The court further held that there is no requirement under section 173 Cr PC for the investigating officer to produce the accused along with the chargesheet.

Promissory estoppel and equity

In *Union of India* v. *Shri Hanuman Industries Ltd*,[56] the facts states that a batch of industries in the north east region were offered incentives to set up units in under developed regions. The Central Government and the north eastern council declared a policy decision in 1997 for promotion of industries in that region. Several industries applied for the promised incentives, but they were delayed. Therefore, they moved the Guahati High Court, which asked the authorities to process their applications. The scheme was later caught in allegations of financial irregularities and scrapped, in the process; another set of industries moved the high court seeking the similar relief as given to the earlier batch of industries. The single judge bench of the high court rejected their petitions on the ground that those industries were not vigilant and waited for the result of the first batch of cases, and now the scheme had been scrapped. But, the

55 *State of Uttar Pradesh* v. *Mahindra and Mahindra Limited* (2011) 13 SCC 77; *Pravasi Bhalai Sangathan* v. *Union of India* (2014) 11 SCC 477; *State of U.P.* v. *U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti* (2008) 12 SCC 675; *State of Haryana* v. *Bhajan Lal* 1992 Supp (1) SCC 335; *Akhilesh Yadav* v. *Vishwanath Chaturve-di* (2013) 2 SCC 1; *Manoj Sharma* v. *State* (2008) 16 SCC 1; *Aravali Golf Club* v. *Chander Hass* (2008) 1 SCC 683; *Govt. of A.P.* v. *P. Laxmi Devi* (2008) 4 SCC 720; *State of U.P* v. *Jeet S. Bisht* (2007) 6 SCC 586; *A.M. Mathur* v. *Pramod Kumar Gupta* (1990) 2 SCC 533.

56 (2015) 6 SCC 600.

division bench of the high court followed the order in the first set of cases and granted relief to the late coming industries. The government, therefore, appealed to the Supreme Court. The apex court rejected the arguments of the late comers and upheld the view of the single judge, and held:[57]

> We are thus of the unhesitant view that the respondents herein in view of their deliberate laches, negligence and inaction have disentitled themselves to the benefit of the adjudication in the earlier lis. In the accompanying facts and circumstances in our comprehension, it would be iniquitous and repugnant as well to the public exchequer to entertain the belated claim of the respondents on the basis of the doctrine of promissory estoppel which is even otherwise in applicable to the case in hand.

The court further held that the respondents are even not entitled to investment subsidy on the grounds of promissory estoppel and equity. The court opined that the delay of more than two year was deliberate and there is no reason to condone same. Further entertaining such belated claim would be iniquitous and repugnant as well as to public exchequer. The court does not found any reasonability to the plea of respondent that they had no knowledge of closure of scheme, not tenable as there was media coverage of closure of schemes and earlier round of litigation as well.

Constructive notice – test of knowledge as a reasonable person

In *Rajasthan Housing Board* v. *New Pink city Nirman Sahkari Samite Ltd.*,[58] the apex court held that the party must have either actual or constructive communication of the order which is an essential requirement of fair play and natural justice. The court opined that the constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have, even if they have no actual knowledge of it. A constructive notice implies a man ought to have knowledge of the fact, meaning whereby, a person is said to have notice of a fact when he actually knows a fact but for will full abstention from inquiry or search which he ought to have made, or gross negligence he would have known it, he would be held liable. After perusing thoroughly the facts of the case, the court held that in order to protect the interest of the scheduled caste persons, the society or other intermeddler, or power of attorney holder shall not be paid compensation on their behalf and the collector/land acquisition officer to ensure that the compensation is disbursed directly to the Khatedars or their legal representatives, as the case may be, and that they are not deprived of the same by any unscrupulous devices of land grabbers.

57 *Id*. at 611.

58 AIR 2015 SC 2126.

Test of administrative order or action—*Wednesbury* principle

In *Nicholas Piramal India Ltd.* v. *Harisingh*,[59] the appeal by special leave is directed against the judgment and order passed by the High Court of Madhya Pradesh, whereby the high court has affirmed the award passed by the industrial court. The respondent was employed as a workman at the drug manufacturing unit of the appellant Nicholas Piramal India Ltd. situated at Pithampur, Madhya Pradesh. The company issued two charge sheets against him, alleging that he has violated and disregarded the orders of his senior officers and intentionally slowed down the work under process and made less production by adopting go slow work tactics which is a grave misconduct on the part of the workman under clause 12(1) (d) of The Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. The respondent denied the charges levelled against him by the appellant and submitted his reply to the charge sheets. The findings of the inquiry officer were accepted by the disciplinary authority of the company and it served the second show cause notice on the respondent along with the copy of the enquiry report, the same did not refer to any of his past service record. The respondent workman submitted his written explanation to the second show cause notice, denying the findings of the inquiry officer by giving point wise reply to the findings of the enquiry report. An order of dismissal was passed by the appellant company dismissing him from his service, after accepting the findings of the domestic inquiry officer in his report and not considering the reply of the respondent workman to the said show cause notice. Being aggrieved by the order of dismissal passed against the workman by the company, he raised an industrial dispute before the labour court by filing application under section 31(3) read with sections 61 and 62 of the Madhya Pradesh Industrial Relations Act, 1960. The labour court, after adverting to the relevant clauses held that the penalty of dismissal awarded on the respondent workman is legal and valid in law which does not call for interference by the labour court. The correctness of the same was challenged by the workman before the industrial court. The appellate court which set aside the award passed by the labour court and remanded the case to it for its reconsideration. The Labour court again passed the award after reconsidering the case as directed by the appellate court, in favour of appellant company, holding that the order of dismissal passed by the company does not warrant interference by it. The correctness of the same was again challenged by the respondent workman before the industrial court which again remanded the case to the labour court. The labour court after reconsideration of the case, has partly allowed the application of the workman and set aside the earlier order of dismissal and the company was directed to reinstate the respondent-workman in the service with 50 percent back wages. The appellant company filed an appeal before the industrial court, questioning the correctness of the award passed by the labour court, the industrial court has held that the evidence produced by the company during the domestic enquiry does not show that the workman has made less production intentionally during the relevant period in respect of which the two charge sheets were served upon him. However, the industrial

59 2015 (5) SCALE 701.

court held that withholding of 50 percent of the back wages from the workman for the proved misconduct is justified and it found no other reason for its interference with the award passed by the labour court and dismissed the appeal of the appellant-company. The award of reinstatement of the workman with 50 percent back wages was challenged by the company by filing the writ petition before the high court, urging various legal grounds. The high court, after adverting to the relevant facts and the findings of fact recorded in the awards held that the exercise of power under section 107 of Madhya Pradesh Industrial Relations Act, 1960 by both the labour court and the appellate court in substituting the lesser punishment in place of the order of dismissal imposed by the disciplinary authority is bad in law and it further held that it is not a fit case for it to interfere with the same and held that the labour court in exercise of its power under section 107 has got the original jurisdiction and power to interfere with the quantum of punishment imposed upon the workman by the disciplinary authority of the appellant company and the same is concurred with by the industrial court in exercise of its appellate jurisdiction after reappreciation of evidence on record.

The correctness of the judgment and the order of the high court were questioned by the company in the Supreme Court. The apex court held that the charge levelled against the workman is partially proved and even then the order of dismissal imposed upon him by the disciplinary authority, has been done without notifying the workman about his past service record, therefore, the order of dismissal of the workman from the service is disproportionate and severe to the gravity of the misconduct. Relying upon the judgement in *Raghubir Singh* v. *Haryana Roadways*,[60] and some other land mark judgments,[61] the apex court discussed in detail about *Doctrine of Proportionality*. The court further referred to the judgement of in *Om Kumar* v. *Union of India*,[62] wherein it was held that in India where administrative action challenged under article 14 of the Constitution as being discriminatory, the question for the constitutional courts as primary reviewing courts to consider correctness of the level of discrimination applied, and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator, must be examined. The apex court was of the view that while dealing with the merits of balancing action of the administrator and, applying proportionality principle, it must act as a primary reviewing authority, but where an administration action is challenged as arbitrary under article 14 on the basis of punishments in disciplinary cases are challenged, the question will be whether the

60 (2014) 10 SCC 301.

61 *Bharat Heavy Electricals Ltd.* v. *M. Chandrasekhar Reddy* (2005) 2 SCC 481; *Regional Manager, U.P.S.R.T.C., Etawah* v. *Hoti Lal* (2003) 3 SCC 605; *Bharat Sugar Mills Ltd.* v. *Jai Singh* (1962) 3 SCR 684; *Raghubir Singh* v. *General Manager, Haryana Roadways, Hissar* (2014) 10 SCC 301; *Jitendra Singh Rathor* v. *Baidyanath Ayurved Bhawan Ltd.* (1984) 3 SCC 5; *State of Mysore* v. *K. Manche Gowda* (1964) 4 SCR 540; *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd*. v. *The Management* , AIR 1973 SC 1227.

62 (2001) 2 SCC 386.

administrative order is rational or reasonable and the test then is the *Wednesbury* test. In such situation, courts must be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If the action does not satisfy these above specified rules, as per the apex court it is to be treated as arbitrary, therefore, while judging whether the administrative action is arbitrary under article 14, the court has confined itself to a *Wednesbury* review always. In the present case the workman's wilful disobedience of lawful or reasonable order under clause 12(1)(d) of the SSO[63] and the wilful slowing down of the work performance by him was partially proved. The court observed that the punishment imposed by the labour court was right under section 107 of the Madhya Pradesh Industrial Relations Act, 1960, since the disciplinary authority has failed to give any valid reasons for not imposing any one of the lesser punishments as provided under clause 12(3)(b) (i) to (v) of SSO.[64] Further in the light of *Jitendra Singh Rathor* v. *Baidyanath Ayurved Bhawan Ltd*,[65] apex court justified the denial of 50 percent back wages to the workman by the labour court as an appropriate punishment.

