1

ADMINISTRATIVE LAW

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I INTRODUCTION

HAVING AN indefinite sphere of operation, administrative law by itself is not an independent subject of law. Being entirely judge made, unlike other subjects of law, administrative law caters general principle of legality and fair play. The principle emerged or discovered infuses fairness and accountability in the administrative process necessary for securing equity and inclusiveness in the functioning of state.[1] The Indian judiciary has exceptionally furthered this cause. Also with the liberalization of economy, wide variety of regulatory mechanism is introduced, which with the assistance of courts are moulded towards forming a people-centric approach.[2] There has been a conscious effort of forming a system of administrative law that delivers a fair policy-delivery mechanism.

Over the years, there has been phenomenal expansion of the horizons of administrative law. The Indian administrative law system generates diversity of interests in its development, thereby signifying the different material and institutional interests that play conventional approaches towards its understanding.[3] This encouraged growth of judicial review, thus bringing principles of proportionality, illegality, irrationality and procedural impropriety into picture. This was coupled with the construction of other necessary rules and principles. The idea is to celebrate values of a rule of law based society and state.

The year 2016 has mostly cases wherein the apex court while interpreting technical and complex doctrines have shown a matured understanding. The legacy of contributing well-thought and discussed wisdom on contemporary constitutional

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1 See SS Jaswal, "Administrative Law", L *ASIL* 1 (2014).

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

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

development has constantly engaged court's attention.[4] With the expansion of the executive functioning and consequent enlargement of the jurisdiction of the courts by the process of judicial review, the role of judiciary in developing a prepared system of administrative law can never be overemphasized.[5] A discussion of administrative law inevitably brings with it a discussion on rights, obligations, duties or privileges of public authorities *interse* and their relationship with private individuals. Thus, the administrative law throws up the possibility of a consideration of a large part of substantive public law. The judicial decisions reported this year are dealt with below, under appropriate heads.

II CLASSIFICATION OF FUNCTIONS

A quasi-judicial action of the administration is one, which stands between judicial and administrative action. In administrative law, characterization of the function discharged by the administration as administrative or quasi-judicial leads to significant consequences. Primary test for classifying an action as quasi-judicial is whether the authority has statutory power to act judicially in arriving at a decision. In *Satya Pal Anand* v. *State of M.P.,*[6] the apex court opined that the function of the sub-registrar for the purposes of registration is purely administrative and not quasi-judicial. In doing so he cannot decide whether a document, which is executed by a person, has had title as is recited in the given instrument.[7] The validity of such registered document can, indeed, be put in issue before a court of competent jurisdiction.

In *M.K. Indrajeet Sinhji Cotton Pvt. Ltd*. v. *Narmada Cotton Coop. Spg. Mills Ltd.,*[8] the company entered into a lease agreement. Under the agreement it took on lease the mill of the cooperative society for a period of five years. Disputes having arisen, the company filed a suit against the society. Within a year of filing the suit, the society, wound up. Since the suit had been filed prior to the winding up order, the company was obliged to apply for leave to continue the suit by virtue of section 112 of the Gujarat Co-operative Societies Act, 1961 (the Act). Registrar of co-operative societies refused permission to continue the suit on the ground that the suit is not

4 See S.P. Sathe, *Judicial Activism in India* (Oxford University Press, New Delhi, 2002); and *generally,* see, Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, Lucknow, 1980) and "The Avatars of Judicial Activism: Explorations in the Geography of (in) Justice", in S.K. Verma and Kusum (eds.), *Fifty Years of the Supreme Court of India* 159-209 (Indian Law Institute, New Delhi, 2002).

5 See SS Jaswal, "Administrative Law", LI *ASIL* 1 (2015).

6 (2016) 10 SCC 767.

7 Registration Act, 1908, s. 35, does not confer a quasi-judicial power on the registering authority. The registering officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. *Id*., para 26.

8 (2016) 12 SCC 133.

tenable because notice of its institution required by section 167 of the Act. The apex court opined that the registrar having refused leave to continue the suit on the ground that the suit pending before the court is not preceded by a notice under section 167 of the Act has acted without jurisdiction; having taken into account a factor which he was not competent to take into account and determine the grant of leave to proceed with the suit. The provisions of the Act casts only limited administrative decision on registrar and such limited administrative decision can be taken by the registrar only on considerations germane to the grant or refusal of the leave and not on considerations which were within the jurisdiction of a competent city civil court. The court held that as a matter of law the decision to hold that the suit is not tenable is a decision, which conclusively determines the suit, and being judicial can be taken by the civil court alone.

In *Union of India* v. *Cipla Ltd.,*[9] the apex court challenges to the notifications under Drugs (Prices Control) Order, 1995 (DPCO) was made. It was alleged that notifications were issued mechanically and without any application of mind. The apex court found out that the perusal of the report of committees clearly brought out that the Central Government initiated a detailed exercise for prescribing the norms but unfortunately the drug industry did not extend its full cooperation in the exercise and declined to provide necessary information and data despite requests and reminders. Therefore, the Central Government was left with no alternative but to notify the norms in compliance with the provisions of the DPCO, on the basis of the materials already available. In view of the apex court the question of judicial scrutiny of the reports and the acceptance of their recommendations by the Central Government was not only limited, but in this case it did not arise.[10] The court held that various notifications issued under paragraph 7 of the DPCO, and thereafter prescribing the norms for conversion cost, packing charges and process loss of raw materials other than packing materials in conversion and packing and process loss of packing materials in packaging were issued after due application of mind and based on available material duly examined by an expert body.[11] The notifications were not arbitrarily issued nor were they discriminatory in any manner at all nor were they issued mechanically nor could it be said that they were issued without any application of mind.

III DELEGATED LEGISLATION

The Parliament in India within its legislative power necessarily includes the determination of public policy along with the formulation of binding rules of conduct to enforce it. This implies core functions are not capable of being either delegated or

9 (2017) 5 SCC 262.

10 *See Rochester Tel. Corporation* v. *United States* 307 U.S. 125 (1939) wherein it is held that the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have warrant in the record and a rational basis in law; See also *Shri Sitaram Sugar Co. Ltd.* v. *Union of India* (1990) 3 SCC 223.

11 *Supra* note 9, para 108.

sub-delegated.[12] However, the law also recognizes that in certain situations legislatures well within its competency can delegate subsidiary legislative powers and functions to the executive. This recognition justifies ground realties and thereby effectively deals with the problems arising from the day-to-day implementation or execution of legislative policies. In *Vivek Batra* v. *Union of India,*[13] an appeal against the petition challenging the sanction dated for prosecution under section 13 of the Prevention of Corruption Act, 1988 (the Act) was dismissed by the high court. The apex court held that the business of the state in a democratic polity is a complicated one and has necessarily to be conducted through the agency of large number of officials and authorities.[14] The court held that the sanction cannot be held invalid only for the reason that in the administrative noting different authorities have opined differently before the competent authority took the decision in the matter. What is required under section 19 of the Act, is that for taking the cognizance of an offence, punishable under sections 7, 10, 11, 13 and 15 of the Act, committed by the public servant, is necessary by the Central Government or the state government, and in the case of a public servant, who is neither employed in connection with affairs of the union or the state, from the authority competent to remove him.[15] The opinion of Central Vigilance Commission (CVC), cannot be said to be irrelevant for the reason that clause (g) of section 8 of the Central Vigilance Commission Act, 2003 provides that it is one of the functions of the CVC to tender advice to the central government on such matters as may be referred to it by the government.

