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ADMINISTRATIVE LAW

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I INTRODUCTION

IN THE year 2020, the Indian judiciary were riddled with many questions of legal and administrative significance. These questions were exhaustively perused and, in that realm, more concretely answered. The judgments pronounced in the yearunder survey by apex court, with special reference to administrative laws, not only had but will, in the times to come, have significant impact on the understanding of administrative mechanisms while guiding both the executive and the judiciary in determining what actions must be taken catering to the best interests of the government and citizens and rights of the parties at *lis* respectively. The fact that each case must be understood in the context of its merits cannot be lost sight of, more so in the context of administrative laws. But the guiding jurisprudence developed by the courts must always be adhered to and the year that passed, brought with its ample opportunities in developing such jurisprudence for the administrative laws to operate effectively and efficiently.

The apex court had the opportunity of discussing the scope of fundamental rights with special reference to right to access to internet,[1] use and regulation of crypto currencies,[2] applicability of rules of natural justice in cases of termination of services in the armed forces,[3] termination of service of probationers,[4] rules related to the process of tendering,[5] process of contractual relationship of public undertaking with private persons and judicial review,[6] disciplinary enquiry and the scope of judicial review of such proceedings,[7] among other.In the year under survey, the cases decided by the Supreme Court under various headings in the field of administrative law such as

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1 *Anuradha Bhasin* v. *Union of India* (2020) 3 SCC 637.

2 *Internet and Mobile Association of India* v. *Reserve Bank of India* (2020) 10 SCC 274.

3 *Nisha Priya Bhatia* v. *Union of India* (2020) 13 SCC 56.

4 *Rajasthan High Court* v. *Ved Priya* 2020 SCC Online SC 337.

5 *Galaxy Transport Agencies, Contractors, Traders, Transports, and Suppliers* v. *New J.K. Roadways, Fleet Owners and Transport Contractors* 2020 SCC Online SC 1035.

6 *Bharat Coking Coal Limited* v. *Amr Dev Prabha* (2020) 16 SCC 759.

7 *Pravin Kumar* v. *Union of India* (2020) 9 SCC 471.

administrative action, natural justice, judicial review and ultra vires have been reviewed.

II ADMINISTRATIVE ACTION

Often, if not always, questions are raised about the validity of orders passed in the administrative capacity by various bodies. These allegations are raised in lieu of the principles of administrative law. One of the contentious issues is the use of administrative action to terminate the employees and the allegation of *mala fides* by such employee on part of the authority dispensing the administrative action. The year under survey began with one such issue raised in the case of *Rajneesh Khajuria* v. *Wockhardt Limited*.[8] This was a case of wrongful transfer alleged by the appellant in lieu of the protest by the said employee against certain alleged malpractices and *raising his voice against the said atrocities and acts of force*. The employee alleged that his transfer was unjust, unfair, illegal, improper, arbitrary, and *mala fide,* amounting to unfair labour practices under item 3, 7, 9 and 10 of Schedule IV of the Unfair Labour Practices Act, 1974. In this case, the person against whom the malice was alleged was not impleaded as a party. The court discussed the question of malice in administrative action at length and dismissed the appeal.

The question as to malice in administrative action cannot be merely looked at from the perspective of factual circumstances, which is only one of the limbs but has also to be looked from the perspective of legal tenets thereof. There has to be substantial malice in law to conclude an administrative action as riddled with malice alleged. Therefore, the court recorded and observed:[9]

> The plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment.

The court referred to numerous judgments[10] and it made special reference to the following observation of the apex court:[11]

> Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly

8 (2020) 3 SCC 86.

9 *Id.,* para 16 at 94.

10 *Prabodh Sagar* v. *Punjab SEB* (2000) 5 SCC 630, *HMT Ltd.* v. *Mudappa* (2007) 9 SCC 768, *State of A.P.* v. *GoverdhanlalPiti* (2003) 4 SCC 739.

11 *State of Bihar* v. *P. P. Sharma, IAS* 1992 (Supp) (1) SCC 222.

> exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

The court also made reference to other decisions and established principles applicable to test the malice in administrative action and reiterated the relevance of the facts and circumstances in each case that must guide a court in coming to the conclusion as to the malice in administrative action.[12] Further, to elucidate the overall facts and circumstances of the present case, the court referred to the issue of non-impleadment of an important party and especially the case where the person against whom the malice is alleged has not been impleaded. In this regard the court reiterated and referred to the case of *Ratnagiri Gas and Power Private Limited* v. *RDS Projects Limited* [13] and observed:[14]

> The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr. Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fide are easier to levy than to prove.