Interpretation of policy document

In *Hindustan Zinc Ltd.* v. *Rajasthan Electricity Regulatory Commission*,[66] the Supreme Court dismissed the appeal of the petitioners, and upheld the Renewable Purchase Obligation (RPO) regulations made by the Rajasthan Electricity Regulatory Commission (RERC). Court further held that where the validity of subordinate legislation is challenged, the question to be asked is whether power given to the rule making authority has been exercised for the purpose for which it was given. However, the court has to start with presumption that the rule is *intra vires* and has to be read down only to save it from being declared *ultra vir*es in case court finds that the above presumption stands rebutted. The court held that it is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. The court opined that too much of legalism cannot be imported in under-standing the scope and meaning of the clauses contained in policy formations.

Quasi judicial proceedings

In *Commissioner, Central Excise and Customs, Kerala* v. *Larsen and Toubro Ltd*.,[67] two appeals were filed by the department against the order of the commissioner dropping the proceedings against the respondents M/s Larsen & Toubro Ltd. It was alleged that in both the case the respondents have deliberately and intentionally not

63 The Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963.

64 *Ibid*.

65 (1984) 3 SCC 5.

66 (2015) 12 SCC 611.

67 AIR 2015 SC 3600.

disclosed the material fact of their providing taxable service as consultant engineer to the department. Therefore, show cause notices were issued to them demanding service tax under Finance Act, 1994. The Supreme Court after referring *Gannon Dunkerley and Co*. v. *State of Rajasthan*,[68] subsequently noted that the separation of the value of goods contained in the execution of a works contract will have to be determined by working from the value of the entire works contract and deducting from it charges towards labour and services. The court explained the deductions enumerated, which are−cost of establishment of the contractor to the extent it is relatable to supply of labour and services; other similar expenses relatable to supply of labour and services; profit earned by the contractor to the extent it is relatable to supply of labour and services. Furthermore, court opined that a bifurcation has to be made by the charging section itself; so the cost of establishment of the contractor is bifurcated into what is relatable to supply of labour and services. The court explained how the service tax charging section itself must lay down with specificity that the levy of service tax can only be on works contracts, and the measure of tax can only be on that portion of works contracts which contain a service element which is to be derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract, which is not done by the Finance Act, 1994; any charge to tax under section 65(105) Act, 1994 would only be of service contracts simpliciter and not composite indivisible works contracts. The court also found that a works contract is a separate species of contract, distinct from contracts for services simpliciter, recognised by the world of commerce and law as such, and has to be taxed separately as such. Thus, there is no charge to tax of works contracts in the Act, 1994. The court, referring to various precedent judgments,[69] and held that under section 67 Act,

1994, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. It is inferred that what is referred to in the

68 1959 SCR 379.

69 See generally, *Builders Assn. of India* v. *Union of India* (1989) 2 SCC 645; *Mcdowell and Co. Ltd.* v. *Com-mercial Tax Officer* 1985 (2) SCC 230; *Bharat Sanchar Nigam Ltd.* v. *Union of India* (2006) 3 SCC 1; *Larsen and Toubro* v. *Union of India* (1993) 1 SCC 364; *Gujarat Ambuja Cements Ltd.* v. *Union of India* (2005) 4 SCC 214; *Kone Elevator India (P) Ltd.* v. *State of T.N*. (2014) 7 SCC 1; *Larsen and Toubro Ltd.* v. *State of Karnata-ka* (2014) 1 SCC 708; *State of Madras* v. *Gannon Dunkerley and Co. (Madras) Ltd*., AIR 1958 SC 560; *Mathuram Agrawal* v. *State of M.P.* (1999) 8 SCC 667; *Govind Saran Ganga Saran* v. *CST* 1985 Supp SCC 205; *Mahim Patram Private Ltd.* v. *Union of India* 2007 (3) SCC 668; *Heinz India (P) Ltd.* v. *State of U.P.* (2012) 5 SCC 443; *K.T. Moopil Nair* v. *State of Kerala* AIR 1961 SC 552; *Rai Ramkrishna* v. *State of Bihar* , AIR 1963 SC 1667; *Jagannath Baksh Singh* v. *State of U.P.* AIR 1962 SC 1563; *State of A.P.* v. *Nalla Raja Reddy* AIR 1967 SC 1458; *Vishnu Dayal Mahendra Pal* v. *State of U.P.* (1974) 2 SCC 306; *D.G. Gose and Co. (Agents) (P) Ltd.* v. *State of Kerala* (1980) 2 SCC 410; *State of Jharkhand* v. *Voltas Ltd., East Singhbhum* (2007) 9 SCC 266; *Larsen and Toubro Ltd.* v. *State of Bihar* (2004) 134 STC 354; *Larsen and Toubro Ltd.* v. *State of Tamil Nadu* (1993) 88 STC 289; *A.V. Fernandez* v. *State of Kerala* (1957) 8 STC 561 (SC); *Kumarasamy Pathar* v. *State of Madras* (1969) 23 STC 447 (Mad.); *Vishnu Agencies (Pvt.) Ltd.* v. *Com-mercial Tax Officer* 1978 (1) SCC 520.

charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as the ones entered into by the assessees. Court opined that no attempt to remove the non service elements from the composite works contracts has been made by any of sections 65(105) and 67 of the Act, 1994 by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract. Referring to the department's contention that the contracts of the assessees would not be exempt, means that other infrastructure contracts would also not be exempted, which would be contrary to the intention of parliament. Apex court answered this contention and explained that the Act, 1994 lays down no charge or machinery to levy and assess service tax on indivisible composite works contract. Further, in the instant case, there is no subterfuge by the assesses in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

File noting can be used as supporting/corroborative material

In *Muneer Enterprises* v. *Ramgad Minerals & Mining Ltd.*,[70] the apex court noticed and reiterated that, *noting* in department files do not have sanction of law to be an effective order unless it culminates into an executable order affecting the rights of parties and only when it reaches the final decision making authority in the department, gets its approval and the final order is communicated to the person concerned. The Supreme Court indicted the Karnataka government and its director of mines for the way they transferred large mining lands in Bellary district from Dalmia Cement Ltd., to another mining firm, and thereby flouting rules under the Forest Act, 1927 and the Mineral Concession Rules, 1960. While setting aside the high court judgment the apex court stated that national wealth should be distributed strictly according to the rules and the conduct of the state and its authorities are highly condemnable and calls for stringent action against them.[71] The apex court further stated that the director simply glossed over the gross violations of the Forest Act by approving the transfer of land surrendered by Dalmia Cement to the Ramgad firm. The judgment narrated the complex dealings among the competing miners and stated that there was total lack of bona fides on the part of the state government in taking a sudden U-turn for passing the order of transfer in favour of Ramgad Minerals.[72] Reversing the view of the high court, the apex court held that any lease granted or renewed without following the central laws would be void.

Formation and establishment of tribunals upheld and need for their functioning expressed

In *Madras Bar Association* v. *Union of India*,[73] the Supreme Court partly allowed the writ petition filed by the Madras Bar Association wherein it struck down the

70 AIR 2015 SC 1834.
71 *Id*. at 1869.
72 *Id*. at 1870.
73 2015 (6) SCALE 331.

validity of technical member appointment and selection committee constitution but it upheld the validity of the National Companies Law Tribunal (NCLT) / National Companies Law Appellate Tribunal (NCLAT) under the Companies Act, 2013. The provisions relating to NCLT and NCLAT were also challenged earlier under the Companies Act, 1956 in *Union of India* v. *R. Gandhi, President, Madras Bar Association*,[74] wherein the Supreme Court upheld the validity of NCLT/NCLAT while certain provisions relating to constitution of board of company law administration were held as unconstitutional. In the present case, the Supreme Court rejected the contention that in *Union of India* v. *R. Gandhi* [75] judgment the constitution of NCLAT was not dealt with. The Supreme Court held that the constitutional validity of NCLT and NCLAT under Parts 1B and 1C of Companies Act, 2013 are valid. The court completely dismissed Madras Bar Association's reliance on 2014 ruling of Supreme Court,[76] wherein the constitu-tion of National Tax Tribunal (NTT) was held as 'unconstitutional' expressing strong remarks on such adventurism on the part of petitioner as totally unfounded since the earlier ruling in *Gandhi* [77] is of Constitution bench and thus binding on the coordinate bench as well. The apex court differentiated the NTT ruling from NCLT/NCLAT and held that the NTT was a matter where power of judicial review exercised by the high court was vested in NTT which was sought to be unconstitutional. Supreme Court observed that NCLT is the first forum in the hierarchy of quasijudicial fora setup under the Companies Act, 2013 and stated that NCLT, would not only deal with question of law but would be called upon to thrash out the factual disputes/aspects as well. With respect to the issue of constitutionality of provisions for appointment of technical members to NCLT/NCLAT, the Supreme Court relied on its earlier ruling in *R. Gandhi* [78] and observed that only officers holding ranks of secretaries or additional secretaries can be considered for appointment as technical members. Further, the court held that the constitution of selection committee (for selecting the Members of NCLT and NCLAT) as invalid and stated that instead of five members selection committee, it should be four members (two from administrative branch + two from judiciary) selection committee, and directed that the 4-member selection committee shall include—chief justice, senior judge, secretary in the finance ministry and law secretary, with the caveat that the chief justice will have a casting vote.

IV DELEGATED LEGISLATION

Formulation of the Memorandum of Procedure is an administrative responsibility

Formulation of the Memorandum of Procedure is an administrative responsibility which fell in the executive domain. In *Supreme Court Advocates on Record Association*

74 (2010) 11 SCC 1.

75 *Ibid.*

76 *Madras Bar Association* v. *Union of India* (2014) 10 SCC 1.

77 *Supra* note 74.