In *Essar Steel Ltd.* v. *Union of India,*[16] the judgment passed by the high court was challenged wherein the court by majority upheld the validity of the policy decision on the ground that the Union of India is competent to take the policy decision and further it has held that it is either arbitrary, unjust or violative of the fundamental rights of the appellants. The facts of the case were that India purchases natural gas from Gulf countries. Since pipelines cannot feasibly transport gas in large quantities across countries, before such gas is transported, it is liquefied and thereafter shipped to India. This liquefied gas is known as Liquefied Natural Gas (LNG). Once tss Company Limited, Qatar sold LNG to Petronet LNG Limited (Petronet), an Indian company, which was set up as a joint venture between the Government of India and the key players in the LNG market like Oil and Natural Gas Corporation (ONGC), Indian Oil Corporation Limited (IOCL) and Bharat Petroleum Corporation Limited (BPCL). This was done under a Sale Purchase Agreement entered in July, 1999 for a

12 *See* J.A.G. Griffith and H. Street, *Principles of Administrative Law* (Pitman Publishing, London, 1973); *See* also Carol Harlow and Richard Rawlings, *Law and Administration* (Cambridge University Press, New York, 1997); O. Hood Phillips, Paul Jackson, and Patricia Leopold, *Constitutional and Administrative Law* (Sweet and Maxwell, London, 2001).

13 (2017) 1 SCC 69.

14 See *Bachhittar Singh* v. *The State of Punjab* 1962 Supp (3) SCR 713; *Jasbir Singh Chhabra* v. *State of Punjab* (2010) 4 SCC 192.

15 *Supra* note 13, para 9.

16 (2016) 11 SCC 1.

period of 25 years. Petronet sold the resultant LNG to companies like BPCL, IOCL and GAIL. They in turn, sold it to customers like Essar Steel. Essar Steel signed contracts with IOCL, BPCL and GSPCL for purchase of RLNG at a fixed price. On March 6, 2007 the government communicated its policy decision to increase the price of gas on revised rates. Finding no evidence to suggest that the impugned policy direction is illegal, arbitrary, unreasonable or otherwise violative of article 14 of the Constitution of India, the apex court opined that the wisdom and advisability of economic policy are ordinarily not amenable to judicial review. The court further opined price fixation, it is common ground, is generally a legislative function and parliament generally provides for interference only at a stage where in pursuance of social and economic objectives or to discharge duties under the directive principles of state policy.[17]

In *Delhi Subordinate Services Selection Board* v. *Praveen Kumar,*[18] high court and Central Administrative Tribunal (CAT) gave relaxation of age for selection and appointment of teachers in MCD schools. Setting aside the judgment of high court and CAT, the apex court reiterated the view that courts shall approach subordinate legislative instruments with considerable amount of caution and examination for absence of competence or reasonableness or fairness and other invalidating circumstances with almost the same standards as legislative enactments are dealt with by courts. Further, it opined that the test of the arbitrariness applicable to the delegated legislation is different from the one applicable to executive actions and the same is explained in *Khoday Distilleries Ltd.* v. *State of Karnataka.*[19] On careful watch of

17 See *M/S Sitaram Sugar Co. Ltd.* v. *Union of India* (1990) 3 SCC 223, the court opined at para 47 that, "The power delegated by the statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, *intra vires* the power granted, and on relevant consideration of material facts".

18 AIR 2017 SC 649.

19 (1996) 10 SCC 304. The relevant portion of the judgment runs thus: It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate art. 14 of the Constitution. Although the protection of art. 19(1) (g) may not be available to the Appellants, the Rules must, undoubtedly, satisfy the test of art. 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under art. 14 is not executive action but delegated legislation. The tests of arbitrary action, which apply to executive actions, do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law, which could not be reasonably expected to emanate from, an authority delegated with the law-making power. A piece of subordinate legislation does not carry the same degree of immunity, which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under art. 14 on the ground that it is unreasonable; unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. Drawing a comparison between the law in England in India, the Court further observed that in England the judges would say, "Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of art. 14 of the Constitution. But subordinate legislation must be so arbitrary that it would not be said to be in conformity with the statute or that it offends art. 14 of the Constitution. *Id.* at para 13.

facts, the apex court while allowing the appeal found that the respondent was not the candidate in the recruitment to the post in the year 2008, on the contrary, he applied for the post pursuant to the advertisement published in the year 2009.

In *Vijay Kumar Mishra* v. *High Court of Judicature at Patna,*[20] an advertisement was issued inviting applications from eligible advocates for direct recruitment. The petitioners appeared in the preliminary as well as in the mains examination pursuant to such advertisement. In the meantime, they qualified for the subordinate judicial service of the state and accordingly joined. The result of the mains examination of the district judge entry level was published and both the petitioners qualified. The high court published the detail of interview schedule and issued call letters for the interview; but one of the conditions in the interview letter was 'No-Objection Certificate of the Employer'. Therefore, they filed their representation before the registrar general, high court to appear in the interview. The requests were declined. It was claimed that since they were eligible on the date of inviting applications, the action of the high court in not permitting them to appear in the interview was illegal. The high court repelled the challenge holding that would be breaching the mandate of article 233(2) of the Constitution.[21] The apex court held that it is well settled in service law that there is a distinction between selection and appointment.[22] In the opinion of the court a person who is successful in the selection process undertaken by the state for the purpose of filling up of certain posts under the state does not acquire any right to be appointed automatically. Article 233(2) only prohibits the appointment of a person who is already in the service of the union or the state, but not the selection of such a person. The right of such a person to participate in the selection process undertaken by the state for appointment to any post in public service and be considered is guaranteed under articles 14 and 16 of the Constitution.

IV NATURAL JUSTICE

The concept of natural justice as applied to administrative process is often criticized as being an unruly horse. Indian judiciary has continuously ensured that the principles of natural justice shall be applied with self-restraint to situations where it must be applied to avoid unnecessary constraints on administrative flexibility.[23]

20 (2016) 2 SCC (L&S) 606.

21 Constitution of India, 1950, art. 233(1) stipulates that appointment of district judges be made by the governor of the state in consultation with the high court exercising jurisdiction in relation to such state. However, art. 233(2) declares that only a person not already in the service of either the union or of the state shall be eligible to be appointed as district judges.