The court in its final observation iterated that:[15]

> Therefore, the allegation that the transfer of the appellant was an act of unfair labour practice without impleading the person who is said to have acted in a mala fide manner is not sustainable….As mentioned in

12 *Prabodh Sagar* v. *Punjab State Electricity Board* (2000) 5 SCC 630; *Union of India* v. *Ashok Kumar* (2005) 8 SCC 760.

13 11 (2013) 1 SCC 524.

14 *Supra* note 1, para 21 at 97.

15 *Id.*, para 22-23 at 97.

> the judgments referred to above, malice in law would be something which is done without lawful excuse or an act done wrongfully and willfully without reasonable or probable cause.

Malice-in-fact and malice in law

During the survey year and in an opportune manner, the court had a further chance to elaborate the concept and understanding of malice-in-fact and malice in law in the case of *Ramjit Singh Kardam* v. *Sanjeev Kumar.*[16] In this case the select list of candidates against the advertisement for the post of Physical Training Inspector issued by the Haryana Staff Selection Commission was challenged on the grounds of malice and being discriminatory, arbitrary, and unsustainable in the eyes of law. The court once again made reference to the judgments discussed in the preceding paragraphs and concluded malice on part of the Commission. The court re-observed the distinction between malice-in-fact and malice-in-law and in that categorically observed that:[17]

> The malice in law has been dealt as "something done without lawful excuse". The malice in law is also mala fide exercise of power, exercise of statutory power for purposes foreign to those for which it is in law intended. In the present case, the power to device the mode of selection and fix the criteria for selection was entrusted on the Commission to further the object of selection on merit to fill up post in State in consonance with the provisions of Articles 14 and 16 of the Constitution of India. When the alteration of criteria has been made, which has obviously affected the merit selection as we have found above, the allegations which have been made in the writ petition against the Commission in conducting the selection are allegations of malice-in-law and not malice-in-fact.

Therefore, the court distinguished between when a fact would be considered merely in malice and when the malice-in-fact read with other circumstances would enter into the domain of malice-in-law. The crux of the matter is that a criteria which has been established by the law in lieu of articles 14 and 16 of the Constitution when altered with would render the subsequent facts as violative of those principles and thereby entering into the domain of malice-in-law which was the case in the present circumstances and therefore, the appeal in this case was thus disposed and the plea of alleged mala-fides was upheld by the apex court.

Administrative action and regulating the cyberspace

The survey year had some profound impact and observations by the apex court related to the information technology laws. These judgments have immense relevance and will bear great impact in the times to follow. It would be no exaggeration to say that the decisions pronounced in the survey year by the apex court has initiated the task of developing the Indian jurisprudence of operation of administrative actions in the cyberspace. This amalgamation of the two facets of the legal regime and the

16 2020 SCC OnLine SC 448.

17 *Id.,* para 62.

interaction thereof is bound to increase in the times to come. Though the development of such jurisprudence comes at a later point of time (*vis.-a-vis* developments in other countries) than it should have the, the brighter side is that it is developing. The survey year will always be counted as the vantage point in the history of development of this jurisprudence.

The survey year began on a very important and interesting note, one that would lay the groundwork for the activities to follow during the unfortunate waves of pandemic that would paralyse the country in the times to come augmenting only online and virtual interactions. The decision was pronounced in the unprecedented case of *Anuradha Bhasin* clubbed with the case of *Ghulam Nabi Azad* v. *Union of India*[18] (hereinafter referred to as the *Anuradha Bhasin* case). The genesis of the issue started when the Security Advisory issued by the Civil Secretariat, Home Department, Government of Jammu and Kashmir whereby educational institutions and offices were ordered to remain shut until further orders and further in August, 2019 mobile phone networks, internet services, landline connectivity were all discontinued alongside restrictions on the movement of people in some areas. The case primarily dealt with the issue of whether right to access to internet can be considered a fundamental right or not. However, to arrive at the conclusion and answering the question in the affirmative, the court discussed the administrative action of government in the form of the orders issued above and their overall impact on the life of people. It is pertinent that the court elaborated further on the test of proportionality to determine whether an administrative action can be considered as one rightful in the eyes of law for achieving certain objective(s). In the light of the facts of this case the argument of protection of national security on one hand (along with peace and order in the newly constituted union territory of Ladakh and Jammu and Kashmir) and the fundamental right of freedom to speech and expression on the other hand, were at loggerheads. Therefore, the court had to balance them and the administrative action was to be gauged on the anvil of proportionality between the two opposing views.