78 *Ibid*.

case,[79] while adjudicating on the merits of the controversy rendered on October 16, 2015, a separate of Order of the Court was also recorded wherein it was decided to consider the incorporation of additional appropriate measures, if any, for an improved working of the collegium system. For this purpose, hearing was fixed and the attorney general for India preferred written submissions and supplemented them with oral submissions. Likewise, other senior counsels also presented their views. Submissions were advanced freely, solely with the objective of introducing measures in the prevailing "collegium system" of appointment of judges to the higher judiciary, which in the perception of the concerned counsel, would improve the working of the system.

A few suggestions contained diametrically opposite recommendations. It was, therefore, felt that the suggestions received should be compiled in an orderly manner so as to enable all concerned stakeholders to have a bird's eye view of the same, thereby possibly making the debate thereon more judicious. Accordingly, on the nomination by the attorney general, of Pinki Anand, additional solicitor general, and on the unanimous endorsement of all the counsel representing the petitioners, of Arvind P. Datar, senior advocate, a two member committee was constituted. The committee was requested to make a compilation of the suggestions. A further opportunity was afforded to the stakeholders to furnish their valuable contributions on the matter. The apex court had a challenging responsibility to embark upon and reflect and, thereafter, to sieve such of the suggestions as were likely to improve the existing collegium system in judicial appointment to the higher judiciary. The court opined about the eligibility criteria and transparency in the appointment process. The court was of the view that the memorandum of procedure may indicate the eligibility criteria, such as the minimum age, for the guidance of the collegium (both at the level of the high court and the Supreme Court) for appointment of judges, after inviting and taking into consideration the views of the state government and the Government of India from time to time. While adjudicating on the merits of the controversy, a separate Order of the Court was also recorded wherein it was decided to consider the incorporation of additional appropriate measures, if any, for an improved work-ing of the collegium system. For this purpose, suggestions were advanced through Attorney General for India and other senior counsels solely with the objective of introducing measures in the prevailing collegium system of appointment of judges to the higher judiciary. The apex court in agreement with the attorney general pointed out that the formulation of the memorandum of procedure was an administrative responsibility which fell in the executive domain, and explained how a nine judge bench left the task of drawing up the memorandum of procedure to the Government of India itself. Further, the court felt that the suggestions received should be compiled in an orderly manner so as to enable all concerned stakeholders to have a bird's eye view of the same, thereby possibly making the debate thereon more judicious and it must not be diametrically opposite recommendations. The apex court on the nomination made by the attorney general,

79 *Supra* note 2.

additional solicitor general, and on the unanimous endorsement of all the counsel representing the petitioners, constituted a two member committee to make a compilation of the suggestions received. The court further extended an affordable opportunity to the stakeholders to furnish their valuable contributions on the matter. The eligibility criteria and the procedure as detailed in the memorandum of procedure for the appointment of judges ought to be made available on the website of the court concerned and on the website of the department of justice of the Government of India.

Judicial review under article 32 and 226 is a basic feature of the Constitution beyond the plea of amendability

In *Union of India* v. *Shri Kant Sharma*,[80] an issue was raised whether the right of appeal under section 30 of the Armed Forces Tribunal Act, 2007, against an order of Armed Forces Tribunal with the leave of the tribunal under section 31 of the Act or leave granted by the Supreme Court, or bar of leave to appeal before the Supreme Court under article 136(2) of the Constitution of India, will bar the jurisdiction of the high court under article 226 of the Constitution. The apex court found that there is a constitutional bar not only under article 136(2) but also under article 227(4) of the Constitution with regard to entertaining any determination or order passed by any court or tribunal under law relating to armed forces.

The apex court opined that judicial review under article 32 and 226 is a basic feature of the Constitution beyond the plea of amendability, thereby permits a person to move before Supreme Court by appropriate proceedings for enforcement of the rights conferred by part III of the Constitution.[81] Further, the court quoted the basic principle for exercising power under article 226 of the Constitution as laid down *in Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*,[82] and *Mafatlal Industries Ltd* v. *Union of India*.[83] As far as considering the question of maintainability of the writ petition while an alternative remedy is available apex court relied on the judgment in *Kanaiyalal Lalchand and Sachdev* v. *State of Maharashtra*,[84] *Nivedita Sharma* v. *Cellular Operators Association of India*,[85] and other judgments,[86] and noticed that

80 AIR 2015 SC 2465.

81 See *Kesavananda Bharati Sripadagalvaru* v. *State of Kerala* (1973) 4 SCC 225 (wherein the Supreme Court outlined the Basic Structure doctrine of the Constitution). See also *L. Chandra Kumar* v. *Union of India* (1997) 3 SCC 261 (wherein the court found that the power of judicial review vested in the high court under art. 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the high court under art. 226 of the Constitution of India). See also *R.K. Jain v. Union of India* (1993) 4 SCC 119; *S.N. Mukherje*e v. *Union of India*, AIR 1990 SC 1984.

82 AIR 1974 SC 2105.

83 (1997) 5 SCC 536.

84 (2011) 2 SCC 782.

85 (2011) 14 SCC 337.

86 See generally, *Executive Engineer, (SOUTHCO)* v. *Sri Seetaram Rice Mill* (2012) 2 SCC 108; *Cicily Kalla-racka*l v. *Vehicle Factory* 2012 (8) SCC 524; *Commissioner of Income Tax* v. *Chhabil Dass Agrawala* (2014) 1 SCC 603.

when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The court observed that it should only be for the specialized tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case. The court also noticed the previous decisions of wherein the Supreme Court adverted to the rule of self-restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person.[87] Further, court opined that if the high court entertains a petition under article 226 of the Constitution against order passed by armed forces tribunal under sections 14 or 15 of the Act by passing the machinery of statute *i.e*., sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from the court.

Excessive delegation

In *Union of India* v. *Purushottam,*[88] the Supreme Court of India has dealt with the situation as to whether administrative action after a summary court martial (SCM) would amount to double jeopardy if the said SCM had been set aside by military authorities on technical grounds. While replying in the negative, the apex court has also ruled that there was no requirement of setting aside the SCM on technical grounds and that it had also not been done by an authority competent to do so. In its long decision which takes note of the law on double jeopardy of various nations, the apex court makes the following observations:[89]

> ...The Show Cause Notice impugned before the High Court was predicated on Rule 13 by obviously circuitously taking recourse to the residuary clause 13(3)(III)(V) of the relevant Table, We have consciously used the word circui-tously 'for the reason that the Appellants could have resorted to Section 20 of the Army Act. We may add a word of caution here– the power to do a particular act must be located in the statute, and if the rules framed under the statute ordain an action not contemplated by the statute, it would suffer from the vice of excessive delegation and would on this platform be held ultra vires. Rules are framed for dealing in detail with myriad situations that may manifest themselves, for the guidance of the concerned Authority. Rules must, therefore, be interpreted in a manner which would repose them in harmony with the parent statute. Based on our experience, it seems to us that the Army Authorities are often consumed by the Army Rules without fully comprehending the scope of the Army Act itself...

The apex court held that power to do particular act must be located in some statute, and if rules framed under such statute ordain action not contemplated by statute, it suffers from vice of excessive delegation and it would be declared *ultra vires*.

87 *Supra* note 85 at para 12-14.

88 AIR 2015 SC 961.

89 *Id*. at 971.

Doctrine of legitimate expectation

In *Pratap Kishore Panda* v. *Agni Charan Das*,[90] Orissa Public Service Commission (OPSC) issued advertisement for competitive examination for recruitment of candidates for which certain seats were reserved for schedule caste and schedule tribes. However, there were inadequate person who were recruited under reserved category, hence state government decided to fill these remaining seats on *adhoc* basis. Respondent was appointed on such *ad hoc* basis. Respondents were declared senior to appellant. Tribunal declared fixation of *inter se* seniority and promotions of regularised candidates over Odisha Public Service Commission (OPSC) appointed recruits illegal and contrary to law. It was held that the services cannot be regularized by resolution, and accordingly recruitment made by state government contrary to rules cannot be upheld. On appeal, high court set aside order passed by tribunal and resolutions passed by government was upheld partly, directing that candidates selected by selection committee and subsequently regularized should be kept below candidates selected by OPSC under reserved category quota, but should be placed in seniority list according to then roster in accordance with Orissa Reservation of Vacancies in Posts and Services (for SC and ST) Act, 1975 and rules framed there under. An appeal was made and Supreme Court after analyzing all facts and circumstances of the case and relying upon various precedents[91] held that it is well within powers of state to organize alternative recruitment drive when insufficient SC/ST candidates are available under article 320(4) of the Constitution. Further, apex court was of the view that at the time of appointment of respondents, prevailing law regarding appointment of SC/ST candidates to surplus vacancies was contained in section 9(4) of Orissa Reservation of Vacancies in Posts and Services (for SC and ST) Act, 1975 and it does not contain or prescribe any limitation regarding method of fresh recruitment except that it is restricted to SC/ST candidates. Understanding procedural inability, apex court was of the view that a fresh recruitment would not be possible, and uphold the appointment of respon-dents as legally valid.

In *Lalaram* v. *Jaipur Development Authority*,[92] the apex court held that right to property having been elevated to the status of human rights, is inherent in every individual, and thus has to be venerably acknowledged. The judicial mandate of human rights dimension, makes it incumbent on the state to solemnly respond to its constitutional obligation to guarantee that a land looser is adequately compensated. The court held that a parallel doctrine founded on the doctrine of fairness and natural

90 *Supra* note 3.

91 *Ashok Kumar Uppal* v. *State of Jammu and Kashmir,* AIR 1998 SC 281; *State of Mysore* v. *P. Narasing Rao,* AIR 1968 SC 349; *Secretary, State of Karnataka* v. *Umadevi* (2006) 4 SCC 1; *State of Orissa* v. *Smt. Sukanti Mohapatra* (1993) 2 SCC 486; *Jammu and Kashmir Public Service Commission* v. *Dr. Narinder Mohan* (1994) 2 SCC 630; *Dr. Surinder Singh Jamwal* v. *State of Jammu and Kashmir* (1996) 9 SCC 619; *Direct Recruit Class II Eng. Officers Association* v. *State of Maharashtra* (1990) 2 SCC 715.