22 See *Prafulla Kumar Swain* v. *Prakash Chandra Misra* 1993 Supp (3) SCC 181.

23 See *Master Marine Services (P) Ltd.* v. *Metcalfe & Hodgkinson (P) Ltd.* (2005) 6 SCC 138.

Mala fides

In *Kedar Nath Yadav* v. *State of West Bengal,*[24] the State of West Bengal formulated an industrial policy to establish automobile industries in the state to cater to the needs of the people and to solve the problem of unemployment in the state. While examining various facets of the case, the apex court categorically held that, rule of law cannot be sacrificed for the sake of furthering political agendas. Further, court opined that a stand taken by the state government can be changed subsequently if there is material on record to show that the earlier action of the acquisition of lands by the state government was illegal or suffers from legal *mala fides* or colourable exercise of power. The apex court was also of the view 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.[25] This rule has been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law. Examining the principle court opined that, what makes the acquisition proceedings perverse is not the fact that the lands were needed for setting up of an automobile industry, which would help to generate employment as well as promote socio economic development in the state, but what makes the acquisition proceedings perverse is that the proper procedure as laid down under part VII of the Land Acquisition Act, 1984 read with Land Acquisition (Companies) Rules, 1963 were not followed by the state government.

In *Afcons Infrastructure Ltd.* v. *Nagpur Metro Rail Corporation Ltd.,*[26] the apex court held that a mere disagreement with the decision making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of *mala fides*, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision making process or the decision.[27] Further, in *State of Jharkhand* v. *Cwe-Soma Consortium,*[28] the apex court observed that a right to refuse the lowest or any other tender is always available to the government, and the same can be challenged by establishing *malafide* exercise of power. Similar view was reiterated by the Supreme Court in *Montecarlo Ltd.* v. *NTPC Ltd.*[29]

Rule of confidentiality

Under administrative law where a policy may exempt the authority from requirement of communicating its reasons for an administrative decision/order affecting rights and interests of parties but certainly reasons must exist in the records so as to justify the reasonableness and fairness of the decision if it has adverse effects upon

24 AIR 2016 SC 4156.
25 See *BabuVerghese* v. *Bar Council of Kerala* (1999) 3 SCC 422.
26 AIR 2016 SC 4305.
27 See *Dwarkadas Marfatia and Sons* v. *Board of Trustees of the Port of Bombay* (1989) 3 SCC 293; *Tata Cellular* v. *Union of India* (1994) 6 SCC 651; *Jagdish Mandal* v. *State of Orissa* (2007) 14 SCC 517.
28 (2016) 14 SCC 172.
29 (2016) 15 SCC 272.

any party. Any court or tribunal exercising judicial review is entitled to call for the records to satisfy itself as to the existence of reasons in appropriate cases involving a challenge to such order. In *Union of India* v. *Meghmani Organics Ltd.,*[30] the apex court while interpreting rule 7, Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Article and for Determination of Injury) rules, 1995, held that rule 7 does not empower the Designated Authority (DA) to claim any confidentiality in respect of reasons for its finding given against a party.The court[31] agreeing with the law laid in *Sterlite Industries (India) Ltd*. v. *Designated Authority, M/o Commerce,*[32] and held that:[33]

> While dealing with objections or the case of the concerned parties, the DA must not disclose the information, which are already held by him to be confidential by duly accepting such a claim of any of the parties providing the information. While taking precautions not to disclose the sensitive confidential informations, the DA can, by adopting a sensible approach indicate reasons on major issues so that parties may in general terms have the knowledge as to why their case or objection has not been accepted in preference to a rival claim. But in the garb of unclaimed confidentiality, the DA cannot shirk from its responsibility to act fairly in its quasi-judicial role and refuse to indicate reasons for its findings. The DA will do well to remember not to treat any information as confidential unless a claim of confidentiality has been made by any of the parties supplying the information. In cases where it is not possible to accept a claim of confidentiality, Rule 7 hardly leaves any option with the DA but to ignore such confidential information if it is of the view that the information is really not confidential and still the concerned party does not agree to its being made public. In such a situation the information cannot be made public but has to be simply ignored and treated as *non est*.

Disciplinary inquiry

In *R.R. Parekh* v. *High Court of Gujarat,*[34] proceedings arose from a judgment of the High Court of Gujarat challenging the punishment of dismissal imposed upon him by a disciplinary inquiry. The apex court held that under article 235 of the Constitution, the high court exercises control over the district judiciary. In exercise of administrative matters, the high court do assigns and distributes its administrative functions to constituent committees. It becomes imperative on part of committee to

30 (2016) 10 SCC 28.
31 *Id*., para 25.
32 (2006) 10 SCC 386.
33 *Supra* note 30 at 25.
34 (2016) 14 SCC 1.

determine its finding upon a careful appraisal of the material on the record. The findings of disciplinary inquiry, is not governed by the strict rules of evidence that governs a criminal trial, but on a preponderance of probabilities.

In *Surjeet Singh Bhamra* v. *Bank of India,*[35] an appeal was preferred against the final judgment of the High Court of Madhya Pradesh. In order to lay off some 6000 employees the bank proposed voluntary retirement scheme (VRS). The appellant applied for the VRS. Meanwhile, the bank issued a memo to the appellant wherein the bank set out the irregularities alleged to be committed by the appellant. The appellants admitted these charges. Justifying the steps taken by the bank the apex court held that there was no need for the bank to have held any inquiry into the charges. The court opined that when the charges stood proved on admission of the appellant, the bank was justified in imposing punishment on the appellant as prescribed in the rules.[36] The court found no ground to interfere in the punishment order, having regard to the nature and gravity of the charge; it held that the punishment imposed on the appellant appears to be just and proper, calling for no interference.

In *Raj Kumar* v. *Director of Education,*[37] the appellant was employed as a driver by the DAV Public School, Delhi and became permanent on the said post in the year 1994. His terms of service are covered under sections 2(h), 8(2), 10 and other provisions of the Delhi School Education Act, 1973 (Act, 1973). Questioning the termination, it was argued that the termination of services of the appellant without obtaining prior permission of the Director of Education, Delhi, renders the action of the school as void.[38] The apex court after perusal of relevant case laws found that the termination of the appellant was bad in law for non-compliance with the mandatory provisions of section 25F of the Industrial Dispute Act, 1947 and also section 8(2) of the Act, 1973. Referring to the opinion of Lord Roche in *Nazir Ahmad* v. *King Emperor*[39] who stated thus:[40]

> [W]here 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.

The court reiterated the said rule and expressed that the rule had since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.[41]

35 (2016) 4 SCC 204.

36 *Id*., para 48.

37 (2016) 6 SCC 541.

38 Reliance is placed on the decision of Supreme Court in the case of *Babu Verghese* v. *Bar Council of Kerala* (1999) 3 SCC 422; See also *Brajendra Singh Yambem* v. *Union of India,* 2016 (8) SCALE 272.