The test of proportionality is an old principle of administrative law.[19] It is used to test whether an administrative action, which affects the exercise of fundamental rights, is proportional to the objective for which such curtailment of fundamental right is necessary and inevitable. In a nutshell this test balances the interest of state in curtailing the exercise of fundamental rights to the extent it is necessary and on the other hand it protects the interest of the citizens or the right holder.[20]

This judgment famously observed:[21]

> Law and technology seldom mix like oil and water. There is a consistent criticism that the development of technology is not met by equivalent

18 (2020) 3 SCC 637.

19 Mark Elliott and Jason N. E. Varhaus, *Administrative Law Texts and Materials* 271 (2016).

20 The court in this case reiterated and observed – '*310...Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law...'K.S. Puttaswamy* v. *Union of India* (2017) 10 SCC 1.

21 *Supra* note 11, para 31.

> movement in the law. In this context, we need to note that the law should imbibe the technological development and accordingly mould its rules so as to cater to the needs of society. Non recognition of technology within the sphere of law is only a disservice to the inevitable. In this light, the importance of internet cannot be underestimated, as from morning to night we are encapsulated within the cyberspace and our most basic activities are enabled by the use of internet.

In light of the test of proportionality, the court observed various cases and observations thereof at the cost of iteration. It quoted the famous observation from the case of *Chintaman Rao* v. *State of Madhya Pradesh:*[22]

> The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

Further, referring to the case of *Om Kumar* v. *Union of India*[23] the court observed:

> By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case maybe. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.

The court further opined that in all the instances where such questions against administrative action has arisen, the court attempted to resolve the conflict by holding that rights and limitations must be interpreted harmoniously so as to facilitate coexistence.[24] The court in order to conclude how the proportionality test must be applied, while referring to various tests from across the world, including the German,

22 AIR 1951 SC 118.

23 (2001) 2 SCC 386.

24 *Supra* note 11, para 55.

Canadian, and Bilchitz approach, analysed the developments in India. It reiterated the law laid down in the case of *K.S. Puttaswamy* v. *Union of India*:[25]

1324. The fundamental precepts of proportionality, as they emerge from decided cases can be formulated thus:

> 1324.1. A law interfering with fundamental rights must be in pursuance of a legitimate State aim;
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> 1324.2. The justification for rights infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved;
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> 1324.3. The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfill the aim;
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> 1324.4. Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and
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> 1324.5. The State must provide sufficient safeguards relating to the storing and protection of centrally stored data. In order to prevent arbitrary or abusive interference with privacy, the State must guarantee that the collection and use of personal information is based on the consent of the individual; that it is authorised by law and that sufficient safeguards exist to ensure that the data is only used for the purpose specified at the time of collection. Ownership of the data must at all times vest in the individual whose data is collected. The individual must have a right of access to the data collected and the discretion to opt out.

Thus, this principle laid out in the case is the final test of proportionality and it is in light of these developments/ legal principles that administrative action must be gauged, if it curtails the fundamental rights of citizens.

Test of proportionality

This test of proportionality was again discussed in the survey year in another judgement where the question that this court was called upon to adjudicate was whether the central bank of the country – Reserve Bank of India has the authority to regulate the crypto-currencies which are emerging as a new form of currency in the cyberspace.[26] This case arose in the backdrop of the statement by the Reserve Bank of India called *Statement on Developmental and Regulatory Policies* vide paragraph 13 of which directed the entities regulated by RBI (i) not to deal with or provide services to any individual or business entities dealing with or settling virtual currencies and (ii) to exit the relationship, if they already have one, with such individuals/ business entities, dealing with or settling virtual currencies (VCs). Further, RBI issued a circular dated April 6, 2018, in exercise of the powers conferred by section 35A read with section

25 (2017) 10 SCC 1.

26 *Internet and Mobile Association of India* v. *Reserve Bank of India* (2020) 10 SCC 274.