92 2015 (13) SCALE 78.

justice known as *legitimate expectation* is now a firmament of administrative law which ensures the predication of fairness in state action.[93] An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred upon them, therefore it must be exercised *bona fide* and for legitimate expectations. In this regard court referred to *Food Corporation of India* v. *Kamdhenu Cattle Feed Industries*,[94] wherein court held that, there was no unfettered discretion in public law and that a sovereign authority possessed powers only to use them for public good. Observing that the investiture of such power imposes with it, the duty to act fairly and to adopt a procedure which is fair play in action, it was underlined that it also raises a reasonable or legitimate expectation in every citizen to be treated fairly in his dealings with the State and its instrumentalities.[95] The apex court opined that the invocation of power must reach injustice and redress the same. The power vested by the state in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest, adhering to the statutory provisions and fact situation of a case. The public authorities cannot play fast and loose with the powers vested in them, and any decision taken in an arbitrary manner would contradict principle of legitimate expectation.

In *P. Suseela* v. *University Grants Commission*,[96] the apex court upheld the regulations framed by the University Grants Commission (UGC) prescribing minimum qualifications for national and state level entrance tests (NET/SLET) for appointment of teachers/assistant professors in colleges. The court held that the legitimate expectation must always yield to larger public interest, which in the instant case is to have highly qualified lecturers/assistant professors to teach in the University Grants Commission's (UGC) Institutions. Even if private appellants had legitimate expectation to be exempted from qualifying in NET exam in case they were M. Phil /Ph.D. holders on basis of such exemption granted in past and decision in *Sadhana Chaudhary*,[97] but that expectation has to yield to larger public interest of most meritorious candidate to teach in higher education institutions. The Supreme Court upheld the regulations framed by the UGC prescribing minimum qualifications for national and state level entrance tests (NET/SLET) for appointment of teachers/assistant professors in colleges. The bench dismissed a batch of petitions filed by Ph. D./M. Phil. holders challenging the regulations as revised by the union government but said they would only be prospective. The constitutional validity of the UGC regulations (minimum qualifications required for the appointment and career advancement of teachers in universities and institutions

93 The concept of legitimate expectation is elaborated in *Halsbury's law of England*, 4th edn.1(1) 151-52 (Lexis Nexis, London, 2003 Reissue) 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 ex-pectation may arise from a representation or promise made by the authority including an Implied representation or from consistent past practice

94 (1993) 1 SCC 71.

95 *Ibid*.

96 (2015) 8 SCC 129.

97 (1996) 10 SCC 536.

affiliated to it) (the third Amendment) Regulation 2009 under which NET/SLET was to be the minimum eligibility condition for recruitment and appointment of lecturers in universities/colleges/institutions was assailed in the petitions. The court held that though the UGC exempted Ph. D. and M. Phil. candidates from the eligibility test, the union/Central government had issued a circular including them in the regulations. Meanwhile, the High Courts of Madras, Delhi and Rajasthan rejected the challenge, while the High Court of Allahabad quashed the regulations.

The apex court set aside the High Court of Allahabad judgment which said that the regulations were issued pursuant to directions of the central government which themselves were outside the powers conferred by the UGC Act, 1956 and, hence, the conditions laid down would not apply to M. Phil and Ph.D. degrees awarded prior to December 31, 2009. The apex court explains:[98]

> It is clear that the object of the directions of the Central Government read with the UGC regulations of 2009/2010 are to maintain excellence in standards of higher education…We have already pointed out how the directions of the Central government under Section 20 of the UGC Act pertain to questions of policy relating to national purpose. We have also pointed out that the regulation making power is subservient to directions issued under Section 20 of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with directions issued by the Central Government.

Further the court also expressed its disappointment on a single judge bench not following a division bench's orders,[99] the apex court held:[100]

> This is also a matter which causes us some distress. A Division Bench judgment of the same High Court is binding on a subsequent Division Bench. The subsequent Division Bench can either follow it or refer such judgment to the Chief Justice to constitute a Full Bench if it differs with it. We do not appreciate the manner in which this subsequent judgment, (even though it has reached the right result) has dealt with an earlier binding Division Bench judgment of the same High Court…

Subordinate legislation when validly made becomes part of the Act

In *Kalyani Mathivanam* v. *K.V. Jeyaraj*,[101] the Supreme Court held that in the event of conflict, the central legislations will override the state laws on subjects like university and education where both have the power to legislate. The apex court held:[102]

98 *Id.*, paras 18 and 23.

99 In SLP (C) NO.3054-3055/2014, dated 06.01.2014.

100 *Supra* note 97 at para 25.

101 (2015) 2 CTC 192.

102 *Id*., para 44.

> In view of the discussion ..., we hold: (i) To the extent the state legislation is in conflict with central legislation including sub-ordinate legislation made by the central legislation under Entry 25 of the Concurrent List shall be repugnant to the central legislation and would be inoperative,…The UGC regulations being passed by both Houses of Parliament, though a subordinate legislation has binding effect on the universities to which it applies.

The court however, concurred with the views of the high court on the constitutional is-sue, but set aside its order quashing appointment of K Mathivanan as Vice Chancellor and held:[103]

> The UGC Regulations, 2010 having not adopted by Tamil Nadu, the question of conflict between state legislation and statutes framed under central legislation does not arise. Once it is adopted by the state government, the state legislation to be amended appropriately. In such case also there shall be no conflict between the state legislation and the central legislation… We uphold the appointment of Dr Kalyani Mathivanan as Vice Chancellor, Madurai Kamaraj University ... And set aside the impugned common judgment and order dated June 26, 2014 passed by a division bench of the Madras High Court, Madurai Bench.

Tribunal is not bound by the rigid rules

A tribunal is not confined to the administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper though they may not be within the terms of any existing agreement. The process it employees is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In *Tamil Nadu Terminated Full Time Temporary LIC Employees Association* v. *Life Insurance Corporation of India*,[104] the apex court held that over riding terms of earlier compromise while passing award by the National Industrial Tribunal (NIT) is within its jurisdiction and the scheme framed pursuant to order in special leave petition, passed by the high court, cannot override the award passed by the Central Government Industrial Tribunal (CGIT). The court was of the view that passing of award by the CGIT on the basis of earlier award passed by the NIT would not have any infirmity.

Administrative instructions cannot make inroads into statutory rights

In *Veerendra Kumar Dubey* v**.** *Chief of Army Staff*,[105] the appellant received a show cause notice pointing out that he had been awarded four red ink entries for various offences set out in the notice and that the appellant had become a habitual

103 *Id*., para 44 (v).
104 2015 (3) SCALE 861.
105 2015(11) SCALE 702.

offender thereby setting a bad example of indiscipline in the army. The notice, on that premise, called upon the appellant to show cause as to why he should not be discharged from service under army rule. It was found that no enquiry whatsoever was conducted by the commanding officer, as per the procedure, at any stage against the appellant. More importantly, there was nothing on record to suggest that the authority competent had taken into consideration the long service rendered by the appellant, the difficult living conditions and the hard stations at which he had served.

While allowing the appeal against the order passed by armed force tribunal, the apex court took notice that it was common ground that a red ink entry might be earned by an individual for overstaying leave for one week or for six months. The court held that if two persons who suffer such entries were treated similarly notwithstanding the gravity of the offence being different, it would be unfair and unjust for unequal could not be treated as equal. While expressing over the fact of the case, court expressed how unfair would it be to allow a person who had suffered four such entries on a graver misconduct to escape discharge while another individual who has earned such entries for relatively lesser offences may be asked to go home prematurely. Unfairness in any such situation makes it necessary to bring in safeguards to prevent miscarriage of justice, which is what the procedural safeguards purported to do. Since the appellant already crossed the age of superannuation, it was directed that the appellant should be treated to have been in service till the time he would have completed the qualifying service for grant of pension but without back wages and all the benefits of continuity of service for all other purpose should be granted to the appellant including pension.

When subject matter comes to be incorporated in primary legislation, supersession of reference to government order in law/rule, predating such primary legislation, to be constructed as reference to the primary legislation

In *Nawal Kishore Mishra* v. *High Court of Judicature of Allahabad*,[106] the challenge in the writ petitions was to the appointment made by the high court to the post of direct recruit district judges in the unfilled reserve vacancies, to the extent of 34 in number by way of promotion from the in service candidates' by applying Rule 8(2) of the Uttar Pradesh Higher Judicial Service Rules, 1975 (hereinafter referred to as the Rules). The division bench of the high court dismissed the writ petitions. Aggrieved, the appellants have come forward with these appeals.

The apex court held that if any department of the state including the high court were to adopt a prescribed rule of reservation after the coming into force of the Reservation Act, 1994, such adoption can be held justifiable only by way of adopting the relevant statutory provision of the Act. The high court would be well in order in adopting the said statutory prescription contained in the Reservation Act, 1994 for the purpose of complying with the rules of reservation. The apex court failed to find any other scope for the high court to look for any government order for the purpose of applying the rule of reservation. Further, when section 3(1) of the Reservation Act,

106 AIR 2015 SC 1332.

1994 specifically provides for the extent of reservation for SC‘s and ST‘s and Other Backward Classes (OBS‘s) in the matter of services, the court found no reason why the high court should search for any other government order for the purpose of complying with the rules of reservation. The court was of the view that for all practical purposes the usage of the expression order in rule 7 is only referable to the provision for reservation as contained in section 3(1) of the Reservation Act, 1994. Therefore, if the Act,1994 was adopted by the high court in exercise of its powers under rule 7, that would be sufficient for applying the rule of reservation. In the event of valid adoption of the rule of reservation of the Reservation Act of 1994 by the high court by exercising its power under rule 7 of the high court rules the same would be valid and in accordance with law. Having regard to the proceedings of the selection and appointment committee as well as that of the full court resolution, the court was convinced that there was sufficient compliance of the requirements of rule 7 of the high court rules in the matter of adoption of the rules of reservation. The apex court held:[107]

By virtue of the adoption of the rule of reservation by invoking Rule 7 when the High Court decided to apply only to the extent of prescribed percentage of reservation‘ for different categories, namely, SC, ST and OBC as provided Under Section 3(1) of the Reservation Act 1994 in all other respects. Keeping the said legal principle relating to applicability of Section 3(1) of the Reservation Act, 1994 i.e. Rules 7 and 8(2) of the High Court Rules in mind, the apex court found the action of the High Court in having resorted to filling up of the unfilled reserved vacancies by taking umbrage Under Rule 8(2) perfectly justified. The said action of the high court in having filled up those unfilled reserved vacancies of direct recruitment of the year 2009 was stated to have been made by promoting the inservice candidates.