39 (1936) 38 BOMLR 987.

40 *Id*., para 11.

41 *See Rao Shiv Bahadur Singh* v. *State of Vindhya Pradesh,* AIR 1953 SC 394; *Deep Chand* v. *State of Rajasthan,* AIR 1961 SC 1527; *State of Uttar Pradesh* v. *Singhara Singh,* AIR 1964 SC 358; also in *Nidhi Kaim* v. *State of Madhya Pradesh,* AIR 2017 SC 986.

Implementation of lokayukta report

In *Jagdish Narain Shukla* v. *State of U.P,*[42] appeal challenges the decision of the division bench of the Uttar Pradesh High Court. The high court held that the opinion of the lokayukta in the report could not be construed to be final or conclusive as it was a fact-finding enquiry and a detailed enquiry is yet to be made after affording opportunity of hearing to the person against whom complaint is made. It further observed that the high court ought not to entertain petition for implementation of recommendations/orders of the lokayukta, as there is sufficient provision under the Uttar Pradesh Lokayukta and UP-Lokayuktas Act, 1975, itself to get the same implemented. The high court also opined that there was no element of public interest in the grievances made by the appellant. Allowing the writ, the Supreme Court limited the relief to directing the competent authority to act upon the recommendations made by the lokayukta. Further, the court found through materials placed before itself that the law enforcement agencies have moved into action and have collected information and material including with reference to the representations and affidavits received in the course of the said investigation/enquiry.[43] However, the court expressed a sanguine hope that they would complete the investigation/enquiry at the earliest and not later than six months from date of judgment and take the same to its logical end in accordance with law.

Delays

Normally, a belated service related claim would be rejected on the ground of delay and laches or limitation. However, in *State of Himachal Pradesh* v. *Rajesh Chander Sood,*[44] the court observed that there are exceptions to the said rule are cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained.[45]

V JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

The power of judicial review is explicit in the written constitution and unless expressly excluded by the constitution, judicial review of administrative action is a constitutional right. Judicial review is not an appeal but a review of the manner in which a decision is made. The primary and central purpose of judicial review of the

42 (2016) 10 SCC 433.
43 *Id*., para 15.
44 (2016) 10 SCC 77.
45 *Union of India* v. *Tarsem Singh* (2008) 8 SCC 648.

administrative action is to promote good administration.[46] Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. The soundness of the decision taken by the employer ought not to be questioned but the decision making process can certainly be subject to judicial review.[47] The power of judicial review is meant to ensure that everyone receives a fair treatment. In *Cellular Operators Association of India* v. *Telecom Regulatory Authority of India,*[48] appeals by various telecom operators who offer telecommunication services to the public generally were made, challenging the validity of the Telecom Consumers Protection (ninth amendment) Regulations, 2015 (Regulation), by the Telecom Regulatory Authority of India (TRAI)[49]. The apex court while addressing the issues discussed the parameters of judicial review of subordinate legislation.[50] The court observed that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid.[51] The court further referred to the *BSNL* v. *Telecom Regulatory Authority of India,*[52] and opined that the power under section 36 of TRAI Act, 1997 is legislative as opposed to administrative. Therefore, the rules and regulations have to be laid before both the Houses of Parliament, which can annul or modify the same. The test for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation.[53] The apex court while finding error in the high court's

46 *Centre for Public Interest Litigation* v. *Union of India* (2016) 6 SCC 408.

47 See *Central Coalfields Limited* v. *SLL-SML (Joint Venture Consortium)* (2016) 8 SCC 622.

48 (2016) 7 SCC 703.

49 The aforesaid amendment was made purportedly in the exercise of powers conferred by s. 36 read with s. 11 of the Telecom Regulatory Authority of India Act, 1997.

50 See *State of Tamil Nadu* v. *P. Krishnamurthy* (2006) 4 SCC 517.

51 It is also well recognized that a subordinate legislation can be challenged under any of the following grounds- (a) Lack of legislative competence to make the subordinate legislation. (b) Violation of fundamental rights guaranteed under the Constitution of India. (c) Violation of any provision of the Constitution of India. (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act. (e) Repugnancy to the laws of the land, that is, any enactment. (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules). The court considering the validity of a subordinate legislation will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a Rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity. *Id*., para 15 and 16.

52 (2014) 3 SCC 222.

53 See *Indian Express Newspapers* v. *Union of India* (1985) 1 SCC 641; For the test of manifest arbitrariness see *Khoday Distilleries Ltd*. v. *State of Karnataka* (1996) 10 SCC 304.

judgment, found that the regulation is *ultra vires* the TRAI Act, 1997 and violative of the fundamental rights under articles 14 and 19(1) (g) of the Constitution. The apex court was of the view that the regulation does not lay down any quality of service, but penalises service providers even though they conform to the 2 percent standard laid down by the Quality of Service Regulations, 2009. Further, the finding that notional compensation is given, therefore, no penalty is imposed, was set aside. The apex court was of the opinion that the finding of transparent process, as followed by TRAI in making the regulation, discloses nothing as to why service providers were incorrect when they said that call drops were due to various reasons, some of which cannot be said to be because of the fault of the service provider.

Writ jurisdiction

In *Extra Judicial Execution Victim Families Association* v. *Union of India,*[54] the apex court allowed the writ petition alleging gross human rights violations in Manipur. The petitioners claimed to have compiled 1528 alleged extra-judicial executions carried out by the police and security forces. Reiterating the view expressed in *Naga People's Movement of Human Rights* v. *Union of India*[55] that the use of excessive force or retaliatory force by the Manipur police or the armed forces of the union is not permissible. The apex court held that the society governed by rule of law principle cannot and do not accept such a death caused by the state.[56] Holding accountability as one of the facets of rule of law and preserving individual liberties, court referred to the mandates of National Human Rights Commission (NHRC) and its strict adherence. The court also considered the grievance of the NHRC that it has become a toothless tiger.[57]

Judicial review of private interest

The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. In *Bakshi Security and Personnel Services Pvt. Ltd.*[58] v. *Devkishan Computed Pvt. Ltd.,* the apex court opined that the writ jurisdiction cannot be utilized to make a fresh bargain between parties. The apex court while citing its earlier judgment expressed how judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*.[59]

Continuous *mandamus*

In *Swaraj Abhiyan* v. *Union of India,*[60] the apex court questioned the faithful implementation of National Food Security Act, 2013 (NFS Act). The court held that

54 AIR 2016 SC 3400.
55 (1998) 2 SCC 109.
56 *Id*., para 122.
57 *Id*., para 176.
58 (2016) 8 SCC 446.
59 See *Jagdish Mandal* v. *State of Orissa* (2007) 14 SCC 517.
60 (2016) 7 SCC 498.

the provision of food grains as per the provisions of the NFS Act, is a statutory obligation on the state. The apex court while placing directions was of the view that the principle of continuing *mandamus* is now an integral part of Indian constitutional jurisprudence.[61] This is reinforced by number of public interest petitions in which the court has continued to monitor the implementation of its orders and on occasion monitor investigations into alleged offences where there has been some apparent stonewalling by the Government of India.