36(1)(a) and section 56 of the Banking Regulation Act, 1949 and section 45JA and 45L of the Reserve Bank of India Act, 1934 (hereinafter, "RBI Act, 1934") and section 10(2) read with section 18 of the Payment and Settlement Systems Act, 2007, directing the entities regulated by RBI (i) not to deal in virtual currencies nor to provide services for facilitating any person or entity in dealing with or settling virtual currencies and (ii) to exit the relationship with such persons or entities, if they were already providing such services to them.[27] The court discussed the overall functions of RBI with special reference to the understanding of what are currencies and the ambit of RBI's powers to regulate virtual currencies. In the facts and circumstances of this case, the action of RBI was considered disproportionate qua the virtual currencies and freezing of accounts of certain persons but simultaneously the approach of RBI for regulating the crypto-currencies was conceded to; meaning thereby that RBI has the power to regulate such currencies.[28] On the basis of this conclusion the court entered into the domain of discussing the mode of exercise of administrative power that is available with the RBI in such circumstances and, therefore, this was discussed on four established anvils:[29]

> II. Assuming but not admitting that RBI has the power to deal with the activities carried on by VCEs, the mode of exercise of such power can be tested on certain well-established parameters. They are –
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> (i) application of mind/satisfaction/relevant and irrelevant considerations
>
> (ii) Malice in law/ colourable exercise of power
>
> (iii) M.S. Gill reasoning
>
> (iv) Calibration/ Proportionality

On the point of *application of mind*, the court succinctly summarised:[30]

> When a series of steps taken by a statutory authority over a period of about five years disclose in detail what triggered their action, it is not possible to see the last of the orders in the series in isolation and conclude that the satisfaction arrived at by the authority is not reflected appropriately.

On the question of malice in law, the court discussed the underlying principle of *public interest* and thereafter applied the same to the facts and circumstances of the present case. The court further discussed the test for understanding the *public interest* while dealing with cases where administrative action may have a direct negative impact on the public interest and especially in the context of economic regime of the country. The court discussed the observations from case of *Meerut Development Authority* v. *Association of Management Studies*[31] and summarised:[32]

27 *Id*., para 1and 1.1.
28 *Id*., para 139.
29 *Id*., para 50.2.
30 *Id*., para 169.
31 (2009) 6 SCC 171.
32 *Supra* note 19, para 175.

> Relying upon (i) the decision in *Meerut Development Authority* v. *Assn. Management Studies* wherein it was held that the term "public interest" must be understood and interpreted in the light of the entire scheme, purpose and object of the enactment (ii) the decision in *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, wherein it was held that the term "public interest" does not have a rigid meaning and takes its colour from the statute in which it occurs (iii) the decision in *Utkal Contractors & Joinery (P) Ltd.* v. *State of Orissa,* wherein it was held that the words of a statute take their colour from the reason for it and (iv) the decision in *Empress Mills* v.*Municipal Committee, Wardha*, wherein it was held that general words and phrases must usually be construed as being limited to the actual object of the Act, it was contended that the expression 'public interest' appearing in Section 35A(1)(a) of the Banking Regulation Act, 1949, cannot be given an expansive meaning...
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> ...As we have indicated elsewhere, the power under Section 35A to issue directions is to be exercised under four contingencies namely (i) public interest (ii) interest of banking policy (iii) interest of the depositors and (iv) interest of the banking company. The expression "banking policy" is defined in Section 5(ca) to mean any policy specified by RBI (i) in the interest of the banking system (ii) in the interest of monetary stability and (iii) sound economic growth. Public interest permeates all these three areas. This is why Section 35A(1)(a) is invoked in the impugned Circular. Therefore, we reject the argument that the impugned decision is a colorable exercise of power and it is vitiated by malice in law.

The M.S. Gill Reasoning was summarised by the court in the following words:[33]

> In *63 Moons Technologies Ltd.* v. *Union of India*, this court clarified that though there is no broad proposition that MS Gill test will not apply where larger public interest is involved, subsequent materials in the form of facts that have taken place after the order in question is passed, can always be looked at in the larger public interest, in order to support an administrative order. The second reason why the weapon of MS Gill will get blunted in this case, is that during the pendency of this case, this court passed an interim order on 21-08- 2019 directing RBI to give a point-wise reply to the detailed representation made by the writ petitioners. Pursuant to the said order, RBI gave detailed responses on 04-09-2019 and 18-09-2019. Therefore, the argument based on MS Gill test has lost its potency.