The court finally directed that:[108]

> whatever promotions already made by resorting to Rule 8(2), the High Court can be permitted to provide that number of vacancies which remained unfilled in the year 2009 in the reserved category of direct recruit source by adding that number of vacancies in the recruitment to be made in the future years until such number of vacancies of unfilled reserved category pertaining to 2009 are filled.

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

In *Zuari Cement Ltd.* v. *Regional Director E.S.I.C., Hyderabad,*[109] the appellant was engaged in the manufacture and sale of cement at Yerraguntla in Cuddappa District. This area was brought under the purview of ESI scheme. The government of Andhra

107 *Id*. at 1344.

108 *Id*. at 1345.

109 AIR 2015 SC 2764.

Pradesh initially granted exemption to the appellant for a certain period. However, the government rejected any further exemption for which the regional director, ESI issued a demand for a sum towards contribution. The appellant filed writ petitions against the same before the high court. The high court directed the appellant to approach the ESI court under section 74 of the Employees Insurance Act, 1948. The appellant filed review petition before the high court. The same was dismissed observing that the appellant has an alternative remedy under section 74 of the Act. The appellant again filed writ petitions before the high court expressing their ap-prehension that the ESI court may not have the power to grant the relief of exemption from the scheme of the Act and, therefore, prayed that the appropriate government be directed to consider the issue of exemption by personal hearing to the appellant and by conducting an inquiry. The high court held that ESI court has jurisdiction to decide the issue and all questions including the applicability of the Act can be raised before the ESI court. Accordingly, the appellant approached the ESI court under section 75(1) (g) of the Act challenging the demand notice. The ESI court appointed an advocate commissioner to submit a report as to the medical benefits made available to the workmen in the industry. The report gave an affirma-tive one. On the basis of the report the court granted future exemption to the appellant from the coverage of the Act and also set aside the impugned demand notices for the period between 1993 to 2001 along with interest. The corporation challenged the order of the court be-fore the high court contending that the ESI court does not have power under section 75 of the Act and it is only the appropriate government which has got the power under section 87 of the Act to exempt anyone from the application of the Act. The high court allowed the appeal of the corporation and held that ESI court does not have the power to grant exemption under section 75(1)(g) of the Act. Aggrieved by this the appellant knocked the door of Supreme court where the apex court held that the Act, does not speak of a dispute between the employer and the appropriate government, which alone has the plenary power to consider the question of grant of exemption. Grant or refusal of exemption by the appropriate government cannot be said to be a dispute between the appellant and the respondent. For grant or refusal of exemption, a specific provision is prescribed under the Act, it cannot be brought within the ambit of any other matter required to be decided by the ESI court under section 75(1) (g) of the Act, 1948. The Supreme Court consider the question of grant of exemption, therefore, the order passed by the ESI court granting exemption and consequently setting aside the demand notices is *nonest*. The apex court found it a basic principle of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor* v. *Taylor* [110] which was followed by Lord Roche in *Nazir Ahmad* v. *King Emperor* [111] who stated Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.[112]

110 45 LJCH 373.

111 AIR 1936 PC 253.

112 *Id*., para 14.

In *Mackinon Mackenzie and Company Ltd.* v. *Mackinnon Employees Union*,[113] the apex court held that non issue of mandatory notice for effecting retrenchment, in the prescribed from to the specified authorities of the state government, is violation of section 25F of the Industrial Dispute Act, 1947, thereby attracting reinstatement with backwages. Before intending closure under section 25FFA of the Act, 1947, the employer is bound to give prior notice of at least 60 days to the state government and non-compliance of section 25FFA of the Act, 1947, would attract the closure to be invalid resulting into award of reinstatement with back-wages in favour of the workman. The Supreme Court further held that non-preparation of seniority list or non-display of seniority list is breach of the provisions of sec-tion 25G of the Act, 1947 and rule 81 of the Industrial Disputes (Bombay) rules, 1957, thus justifying the retrenchment of the workman to be illegal. Whenever a statute prescribes that a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and specified consequence should not follow. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.[114] Non compliance of statutory provisions is unfair labour practice for which the employer is liable to be practice. The court held that retrenchment of workmen arbitrarily and unreasonably is an unfair labour practice, calling for full backwages with consequential benefits if the termination of services of the workmen is in violation of mandatory provisions since such a termination would be void *ab initio* in law and ineffective. The court also stated that any sympathy with a party which gambles in litigation to put off the evil day and when that day comes, prays to be saved from its own gamble, is not justified.

Administrative apathy no reason for non fulfillment of statutory mandate

In *Dilip K. Basu* v. *State of West Bengal*,[115] the amicus filed a summary of recommendations, and sought suitable directions for settingup of State Human Rights Commissions in the States of Delhi, Arunachal Pradesh, Mizoram, Meghalaya, Tripura and Nagaland, where such Commissions have not been setup, despite an opportunity granted for the purpose. It was contended by the states that the establishment of a commission was not mandatory in terms of section 21 of the Protection of Human Rights Act, 1993. In the absence of any mandatory requirement under the Act constitution of a State Human Rights Commission can-not be required. The Supreme Court held that the use of word 'may' in section 21 of the Protection of Human Rights

113 AIR 2015 SC 1373.

114 Supreme Court referred few precedents in this regards, see *Bharat Forge Co. Ltd.* v. *Uttam Manohar Nakate* (2005) 2 SCC 489; *Workmen of Sudder Workshop of Jorehaut Tea Co.* v. *Mgmt. of Jorehaut Tea Co.*, AIR 1980 SC 1454; Swadesamitran Ltd., Madrass v. *Their Workmen*, AIR 1960 SC 762; *Isha Steel Treatment, Bombay* v. *Association of Engineering Workers, Bombay* (1987) 2 SCC 203; *JK Synthesis* v. *Rajasthan Trade Union Kendra* (2001) 2 SCC 87; *Bhuvesh Kumar Dwivedi* v. *Hindalco* (2014) 11 SCC 85.

115 AIR 2015 SC 2887.

Act, 1993 is not by itself determinative of the true nature of the power or the obligation conferred or created under a provision. The court explained how the use of word 'may' does not always mean that the authority upon which the power is vested may or may not exercise that power. To support the view, court referred to *Bachahan Devi* v. *Nagar Nigam, Gorakhpur,*[116] wherein it was held that if the parliament has used the words 'may' and 'shall' at the places in the same provision, it means that the intention was to make a distinction in as much as one was intended to be discretionary while the other mandatory. The court opined that even when the two words are used in the same provision the courts power to discover the true intention of the legislature remains unaffected. Referring to the functions of National Human Rights Commission (NHRC), which includes spreading human rights literacy and the protection of human rights are critical for the promotion and protection of human rights at the state level, apex court opined that a contention that State Human Rights Commissions (SHRC) were not to be mandatory to be set up would be destructive of the scheme of the Act, 1993. The court directed states of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura and Nagaland to set up SHRC for their respective territories with or without resort to provisions of section 21(6) of the Act, 1993. The court also directed all state governments to fill all vacancies, for the post of chairperson or the member of SHRC wherever they exist within a period of three month and vacancies occurring against the post of chairperson or the members of the SHRC in future shall be filled up as expeditiously as possible but not later than three months from the date such vacancy occurs. The court also directed to take appropriate action in terms of section 30 of the Act, 1993, in regard to setting up of specifying human rights courts.

The apex court directed all state governments to take steps to install CCTV cameras in all the prisons in their respective states, within a period of one year, but not later than two years and installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violation reported in such stations shall also be in their priority. It also directed state government to consider appointment of non official visitors to prisons and police stations in terms of the relevant provisions of the Act, 1993 wherever they exist in the jail manuals or the relevant rules and regulations and shall launch in all cases where an enquiry establishes culpability of the persons in whose custody the victim has suffered death or injury, an appropriate prosecution for the commission of offences disclosed by such enquiry report or investigation in accordance with law. The court further asked the state governments to consider deployment of at least two women constables in each police station wherever such deployment is considered necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years.

116 (2008) 12 SCC 372.

V NATURAL JUSTICE

Adequate safeguard for universally recognized principle of human dignity and the right to a speedy trial must be upheld

In *Ajay Kumar Choudhary* v. *Union of India*,[117] the apex court held that suspension, specially while preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce to be of short duration and if it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. In this regards court apex court refers to the Universal Declaration of Human Rights (UDHR),[118] European Convention on Human Rights (ECHR),[119] judgment passed by the Supreme Court of the United States where it struck down the use of *nolle persequi*,[120] Indian judgment *Kartar Singh* v. *State of Punjab*,[121] wherein the right of speedy trial was equated with fundamental right granted under the Constitution. The court while drawing support from the observations contained in *Raghubir Singh* v. *State of Bihar*,[122] and *AR Antulay* v. *RS Nayak*,[123] wherein the court spurred to extrapolate the quintessence of the proviso of section 167(2) of Cr PC to moderate suspension orders in cases of departmental/ disciplinary inquiries. If parliament considers it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/ chargesheet has not been served on the suspended person. The court further opined that the proviso to section 167(2) of the Cr PC does postulates personal freedom, but also respect preservation of human dignity by putting right to a speedy trial on the same pedestal. Suspension order must not extend beyond three months if within this period the memorandum of charges/chargesheet is not served on the delinquent officer/employee; if served than a reasoned order must be passed for the extension of the suspension. Adequate safeguard for universally recognized principle of human dignity and the right to a speedy trial must be upheld.