Public interest litigation (PIL)

The institution of PIL is a well-known concept in India. The concept has brought many significant cases pertaining to administrative law before the courts. It aims in dispensing justice to the darkest and remotest corners of India. The fact, however, remains that the filing of cases in the Supreme Court over the past six decades has grown so sharply that the judge strength in the Supreme Court is proving inadequate to deal with the same. Statistics show that more than 3/4th of the total numbers of cases filed are dismissed *in limine*. Even so, the dismissal is only after the court has applied its mind and heard arguments, which consume considerable time of the court. Dismissal of an overwhelming number of cases has not and does not discourage the litigants or the member of the bar from filing cases. That is why the number of cases filed is on the rise every year. The huge backlog of cases in the Supreme Court not only attracts criticism from the litigant public but also from independent observers of the judicial systems. The setting of regional court of appeal is an alternative.[62] Keeping in view the importance and the need for reforms which have been long felt, the apex court in *V. Vasanthakumar* v. *H.C. Bhatia*[63] has referred the matter to a constitutional bench for an authoritative pronouncement.[64]

61 See also *Manohar Lal Sharma* v. *Union of India* (2014) 2 SCC 532.

62 See *Bihar Legal Support Society* v. *Chief Justice* (1986) 4 SCC 767. See also 14th (1958); 95th (1984); and Law Commission of India, Two Hundred and Twenty Ninth *Report on Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai*, (August 2009)

63 (2016) 7 SCC 686.

64 In this regards the apex court framed following questions for consideration:
i. With access to justice being a fundamental right, would the said right stand denied to litigants, due to the unduly long delay in the disposal of cases in the Supreme Court?; ii. Would the mere increase in the number of judges be an answer to the problem of undue delay in disposal of cases and to what extent would such increase be feasible?; iii. Would the division of the Supreme Court into a Constitutional wing and an appellate wing be an answer to the problem? iv. Would the fact that the Supreme Court of India is situate in the far North, in Delhi, rendering travel from the Southern states and some other states in India, unduly long and expensive, be a deterrent to real access to justice?; v. Would the Supreme Court sitting in benches in different parts of India be an answer to the last mentioned problem?; vi. Has the Supreme Court of India been exercising jurisdiction as an ordinary court of appeal on facts and law, in regard to routine cases of every description?; vii. Is the huge pendency of cases in the Supreme Court, caused by the Court not restricting its consideration, as in the case of the apex courts of other countries, to Constitutional issues, questions of national importance,

In *Mathai* v. *George,*[65] it was submitted by the parties that in the petition an interim order passed in a suit had been challenged, but during the pendency of the petition, the suit had already been decided. Thus, the petition before the Supreme Court becomes in fructuous and it should be disposed of. On account of increasing pendency of cases, apex court referred the issue to the constitution bench with regard to interpretation of article 136 of the Constitution of India so as to restrict its scope, possibly with an intention to see that if Supreme Court restricts its powers under article 136, arrears of cases pending may not increase further. The court while dismissing the petition held that:[66]

> No effort should be made to restrict the powers under Article 136 because while exercising its powers under Article 136, present Court can very well use its discretion. It would be better to use the said power with circumspection, rather than to limit the power forever. No reason to answer the issue, which had already been answered in the judgments in question. No further elaboration was required on the issue involved in present case.

The Supreme Court in *State of Jammu and Kashmir* v. *District Bar Association, Bandipora,*[67] examined the challenges made to the orders of the high court in a PIL instituted by the district bar association. The court expressed its displeasure towards

differences of opinion between different high courts, death sentence cases and matters entrusted to the Supreme Court by express provisions of the Constitution?; viii. Is there a need for having Courts of Appeal, with exclusive jurisdiction to hear and finally decide the vast proportion of the routine cases, as well as article 32 petitions now being decided by the Supreme Court of India, especially when a considerable proportion of the four million cases pending before the high court may require review by a higher intermediate court, as these judgments of the high courts may fail to satisfy the standards of justice and competence expected from a superior court?; ix. If four regional Courts of Appeal are established, in the Northern, Southern, Eastern and Western regions of the country, each manned by, say, fifteen judges, elevated or appointed to each court by the collegium, would this not satisfy the requirement of 'access to justice' to all litigants from every part of the country?; x. As any such proposal would need an amendment to the Constitution, would the theory of basic structure of the Constitution be violated, if in fact, such division of exclusive jurisdiction between the Supreme Court and the Courts of Appeal, enhances the efficacy of the justice delivery system without affecting the independence of the judicial wing of the state?; 11. In view of cases pending in the Supreme Court of India on average for about five years, in the high courts again for about eight years, and anywhere between 5-10 years in the trial courts on the average, would it not be part of the responsibility and duty of the Supreme Court of India to examine through a Constitution Bench, the issue of divesting the Supreme Court of about 80% of the pendency of cases of a routine nature, to recommend to government, its opinion on the proposal for establishing four Courts of Appeal, so that the Supreme Court with about 2500 cases a year instead of about 60000, may regain its true status as a Constitutional Court? *Id*., para 22.

65 (2016) 7 SCC 700.

66 *Id*., para 5 and 6.

67 (2017) 3 SCC 410.

the directions issued by the high court, holding them contrary to the law laid down in *Renu* v. *District & Sessions Judge, Tis Hazari Courts, Delhi.*[68] The court further opined that regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments, which have been made without following the due process envisaged by articles 14 and 16 of the Constitution.[69]

In *Union of India* v. *Mohanlal,*[70] the apex court examined the instructions given and the procedure prescribed for seizure, sampling, safekeeping and disposal of the seized drugs, narcotics and psychotropic substances is being followed throughout the country. The apex court realized how the pilferage of the contraband goods and their return to the market place for circulation is a major hazard. Keeping in view the importance of subject, the apex court issued certain guidelines and requested the chief justices of the high courts to appoint a committee of judges on the administrative side to supervise and monitor progress made by the respective states in regard to the compliance with the above directions and wherever necessary, to issue appropriate directions for a speedy action on the administrative and even on the judicial side in public interest wherever considered necessary.

In *State of Tamilnadu* v. *K. Balu,*[71] the apex court addressed the concern for availability of liquor along the highways. The court observed that easy access to liquor shops allows drivers of vehicles to partake in alcohol, and the same is a callous disregard to their own safety and the safety of others. It is in this regards while disposing of the appeal, the court held that:[72]

> Necessary safeguards must be introduced to ensure that liquor vends are not visible or directly accessible from the highway within a stipulated distance of 500 metres form the outer edge of the highway, or from a service lane along the highway.