117 AIR 2015 SC 2389.

118 United Nations Declaration on Human Rights, art.12 states No one shall be subjected to arbitrary interfe-rence with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Every-one has the right to the protection of the law against such interference or attacks.

119 European Commission on Human Rights, art. 6(1), promises that in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a rea-sonable time…. and in its second sub article that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

120 *Klapfer* v. *State of North Carolina* 386 US 213 (1967).

121 (1994) 3 SCC 569.

122 (1986) 4 SCC 481.

123 (1992) 1 SCC 225.

Non-supply of requisite documents amounts to violation of principles of natural justice

In *Ratnesh Kumar Choudhary* v. *Indira Gandhi Institute of Medical Sciences, Patna, Bihar,*[124] the appellant applied for the post of Physiotherapist in Indira Gandhi Institute of Medical Sciences, Patna (INGIMS). The selection committee of the institute selected him for the post of Chest Therapist. While selecting him the post of chest therapist, the screening committee observed that the post of physiotherapist and chest therapist are of similar nature and, therefore, the candidates for the post of physiotherapist can be considered for the post of chest therapist also and appointed appellant employee to the post of chest therapist. This appointment was subject to completion of probation for two years. After few years, a complaint was received by the vigilance department relating to this appointment and in complaint it was stated that appellant has been wrongly, illegally appointed as chest therapist while he does not even possess the essential qualification as required for the post of chest therapist. In this regard an enquiry was conducted and the employee was served with the show cause and after show cause notice, the institute proceeded to terminate his services. Appellant sent his reply and asked for the copy of the complaint as well as copy of vigilance report. The institute never supplied the said documents and terminated the employee's services by stating that his appointment on the post of chest therapist was illegal. Appellant filed writ petition against this termination before high court. High court quashed the termination letter by holding that there had been a violation of the principles of natural justice and the employee was kept in dark and was not informed about the grounds on which his services were being terminated. Institute filed appeal before the division bench which set aside the order of single bench by holding that it was an illegal appointment no such plea can be raised that no fraud has been alleged in the name of beneficiary of such appointment. Against the order of division bench employee filed appeal before the apex court on the grounds—whether there had been a violation of the principles of natural justice for not conducting a regular enquiry; whether the order passed by the authority was stigmatic or not; and whether termination was termination simpliciter. While answering the issues, the court relied upon the ratio laid down in *State Bank of India* v. *Palak Modi*.[125] The court observed, a probationer does not have right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. And if a competent authority holds an inquiry for judging the suitability of the probationer for his further continuance in service or confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. But if the allegation of misconduct constitutes the foundation of the action taken then the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.[126]

124 AIR 2016 SC 467.

125 (2013) 3 SCC 607.

126 *Ibid*.

Relying upon the aforesaid judgment and referring various other cases[127] dealing with matter of similar nature, the court held that in the present case, there had been a clear violation of principles of natural justice as admittedly; the copies of the requisite documents were not given to the employee. The vigilance department conducted the enquiry behind the back of the employee and submitted its report, and in this report, vigilance department looked into the character and conduct of employee and there are stigmatic remarks which ultimately constitute the foundation of termination and not the motive. The court held that this was not a termination simpliciter and non-supply of requisite documents amounts to violation of principles of natural justice.

Applicability of natural justice

In *Dharampal Satyapal Ltd.* v. *Deputy Commissioner of Central Excise*,[128] the company had availed tax benefit for industries set up in north eastern states. Later the benefit was withdrawn for industries dealing in *pan masala*, tobacco and tobacco substitutes. The authorities wanted to recover from the company what it had benefited. The company challenged it in the high court and Supreme Court on the ground of breach of natural justice. The apex court while dismissing their arguments held that in the special circumstances of the case (as in the case of the present one) the doctrine of natural justice cannot be applied as a strait jacket formula. The court was of the view that it all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. Highlighting certain exceptions that may be invoked under certain circumstances, the court held that no action shall be taken without providing a hearing to the affected party. Court explained that the principle, called the law of natural justice, is flexible according to situations, and it need not be followed as an empty formality, however, if no prejudice is caused to a party, the principle need not be applied as an empty formality.

In *Poonam* v. *State of U.P.*,[129] respondent ran a fair price shop, various complaints were made against him pertaining to non distribution of essential commodities for which an enquiry was ordered. After obtaining the enquiry report, respondent's license was suspended by sub divisional magistrate and explanation was called for from the

127 *Samsher Singh* v. *State of Punjab* (1974) 2 SCC 831; *R.S Gupta* v. *U.P. State Agro Industries Corporation Ltd* (1999) 2 SCC 21; *State of U.P*. v. *Kaushal Kishore Shukla* (1991) 1 SCC 691; *Triveni Shankar Saxena* v. *State of U.P* (1992) Supp (1) SCC 524; *State of U.P.* v. *Prem Lata Misra* (1994) 4 SCC 189; *Parshotam Lal Dhingra* v. *Union of India*, AIR 1958 SC 36; *State of Bihar* v. *Gopi Kishore Prasad*, AIR 1960 SC 689; *State of Orissa* v. *Ram Narayan Das*, AIR 1961 SC 177; *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Mazdoor Sab-ha* (1980) 2 SCC 593; *Anoop Jaiswal* v. *Govt. of India* (1984) 2 SCC 369; *Nepal Singh* v. *State of U.P.* (1980) 3 SCC 288; *Commissioner, Food and Civil Supplies* v. *Prakash Chandra Saxena* (1994) 5 SCC 177; *Chandra Prakash Shahi* v. *State of U.P.* (2000) 5 SCC 152; *Union of India* v. *Mahaveer C. Singhvi* (2010) 8 SCC 220; *Dipti Prakash Banerjee* v. *S.N. Bose National Centre for Basic Sciences* (1999) 3 SCC 60; *Pavanendra Na-rayan Verma* v. *Sanjay Gandhi P.G.I. of Medical Sciences* (2002) 1 SCC 520.

128 2015 (6) SCALE 612.

129 2015 (12) SCALE 227.

respondent. Respondent's shop was attached to one running another shop and respondent handed over charge of shop to him. Subsequently, a final enquiry report was placed before the deputy district magistrate, reflecting that there was improper distribution of essential commodities in violation of instructions and the competent authority cancelled respondent's allotment. Respondent appealed against the order to the commissioner who while hearing the order refused interim relief. Eventually, however, the appeal preferred by the appellant was allowed. The appellant had got herself impleaded in the appeal on the ground that she had been allotted the shop after cancellation of the allotment along with the licence granted in favour of the respondent. The appellate authority after hearing the respondent opined that the entire proceedings against the respondent were initiated on the basis of oral statements pertaining to allegations made by some below poverty line card holders whom respondent had told that their cards had been cancelled. There was no enquiry and investigation by the deputy district magistrate. It appeared from the official documents, as regards the cancellation of original ration cards of the below poverty line card holders; respondent was not provided a copy of the investigation report and was deprived of opportunity to submit his clarification. There were serious procedural lapses; and the investigation carried out by officials was severely faulty. Thus the appellate authority allowed the appeal of the respondent, restored the allotment and cancelled the allotment to the appellant. Appellant challenged the decision before the high court which got dismissed for not having an independent right to continue litigation, being the subsequent allottee. Aggrieved by this the appellant took the resort of Supreme Court where the court held that the appellant cannot be held to have an independent legal right in the present proceedings. It was the respondent who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. The appellant was allotted the shop, in the handicapped quota, but such allotment was the result of the shop falling vacant. It was not relevant that appellant was allowed to put her stand in the appeal against respondent's success in regaining the shop. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that had no effect on the facts of the case nor did it confer any legal status on her. She cannot assail the said order in a writ petition because she is not a necessary party. It was the state or its functionaries who could have challenged the same in appeal, but in their non filing of an appeal, appellant was not conferred any locus to challenge the order passed in favor of the respondent. She was a third party to the *lis*, and respondents revived right in the shop cannot be contested by a third party. The Supreme Court relied on judgments of earlier cases[130] and came to above conclusion and accordingly dismissing the appeal for lacking the merit.

130 See generally, *U.N Singh Malpaharia* v. *Add. Member Board of Revenue, Bihar,* AIR 1963 SC 786; *Vijay Kumar Kaul* v. *Union of India* (2012) 7 SCC 610; *Indu Shekhar Singh* v. *State of U.P*. (2006) 8 SCC 129; *Gulabchand Chhotalal Parikh* v. *State of Gujarat,* AIR 1965 SC 1153; *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot* (1974) 2 SCC 706; *Asstt. G.M. State Bank of India* v. *Radhey Shyam Pandey,* 2015 (3) SCALE 39; *Hari Vishnu Kamath* v. *Ahmad Ishaque,* AIR 1955 SC 233; *B. Gopalaiah* v. *Government of Andhra Pradesh,* AIR 1969 AP

In *Professor Ramesh Chandra* v. *University of Delhi,*[131] an apex court directed the Delhi University to abstain from appointing any retired judge who was earlier on its panel, as an inquiry officer to investigate any of its employees. The bench reasoned that in case such a retired judge is engaged by the disciplinary authority of the university, the other party may allege bias, which may in turn tarnish his reputation. In this case the high court while dismissing the writ petition, refused to interfere with the show cause notice issued on the appellant and the memorandum by which the appellant was punished and removed from the service of the Delhi University. Major issues which framed in the apex court were−whether or not the dismissal of the petitioner met with *malafide*? Whether or not the due procedure was followed for the dismissal of the petitioner? Whether or not there was suppression of evidence by the petitioner? The apex court held:[132]

> We are of the opinion that if an Hon'ble retired Judge of a Court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the Disciplinary Authority should not engage such retired Judge as an Inquiry Officer, as the other party may allege bias against the Inquiry Officer and the reputation of the Hon'ble Judge may be at stake.