Challenge to selection process

In *Srikant Roy* v. *State of Jharkhand,*[73] the apex court while dismissing the judgment of the High Court of Ranchi, held that there exists a distinction between post and vacancy. The court was of the view that, if the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in service judicial officers by promotion through limited ccompétitive examination. Further, the number of posts comprising the cadre always measures the cadre strength.

68 (2014) 14 SCC 50.
69 See *Secretary, State of Karnataka* v. *Umadevi* (2006) 4 SCC 1.
70 (2016) 3 SCC 379.
71 (2017) 2 SCC 281.
72 *Id*., para 22.
73 (2017) 1 SCC 457.

The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of quota has to be worked out in relation to number of posts, which form the cadre, and has no relevance to the vacancy that would occur.

In *Rajeev Kumar Gupta* v. *Union of India,*[74] petitioners were employed with a statutory corporation brought into existence by the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (Act, 1990). The petitioners were persons with disability (PWD). They were aggrieved by two-office memorandum I and II issued by the department of personnel and training. Their grievance was that the memoranda deprive them of the statutory benefit of reservation with respect to Group A and Group B posts in the corporation. Certain posts were identified by the government vide notification as identified posts suitable for being filled up with PWD; an exercise in compliance with the mandate under section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act, 1995). After such identification, the government was mandated under section 33 of the Act, 1995 to reserve not less than three per cent of identified posts in favour of PWD. Under the regulations framed under the Act, 1990, various posts in the corporation were to be filled up by three different modes *i.e.* direct recruitment, promotion and some posts partly by direct recruitment and partly by promotion. The apex court while holding the memoranda illegal and inconsistent with the Act, 1995, held that the objective behind the Act, 1995 is to integrate PWD into the society and to ensure their economic progress. The intent was to turn PWD into agents of their own destiny. PWD are not and cannot be equated with backward classes contemplated under article 16(4) of the Constitutison.[75]

In *Suresh Chand Gautam* v. *State of Uttar Pradesh,*[76] the issue was whether in the context of articles 16(4-A) and 16(4-B), a writ or direction can be issued to the state government or its functionaries or the instrumentalities of the state to collect and gather the necessary data for the purpose of taking a decision as regards the promotion and consequential fixation of seniority. The apex court referred to the concept of mandamus and the circumstances in which it can be issued.[77] The court held that the concerning articles 16, 16(4-A) and 16(4-B) are enabling provisions (there is no power coupled with duty).[78] Further, court held that in light of *Ajit Singh (II)* v. *State of Punjab,*[79] it has been held that no mandamus can be issued either to provide for reservation or for relaxation. The court also expressed that it does not

74 (2016) 13 SCC 153.

75 *Id*. para 22.

76 (2016) 11 SCC 113.

77 See William Wade & Christopher Forsyth, *Administrative Law* 233 (Oxford University Press, New York, 2004). See also *State of Kerala* v. *A. Lakshmikutt* (1986) 4 SCC 632.

78 The apex court reached to this point on a careful reading of the language employed in *M. Nagaraj* v. *Union of India* (2006) 8 SCC 212, which states that the State is not bound to make reservation in promotion. Therefore, there is no constitutional obligation.

79 (1999) 7 SCC 209.

formulate any policy, and remains away from making anything that would amount to legislation, rules and regulations or policy relating to reservation. It can, however, test the validity, when they are challenged, but cannot direct for making legislation or for that matter any kind of subordinate legislation.[80]

In *D. Sudhakar* v. *State of Andhra Pradesh,*[81] the petitioner was directly recruited in the group-I services as a regional transport officer in 1990 and has been working as joint transport commissioner since 2008. The petitioner belongs to the scheduled caste community and is physically handicapped. He affirmed unfair treatment for selection to the Indian Administrative Service (IAS) and claimed benefit under the quota for physically handicapped persons for scheduled caste category under the Indian Administrative Service (Appointment by Selection) Regulations, 1997. He approached Central Administrative Tribunal, wherein his plea was partly allowed. The tribunal held that the short-listing process by the selection committee was not at all satisfactory and, therefore, the short-listing of the 15 candidates was set aside as the selection was not fair. Feeling aggrieved he approached High Court of Andhra Pradesh, which rejected his writ plea out rightly. The apex court after going through the facts of the case held that high court erred in the matter. The court clubbed the matter with a different civil matter since much of the questions raised were interlinked with other pending civil matters.

In *J. Ashoka* v. *University of Agricultural Sciences,*[82] challenge to the decision reached by the selection committee was made. The apex court after a careful perusal of facts held that the question is not as to whether the board could not proceed to select and appoint a candidate whose name according to the recommendation made by the selection committee is lower in preference to the candidate who is placed above, but the question is whether the board can do so without recording reasons for preferring a person placed below in preference to a person placed above by the selection committee. The court opined that the selection committee constituted for making selection on the basis of the performance of the candidates at the interview recommends the names in the order of merit, the power of the board of regents to choose best among them means normally it should proceed in the order of merit as arranged by the selection committee, and if it is of the view that any person placed lower is the best, it can do so, but it has to record reasons for doing the same.[83] But if a person placed below is appointed without assigning any reasons or on irrelevant considerations, there is no other alternative than to hold that such a selection and appointment is arbitrary and violative of articles 14 and 16(1) of the Constitution.

In *State of Punjab* v. *Brijeshwar Singh Chahal,*[84] the issue was whether appointment of law officers by the state governments can be questioned or the process

80 *Supra* note 76, para 43.
81 (2016) 12 SCC 370.
82 (2017) 2 SCC 609.
83 *Id*., para 19.
84 (2016) 6 SCC 1.

by which such appointments are made, can be assailed on the ground that the same are arbitrary, hence, violative of the provisions of article 14 of the Constitution of India. The apex court found out that no such assessment has been made nor any material disclosed by the state governments to demonstrate that they were sensitive to the need for any such assessment.[85] The court found it hard to accept how appointments made to offices having heavily remunerated from the public exchequer remained unregulated.[86] Holding government as well as public bodies as trustees of power vested on them, the court opined that duty to act fairly and reasonably is a facet of *rule of law* in a constitutional democracy like ours.[87] The court pointed out three important aspects these are: that no lawyer has a right to be appointed as state government counsel or as public prosecutor at any level nor does he have a vested right to claim extension in the term for which he/she is initially appointed; the process of selection and assessment of merit of the candidates by a credible process; and the process of selection and appointment shall in the absence of any statutory provisions regulating such appointments involve consultation with the district and sessions judge if the appointment is at the district level and the high court if the appointment is for cases conducted before the high court.

Access to justice

In *Anita Kushwaha* v. *Pushap Sudan,*[88] the apex court held how access to justice as a constitutional value will be a mere illusion if justice is not speedy. The process of adjudication of administration of justice must remain affordable. The court referred to the expert of Mauro Cappelletti, which runs thus:[89]

> The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement—the most 'basic human right'—of a system which purports to guarantee legal right.

Dealing with the question whether a provision contained in an ordinary statute would affect the exercise of powers under article 142 of the Constitution, the court

85 *Id*., para 8.
86 *Id*., para 15.
87 See Law Commission of India, One Hundred and Ninety Seventh *Report on Public Prosecutor's Appointment* (July, 2006).
88 (2016) 8 SCC 509.
89 See Mauro Cappelletti Rabel and Bryant Garth (eds.), *Access to Justice: A World Survey* (European University Institute, Noordhoff, 1978).

held that, the constitutional power under article 142 is at a different level altogether and that an ordinary statute could not control the exercise of that power. The court further opined that:[90]

> The provisions of Articles 32, 136 and 142 are, therefore, wide enough to empower this Court to direct such transfer in appropriate situations, no matter Central Code of Civil and Criminal Procedures do not extend to the State nor do the State Codes of Civil and Criminal Procedure contain any provision that empowers this Court to transfer cases.

In *Mahipal Singh Rana* v. *State of Uttar Pradesh,*[91] an appeal was preferred against the order delivered by the high court, whereby the appellant was found guilty of criminal contempt for intimidating and threatening a civil judge in his court. The high court also directed the state bar council to consider the facts contained in the complaint of the civil judge and earlier contempt referred to in the judgment and to initiate appropriate proceedings against the appellant for professional misconduct. While disposing off the appeal, the apex court agreed with the conclusion arrived by the high court. The apex court expressed concerns over the regulation of legal profession and suggested for an urgent need to review the provisions of the Advocates Act, 1961 dealing with regulatory mechanism for the legal profession and other incidental issues.[92] Legal profession being the most important component of justice delivery system, it must continue to perform its significant role and regulatory mechanism and should not be seen to be wanting in taking prompt action against any malpractice.

Levy of tax

In *Jindal Stainless Ltd.* v. *State of Haryana,*[93] the Supreme Court, while rejecting the challenge, held that Indian Constitution had laid the foundation of a welfare state, very much extending the activities of the government and the administration thus making it necessary for the state to impose taxes on a large scale and in much wider fields. Also, the legislative competence of the Parliament or of the state legislatures can only be circumscribed by express prohibition contained in the Constitution itself.[94]

90 *Supra* note 88, para 36.

91 (2016) 8 SCC 335.

92 *Id*., para 50.

93 AIR 2016 SC 5617.

94 See *Atiabari Tea Co., Ltd*. v. *The State of Assam,* AIR 1961 SC 232. View expressed by C.J. B.P. Sinha were "As to the question of affecting the separation of power between the Legislature and judiciary on the ground that levy of taxes Under art. 304(b) which contains restriction to the freedom of trade, commerce and intercourse, the apex court opined that the Constitution contains large number of provisions including art. 304(b) where a state legislation is subject to presidential sanction which provisions are in accordance with the Constitutional scheme and does not affect the separation of power between the legislature and judiciary. Art. 304(b)

The plenary powers of legislation vested in the union and state legislatures by the Constitution are not subject to any limitations other than those imposed by the Constitution itself. The court also held that the states are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other states and goods produced within the state fall equally. Such measures if taken would not contravene article 304(a) of the Constitution.

VI TRIBUNALS

In the wake of 42nd Amendment to the Constitution of India, incorporating articles 323-A and 323-B of the Constitution under part XIV-A, various tribunals have been set up. The tribunals constitute alternative institutional mechanism for dispute resolution. The declared objective of such tribunals is inability of the existing system of courts to cope up with the volume of work. The question needs to be asked is what should be the liability of a tribunal that has erred—both on error of law as well as of record in its finding. It is in this regard the law is settled with respect to the writ jurisdiction of the constitutional courts.[95] However, there are tribunals which have became substitute for high courts, even without manner of appointment to such tribunals being the same as the manner of appointment of high court judges, *e.g.,* tribunal constituted under the Electricity Act, 2003; tribunal constituted under the Telecom Regulatory Authority of India Act, 1997.[96]

The Supreme Court in *Mahanagar Telephone Nigam Limited* v. *S.M. Lal,*[97] held that the decision reached by central administrative tribunal as well as High Court of Delhi was wrong in law in so far placing reliance on *N.S.K. Nayar* v. *Union of India.*[98] The factual situations in the present matter were quite different. The relief which were claimed was not by pleading that they had put in huge number of years on officiating basis and had been dealt with arbitrarily by department of telecommunications (DoT) in denying them regular promotions but on an understanding that as per the circular, MTNL shall give them the due advantage and their officiating promotion as per orders. This aspect was missed. However, understanding the factual situation, the matter was given a quietus.

In *State of Orissa* v. *Sasmita Pattnaik,*[99] the apex court questioned the veracity of the direction of the administrative tribunal directing the appointment of 671

enables the state legislature to frame legislations containing restriction on freedom of trade, commerce and intercourse after routing the legislation through proviso to art. 304(b). The question of judicial review arises only when there is challenge to such legislation. Judicial review of such legislation in no manner affects the separation of power". *Id*., para 14.

95 See *L. Chandra Kumar* v. *Union of India* (1997) 3 SCC 261; *Madras Bar Association* v. *Union of India* (2014) 10 SCC 1.

96 *Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Limited* (2016) 9 SCC 103.

97 2016 (10) SCALE 14.

98 AIR 1992 SC 1574.

99 AIR 2017 SC 1418.

candidates, compelling the state to make appointments in excess of the notified vacancies without any basis in law. In *Alkali Manufacturers Assn. of India* v. *Designated Authority, D.A.D.A.S.*,[100] the apex court set aside the decision reached erroneously by the tribunal and directed that a tribunal which has the jurisdiction to appreciate the evidence in entirety and arrive at a conclusion must revisit the same. Interesting to note that, the authenticity of tribunals, which has now become an essential part of the judicial system needs a careful relook, especially in these instances where grave violations of rules and regulations are quiet rampant.

In *State of U.P.* v. *Z.U. Ansari,*[101] the petitioner before the high court joined the Saharanpur division of rural engineering department (RED) of the state of Uttar Pradesh as a junior engineer. He was promoted to the post of assistant engineer and transferred to Pratapgarh division, and thereafter to several other places till he superannuated from service in 2008. Financial irregularities were alleged, causing pecuniary loss to the state exchequer. A proposal for initiating disciplinary proceedings was mooted by the RED and sanctioned by the minister in-charge of RED. A charge sheet was accordingly issued and chief engineer was nominated as enquiry officer to conduct an enquiry into the charges. Being aggrieved, the respondent filed civil miscellaneous writ petition before the high court. The principal contention urged in support of that writ petition was that in the absence of a valid sanction from the governor under 351-A of the Civil Services Regulations, 1975 framed under article 309 of the Constitution of India. The high court allowed the writ petition and quashed the disciplinary proceedings including the charge-sheet. The issue before the Supreme Court was whether the power to initiate disciplinary proceedings against a government servant whether in service or retired is an executive function for the government to exercise. The court having conflicting views onto the issue referred the matter to an appropriate bench.