The apex court while relying on its judgment in *Board of Trustees of the Port of Bombay* v. *Dilip kumar Raghvendranath Nandkarni,*[133] and *J.K. Aggarwal* v. *Haryana Seeds Development Corporation,*[134] held that all the departmental inquiries conducted against the appellant were in violation of rules of natural justice. The court set aside penal memoranda ordered against appellant and reinstated him to the post of professor but in the facts and circumstances allows only 50 percent of back wages to appellant for the intervening period *i.e.* from the date of his disengagement till the date of this

204; *J.S. Sachdev* v. *Reserve Bank of India, New Delhi,* ILR (1973) 2 Delhi 392; *State of Himachal Pradesh* v. *Kailash Chand Mahajan* 1992 Supp (2) SCC 251; *State of Kerala* v. *Miss Rafia Rahim,* AIR 1978 Ker 176; *Padamraj* v. *State of Bihar,* AIR 1979 Pat 266; *A. Janardhana* v. *Union of India* (1983) 3 SCC 601; *Sadananda Halo* v. *Momtaz Ali Sheikh* (2008) 4 SCC 619; *All India SC and ST Employees' Assn.* v. *A. Arthur Jeen* (2001) 6 SCC 380; *Canara Bank* v. *Debasis Das* (2003) 4 SCC 557; *J.S. Yadav* v. *State of U.P.* (2011) 6 SCC 570; *State of Karnataka* v. *K. Govindappa* (2009) 1 SCC 1; *State of Punjab* v. *Bhajan Kaur* (2008) 12 SCC 112; *Sangam Spinners* v. *Regl. Provident Fund Commr* (2008) 1 SCC 391; *Railway Board* v. *C.R. Rangadhamaiah* (1997) 6 SCC 623; *Prabodh Verma* v. *State of Uttar Pradesh* (1984) 4 SCC 251; *Tridip Kumar Dingal* v. *State of West Bengal* (2009) 1 SCC 768; *State of Assam* v. *Union of India*: (2010) 10 SCC 408; *Public Service Commission, Uttranchal* v. *Mamta Bisht* (2010) 12 SCC 204; *Union of India* v. *Dhanwanti Devi* (1996) 6 SCC 44; *U.P. Awas Evam Vikas Parishad* v. *Gyan Devi (Dead) by L.Rs*. (1995) 2 SCC 326; *DDA* v. *Bhola Nath Sharma (Dead) by L.Rs* (2011) 2 SCC 54; *Ram Swarup* v. *S.N. Maira* (1999) 1 SCC 738.

131 2015 (2) SCALE 203.

132 *Id*. at 221.

133 (1983) 1 SCC 124.

134 (1991) 2 SCC 283.

judgment. Further, court directed that the intervening period to be treated as 'on duty' for all purposes including seniority, increment, fixation of pay, retrial benefits, *etc*. The respondents were also directed to pay the appellant arrears within two months, failing which they shall be liable to pay interest @ 6 percent from the date of the judgment.

Analyzing the procedure followed against the appellant, the court observed that the respondent first decided to punish the appellant and only thereafter memorandum of charges was framed, show cause notice was issued and inquiry was conducted, just to give it a color of legal procedure. The memorandum was hence declared illegal.

Public functions—public accountability and transparency

In order to bring the element of transparency in the functioning of matters concerning cricket in India, Supreme Court in *Board of Control for Cricket in India* v. *Cricket Association of Bihar*,[135] rightly laid down that the conflict of interest of people associated or in any way related to the BCCI cannot be accepted for the purpose of cricketing operations in India. The case revolves around the decision of the BCCI in 2007 to launch the Indian Premier League (IPL). In a subsequent meeting held on September 27, 2008, BCCI decided to appoint N. Srinivasan as Secretary of BCCI and in the same meeting it amended its regulation in order to exclude the IPL and Champions League T20 from its purview. In April 2013, Delhi police retrieved information in relation to spot fixing in IPL and charges were leveled against Raj Kundra, the owner of Rajasthan Royals, and Gurunath Meiyappan, the son-in-law of N. Srinivasan who was also the owner of the IPL team Chennai Super Kings. BCCI constituted a commission headed by Shri Sanjay Jagdale and two retired judges of Madras High Court. Shri Sanjay Jagdale, however, resigned as member of the probe commission leaving the two former judges to complete the probe. A PIL was filed by cricket association of Bihar before the Bombay High Court seeking constitution of committee to be declared *ultra-vires* and sought the appointment of retired Supreme Court judges in the panel. They also prayed for termination of contract of IPL franchisee Chennai Super Kings and Rajasthan Royals with BCCI and initiation of disciplinary proceedings against N. Srinivasan. The high court in an order dated 30th of July 2013 declared constitution of probe commission in contravention to provisions 2.2 and 6 of IPL operational rules. The high court, however, denied relief in the form of constitution of commission consisting of retired Supreme Court judges. An appeal was filed before the Supreme Court by the board. The apex court constituted a committee under supervision of Justice Mukul Mudgal to intervene into the alleged match fixing allegations surfacing the IPL. There were three major issues for consideration—whether BCCI was state under article 12 of the Constitution and if not, whether it is amenable to the writ jurisdiction of the high court under article 226 of the Constitution of India; whether Raj Kundra and Gurunath Meiyappan were team officials for the purpose of disciplinary proceedings?; and whether Amendment to Rule 6.2.4 of IPL regulations

135 AIR 2015 SC 3194.

was to the extent it permits administrators to have commercial interest in the IPL, Champions League and Twenty 20 events is illegal?

In relation to the first issue, the court took into consideration the principles laid down in numerous cases[136] especially *R.D. Shetty* v. *Union of India*[137] and *Ajay Hasia* v. *Khalid Mujib*[138] in order to decide that BCCI was not state within the ambit of article 12 of the Constitution of India. The court took into account the principles of absence of deep and pervasive control and lack of substantial government funding[139] to rule out BCCI as state under article 12 of the Constitution of India. In the process, the court re affirmed its decision in the case of *Zee Telefilms* v. *Union of India*,[140] wherein the court had declared BCCI to be a non state entity, amenable under the writ jurisdiction of the high court under article 226 of the Constitution and discharging functions of public importance. In relation to the second issue, the apex court took into consideration the reports submitted by the Mudgal Committee and relied on judgments of various cases[141] in order to prove that Raj Kundra and Gurunath Meiyappan as team officials for purpose of disciplinary matters as they were accredited locally or centrally by the BCCI for matters pertaining to the IPL and hence they were to be considered as team officials subject to the terms and conditions of the IPL operational rules. In addition to that, the court also held that mere suspicion of misuse of power by N. Srinivasan was not enough to hold him guilty for misuse of power. In relation to the third issue on amendment, the Supreme Court observed that an amendment which strikes at the very essence of the game as stated in the anti corruption code cannot obviously co exist with the fundamental imperatives. Conflict of interest situation is a complete antithesis to everything recognized by BCCI as constituting fundamental imperatives of the game hence unsustainable and impermissible in law.

The judgment of the apex court is an excellent attempt at bringing about more amount of transparency in the functioning of cricket. Court has rightly laid down that, conflict of interest of people associated or in any way related to the BCCI cannot be accepted for the purpose of cricketing operations in India. The absence of a proper cricketing legislation is the biggest reason behind corruption and lack of accountability in the administration of the sport in this country.

136 *Sukhdev* v. *Bhagatram Sardar Singh Raghuvanshi* (1975) 1 SCC 421; *Marsh* v. *Alabama* (3) 326 U.S. 501; *Evans* v. *Newton* 1963 1 All. E.R. 590; *New York* v. *United States* 326 US 572; *Pradeep Kumar Biswas* v. *In-dian Institute of Chemical Biology* (2002) 5 SCC 111; *Sabhajit Tewary* v. *Union of India* (1975) 1 SCC 485; *Board of Control for Cricket in India* v. *Netaji Cricket Club* (2005) 4 SCC 741.

137 AIR 1979 SC 1628.

138 AIR 1981 SC 487.

139 *Supra* note 137.

140 AIR 2005 SC 2677.

141 *Ambalal Sarabhai* v. *Phiroz H. Antia*, AIR 1939 Bom. 35; *Lennox Arthur Patrick O' Reilly* v. *Cyril Cuthbert Gittens*, AIR 1949 PC 313; *Maclean* v. *Workers Union LR* 1929 1 CHD 602, 623; *LAPO Reilly* v. *C.C. Gittens*, AIR 1949 PC 313; *Ambalal Sarabhai* v. *Phiroz H. Antia*, AIR 1939 Bom. 35.

In *Yunus Zia* v. *State of Karnataka*,[142] the question that arose for consideration before the court was whether *suo moto* complaint registered by respondent in police station of lo-kayukta against appellant was without jurisdiction. The apex court having regards to the facts and circumstances of the case and relying its earlier judgments,[143] found it to be just and proper to see that justice is meted out and the case is fairly investigated by the Corps of Detectives (COD) of the state. The court opined that the said investigation shall be entrusted to an officer of the rank equivalent to the superintendent of police in the COD and directed the second respondent to transmit the FIR to the COD Bangalore for further investigation in the matter. The court further directs the COD represented by the director general of police to entrust the same to the officer of the rank of superintendent of police for conducting impartial investigation and proceed with the matter in accordance with law. The high court rightly declined to exercise his inherent power to quash proceedings and 2nd respondent was directed to transmit FIR to COD for further investigation in matter to see justice is meted out in a fair manner.