VII PROMISSORY ESTOPPEL

It is pride of constitutional democracy and rule of law that both—the government and the private individuals—stand on the same footing so far as promissory estoppel is concerned. The promise is intended to create and affect a legal relationship, which will arise in future. The principle has been evolved by equity to avoid injustice. The doctrine of promissory estoppel being equitable in nature requires governments to show that having regard to the facts as they have transpired, it would be inequitable to hold the government to the promise or the representation made by it. In *Sulekhan Singh and Company* v. *State of U.P.,*[102] the Supreme Court has restated the well-

100 (2016) 11 SCC 165.
101 2016 (9) SCALE 520.
102 (2016) 4 SCC 663.

established propositions concerning the doctrine of promissory estoppel. The apex court held that the doctrine of promissory estoppel cannot be invoked in abstract, and it must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the government or the public authority to its promise, assurance or representation.

In *Ashok Kumar* v. *State of Bihasr,*[103] the apex court held that the appellants were estopped from turning around and challenging the selection once they were declared unsuccessful.[104] The principle is that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded.[105] The apex court observed that the question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated, he or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable.

VIII DOCTRINE OF PROPORTIONALITY

The concept of proportionality is used as a criterion of fairness and justice in statutory interpretation processes, especially in administrative law, as a logical method intended to assist in discerning the correct balance between the restriction imposed by a corrective measure and the severity of the nature of the prohibited act.[106] The doctrine of proportionality covers several special concepts.[107] In its exercise one has to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality *i.e.* balancing of different interests. In *Modern Dental College and Research Centre* v. *State of Madhya Pradesh,*[108] the apex court examined the validity/ vires of the provisions of the statute [(Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 (Act, 2007)] and the subsequent Admissions Rules, 2008 and the Madhya Pradesh Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2009. Upholding the

103 (2017) 4 SCC 357.

104 Similar view is taken in *Marripati Nagaraja* v. *The Government of Andhra Pradesh* (2007) 11 SCC 522; *Dhananjay Malik* v. *State of Uttaranchal* (2008) 3 PLJR (SC) 271; *Amlan Jyoti Borrooah* v. *State of Assam* (2009) 3 SCC 227.

105 See *Union of India* v. *S. Vinodh Kumar* (2007) 8 SCC 100.

106 See observation made by former Chief Justice of Canada, Robert George Brian Dickson in *R.* v. *Oakes* [1986] 1 SCR 103.

107 See Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press, Cambridge, 2012).

108 (2016) 7 SCC 353.

validity of the Act, 2007, Rules 2008 and entrance test 2009, along with a careful perusal of all the relevant considerations and issues, apex court held that in exercise of their right to occupation, private institutions cannot transgress the rights of the students. The apex court also held that the fundamental rights of colleges to run their administration, includes fixation of fee.[109] The right to administration has to be balanced with the rights of the students, so that they are not subjected to exploitation in the form of profiteering.

In *Chief Executive Officer, Krishna District Cooperative Central Bank Ltd.* v. *K. Hanumantha Rao,*[110] a departmental inquiry was conducted against respondent, an employee of Krishna District Cooperative Central Bank Ltd., into certain charges of misconduct. In the said inquiry, charges were proved and as a result the disciplinary authority inflicted the punishment of dismissal from service. The apex court held that in the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases.[111] It is only when the punishment is found to be out rigorously disproportionate to the nature of charge; principle of proportionality comes into play.[112] The court found that the punishment imposed was not shockingly disproportionate; no question of remitting the case to the disciplinary authority arises.

IX LEGITIMATE EXPECTATION

Doctrine of legitimate expectation has been firmly grounded in the Indian administrative law. The essence of this doctrine has much in common with natural justice, reasonableness and promissory estoppel as all these doctrines aim at achieving fairness in administrative action. The doctrine is rooted in the rule of law and requires regularity, predictability and certainty in governmental dealings with the public. The Supreme Court in *Union of India* v. *Lt. Col. P.K. Choudhary,*[113] restated that denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice the same can be questioned on the well-known grounds attracting article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles.[114]

109 See also *T.M.A. Pai Foundation* v. *State of Karnataka* (2002) 8 SCC 481; *P.A. Inamdar* v. *State of Maharashtra* (2005) 6 SCC 537; *Islamic Academy of Education* v. *State of Karnataka* (2003) 6 SCC 697.

110 (2017) 2 SCC 528.

111 See *Ranjit Thakur* v. *Union of India* (1987) 4 SCC 611; *State of Meghalaya* v. *Mecken Singh N. Marak* (2008) 7 SCC 580.

112 See *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* (1948) 1 KB 223; *Council of Civil Service Unions* v. *Minister for the Civil Service* 1985 AC 374.

113 (2016) 4 SCC 236.

114 See *Ram Pravesh Singh* v. *State of Bihar* (2006) 8 SCC 381; *Sethi Auto Service Station* v. *Delhi Development Authority* (2009) 1 SCC 180; *Confederation of Ex-servicemen Association*

However, the court while referring to *Punjab Communications* v. *Union of India* [115] emphasized that change in policy defeating substantive legitimate expectation must satisfy the test of *Wednesbury* reasonableness, hence, courts can interfere on being satisfied that change in its policy is irrational or perverse. In this case, the court rejected the contention that the legitimate expectation did arise.

It may be emphasised that the doctrine of legitimate expectation as an argument cannot prevail over a policy introduced by the government which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights. Further, it ensures that person seeking to invoke this doctrine must be an aggrieved person and should have altered his position acting upon state representative, action/inaction.

X CONCLUSION

The surveyed graph of administrative law during the year under review shows that while in certain spheres it has gained positive points by adding new dimensions to the existing concepts, in certain other spheres, it has scored only negative. The cases surveyed above showed that the apex court, however continued to bestow its latitude both on delegation of legislative powers by legislature and delegated legislation as such. There appear pertinent questions: What are the veracious limits of delegate in exercising subordinate legislation? Is there some sanctity left to the legislative guidelines? How long does a citizen have to wait and bear consequences for an indefinite legislative policy? The judicial engagement during the period under review clearly demonstrates that a reasonable measure of flexibility in the inter play amongst the principal organs of the state, is the *sine qua non* of a vibrant democracy.

v. *Union of India* (2006) 8 SCC 399; *State of Bihar* v. *Kalyanpur Cements Ltd.* (2010) 3 SCC 274; *Monnet Ispat and Energy Ltd.* v. *Union of India* (2012) 11 SCC 1.

115 (1999) 4 SCC 727; See also *Chanchal Goyal* v. *State of Rajasthan* (2003) 3 SCC 485.