Once the appointment of a person is void *ab initio* and bad in law, it cannot be regularized under any circumstances whatsoever

In *Bishwanath Das* v. *State of Jharkhand*,[144] the apex court dismissed the appeal holding that the impugned judgment was based on the records available which were produced along with counter affidavit namely, the enquiry report submitted by the deputy collector to the deputy commissioner with regard to the illegal appointments of the appellants. The same had been accepted by the high court after adverting to the legal submissions made by the appellants. In the judgment, the division bench referred to the procedure of appointment as laid down by the state *vide* circular. Apex court while referring to the requisite procedure found many abuse, misuse and various irregularities followed in the appointment. The court while highlighting few of the irregularities found that the merit list did not show the date of birth, qualification and knowledge of typing of the selected candidates nor does it contains the marks obtained by any of the selected candidates. In the light of these observations the court held that the appellants had not been appointed in conformity with the procedure laid down under the Rules, 1983.[145] The court further noticed all the irregularities like while appointing the appellants, circular was not followed. In this regard court referred to *Secretary, State of Karnataka* v. *Umadevi*[146] and concluded that being devoid of any merit, the appeal is dis-missed.

142 2015 (4) SCALE 467.

143 *State of Karnataka, by Chief Secretary* v. *Basavaraj Gyddappa Maliger*, ILR 2003 Karnataka 3589; *State of Karnataka* v. *Kampaiah* (1998) 6 SCC 103; *C Rangaswamaiah* v. *Karnataka Lokayukta (*1998) 6 SCC 66.

144 AIR 2015 SC 3518.

145 Bihar Nationalised Secondary School (Condition of Service) Rules, 1983.

146 (2006) 4 SCC 1.

Fairness in administrative action

In *Director General of Income Tax (Investigation) Pune* v. *Spacewood Furnishers Pvt. Ltd.*,[147] the apex court while relying on the judgments in *ITO* v. *Seth Brothers*[148] and *Pooran Mal* v. *Director of Inspection (Investigation), Income Tax*,[149] found that the opinion expressed by the high court was incorrect. The apex court opined that in order to ensure accountability and responsibility in the decision making process the courts must stressed upon the necessity of recording of reasons, despite the amendment of Income Tax Rule 112(2) with effect from October 1, 1975. The necessity of recording of reasons also acts as a cushion in the event of a legal challenge being made to the satisfaction reached. The apex court was of the view that reasons enable a proper judicial assessment of the decision taken by the revenue, and writes:[150]

> However, the above, by itself, would not confer in the Assessee a right of inspection of the documents or to a communication of the reasons for the belief at the stage of issuing of the authorization. Any such view would be counter productive of the entire exercise contemplated by Section 132 of the Act. It is only at the stage of commencement of the assessment proceedings after completion of the search and seizure, if any, that the requisite material may have to be disclosed to the Assessee.

The apex court stated that the high court had committed a serious error in reproducing in great details the contents of the satisfaction notes containing the reasons for the satisfaction arrived at by the authorities under the Act. The court after perusal found that the reading of the relevant part of the satisfaction note of the director goes to show that on the basis of materials produced satisfaction was duly recorded by him and that authorization for search should be issued. The file was put up before the Director General (Investigation) for accord of administrative approval as required by Notification dated 3 March, 2001. The requirement to obtain administrative approval is prompted by the need to provide an additional safeguard to the tax payer. The court held that with a careful reading of the order of the director general there appears no doubt that the same was reasonable and, therefore, administrative approval should be accorded. Mere suspicion ought not to be the basis of any judicial order and the findings of the high court with regard to the satisfaction recorded by the authorities appear to be in the nature of an appellate exercise touching upon the sufficiency and adequacy of the reasons and the authenticity and acceptability of the information on which satisfaction had been reached by the authorities was unjustified within the ambit of article 226 of the Constitution.

147 2015 (6) SCALE 291.

148 (1969) 74 ITR 836 (SC)

149 (1974) 93 ITR 505 (SC).

150 *Id*., para 22.

Principle of fairness to be applied carefully in the matters of sentencing

In *State of Haryana* v. *Asha Devi*,[151] the apex court noticed the decision of the court in *Allauddin Mian* v. *State of Bihar*[152] wherein the court held that as far as the requirement of hearing is concerned, the accused must be satisfied with the rule of natural justice, since it is a fundamental requirement of fair play that the accused who was concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. Since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing, hence the opportunity must be provided to assist the court in determining the correct sentence. This opportunity is mandatory and should not be treated as a mere formality, especially involving life. Without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, *etc.*, before the court, the court's decision on the sentence would be vulnerable. The apex court opined that in many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision; therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. Explaining the same court writes:[153]

> An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Like wise a sentencing decision taken without following the requirements of Sub section (2) of Section 235 of the Code of Criminal Procedure, 1973 in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before it, it must pronounce the sentence. Court stated that as a general rule the trial courts should af-ter recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it and thereafter pronounce the sentence to be imposed on the offender.

In the present case, the apex court expressed its concern with the findings of trial judge who did not attach sufficient importance to the mandatory requirement of sub section (2) of section 235 of the Code and the high court also which too had before it material placed.

151 AIR 2015 SC 3189.

152 (1989) 3 SCC 5.

153 *Id.* at 3193.

Principles of natural justice applies to administrative enquiries

In *Rajendra Shankar Shukla* v. *State of Chhattisgarh*,[154] the appellants were landowners of portions of land in villages in Chhattisgarh. The Kamal Vihar Township Development Scheme (KVTDS) was planned by respondent while discharging its functions under section 38(2) of the Act, 1973. Though the KVTDS initially started as a small Town Development Scheme (TDS), it subsequently included five villages in Raipur within its scheme. The KVTDS was initially planned and proposed for an area of 416.93 acres, and the CEO issued a public notification declaring its intention of coming up with an integrated township of that area. However, a month after the publication of the notification, the board increased the area of the integrated KVTDS from 416.93 acres to 2300 acres, which resulted in the inclusion of the lands of the appellants. At the time of appeal, the KVTDS had a total project area of 647.84 hectares, out of which the area available for development was 610.46 hectares, with 482.29 hectares of that being private land and 128.17 hectares government land. According to the development plan, the area of 647.84 hectares was also marked for recreational land, roads and lanes and other miscellaneous infrastructure like educational, hygienic and various public purpose amenities. The appellants did not agree to KVTDS and the procedure adopted, and filed petitions before the single judge of the high court, which were dismissed. The division bench of the high court, while dismissing the appeals of the appellants too upheld the validity of the KVTDS. Hence, the appellant reached the door of Supreme Court where the apex court after referring to various landmark judgments,[155] opined that a bare minimum requirement of trust and fairness by the state must be ensured to its people. For this purpose court relied on the case of *Mohinder Singh Gill* v. *Chief Election Commissioner*,[156] where the court held as under:[157]

> The moral may be stated with telling terseness in the words of William Pitt: "Where laws end, tyranny begins". Embracing both these mandates and emphasizing their combined effect is the elemental law and politics or Power best ex-pressed by Benjamin Dizreeli:
>
> I repeat...that all power is a trust-that we are accountable for its exercise that, from the people and for the people, all springs, and all must exist. (Vivien Grey, BK. VI. Ch. 7).

154 *Supra* note 4.

155 See generally, *Charan* v. *State of Maharashtra* 2012 (4) Bom CR 40; *Chairman, Indore Vikas Pradhikaran* v. *Pure Industrial Coke and Chemicals Ltd*. (2007) 8 SCC 705; *Connecticut Fire Insurance Co.* v. *Kava-nagh* (1892) A.C. 473, 480 (Privy Council); *Gurcharan Singh* v. *Kamla Singh* (1976) 2 SCC 152; V.*L.S. Finance Limited* v. *Union of India* (2013) 6 SCC 278; *Greater Mohali Area Development Authority* v. *Manju Jain* (2010) 9 SCC 157; *Bondu Ramaswamy* v. *Bangalore Development Authority* (2010) 7 SCC 129.

156 (1978) 1 SCC 405.

157 *Id*., para 33.

> Aside from these is yet another, bearings on the play of natural justice, its nuances, non applications, contours, colour and content. Natural Justice is no mystic testament of judge made juristic but the pragmatic, yet principled, requirement of fairplay in action as the norm of a civilised justice system and minimum of good government-crystallised clearly in our jurisprudence by a catena of cases here and elsewhere &

Earlier in *A.K. Kraipak* v. *Union of India*,[158] the court held that the principles of natural justice are applicable to administrative enquiries as well and that no person can be a judge in his own cause, court writes:[159]

> The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem)*. Very soon thereafter a third rule was envisaged and that is that quasijudicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi judicial in character. Arriving at a just decision is the aim of both quasi judicial enquiries as well as administrative enquiries.

The apex court while answering all the points framed in favour of the appellants set aside the judgment and orders passed by the High Court of Chhattisgarh, citing importance of principles of natural justice in administrative functions. The court held that any deviation of mandatory condition prescribed by law, thus affecting public

158 (1969) 2 SCC 262.

159 *Id*. at para 20.

faith calls for strict scrutiny. The apex court further allowed the prayer of the appellants by quashing the acquisition of their land of the villages which were included subsequently in the TDS.

VI CONCLUSION

The crucial aspect of administrative law is fairness and accountability in the administrative process. Inspite of its various limitations, over the years owing to the failures of all mechanism to deliver just, fair and reasonable expectations, judicial review of the administrative action has played a commanding role. Revealing many interesting facets even in the changed scenario, the directions given by the court remained firm and fixed. What is revealed through this survey? What are the observations? What is proposed? The judicial engagement during the period under review clearly demonstrates within its limitations its earnest efforts in trying to develop an order ensuring principles of fairness, accountability, rule of law, reasonableness, equity in the functioning of governance within the parameters of the Constitution. The pronouncement of the apex court reveals that the executive agencies must be rigorously held to the standards by which it professes its action to be judged. The court cautioned statutory authority not to act with any preconceived notions. The court made it clear that the demands of principles of natural justice varies in different situations depending not just upon the facts and circumstances of each case but also on the power and composition of the tribunal, guided by the rules and regulations under which it functions. The trend shows that there is consistency with the observations formed by the court and is in line with the survey of past few years.