On the question of proportionality, the court discussed the same with special reference to the kinds of stand taken by various countries and applicability of the principle thereof. Primarily, the court applied the principle enshrined in the Modern

33 *Id*., para 177.

Dental College (as discussed in the preceding paragraph) and the decision of the RBI was considered as excessive while regulating the crypto-currencies. This case has pointed to one essential fact that RBI will be the sole repository of powers to regulate virtual currencies for when they are recognised in the country; it is only a matter of time that we witness the surge in and transactions associated with virtual currencies.

III NATURAL JUSTICE

In the survey year, the apex court dwelt on many aspects of natural justice and its operability in various realms. The year began with a question on whether a committee member who was part of the Service Making Rules can be considered, while applying for certain position, as having violated the principles of natural justice. The court discussed that such conclusion will depend on the facts and circumstances of each case and no general conclusion can be drawn in this regard.[34] The court observed:[35]

> This takes us to the last objection taken by the High Court regarding 'conflict of interest'. It is not in dispute that the State Government had inducted Appellant No. 1 in a Committee which submitted the draft service rules. It is, however, difficult to accept (nor has it been alleged) that the said appellant held a position through which he could influence the rule-making authority to exercise its powers under Proviso to Article 309 of the Constitution as per his wishes. He was holding too small a position that no inference of his dominance in the decision-making process can be drawn.

Scope of applicability of the principles of natural justice

In *Rajasthan High Court* v. *Ved Priya*[36] the apex court was called upon to discuss the scope of applicability of the principles of natural justice in the discontinuation of employment after probation. The court observed:[37]

> Probationers have no indefeasible right to continue in employmentuntil confirmed, and they can be relieved by the competent authority if found unsuitable. Its only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are 'removed' in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of 'stigmatic' removal only that a reasonable opportunity of hearing is sine-qua-non.

In a decisive turn, attending to the question of how the principles of natural justice would be applicable to the cases of dismissal in armed forces the court expounded upon the decided cases and concluded that there is an explicit exclusion of the principles of natural justice in such cases.[38] The judgement arose from the

34 *Gelus Ram Sahu*v. *Dr. Surendra Kumar Singh* (2020) 4 SCC.

35 *Id*., para 33.

36 *Rajasthan High Court* v. *Ved Priya*, 2020 SCC Online SC 337.

37 *Id*., para 19.

38 *Nisha Priya Bhatia* v. *Union of India*, (2020) 13 SCC 56.

action of compulsory retirement of the appellant under Rule 135 of the Research and Analysis Wing (Recruitment, Cadre and Services) Rules, 1975 (for short, "the 1975 Rules") on the ground of "exposure". The court while excluding the applicability of the principles of natural justice in this specific case, made reference to the case of *New Prakash Transport Co. Limited* v. *New Suwarna Transport Co. Limited*[39] and reiterated the principle laid in *A.K. Kraipak* case and held that:[40]

> 8. ...It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.
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> 63. A priori, a mechanical extension of the principles of natural justice would be against the proprieties of justice.

Also, in this case the challenge was founded on the ground and contention of *apprehension of abuse due to the usage of vague and open-ended terms like "exposed" and "security"*.[41] In this regard the court dismissed the challenge against the rule based on the ground of it being violative of article 311 and the doctrine of natural justice enshrined therein. The court at the outset observed:[42]

> 26. Article 311 of the Constitution is a manifestation of the essential principles of natural justice in matters of dismissal, removal or reduction in rank of public servants and imposes a duty upon the Government to ensure that any such decision against the public servant is preceded by an inquiry, coupled with an opportunity of being heard and making a representation against such decision. The abovementioned principles of natural justice are also generally implicit under Article 14, as a denial of the same to the public servant in question would taint the decision with the vice of arbitrariness and deprive the public servant of equal protection of the law….
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> 28. A perusal of the text of Article 311 reveals that this Article comes into operation when a public servant is being subjected to dismissal, removal or reduction in the rank. The usage of words "dismissal",

39 AIR 1957 SC 232.

40 *Id*., para 62-63.

41 *Id.,* para 22.

42 *Supra* note 38, para 26 and 28.

> "removal" or "reduction in rank" clearly points towards an intent to cover situations where a public servant is being subjected to a penal consequence. Thus, until and unless the action taken against a public servant is in the nature of punishment, the need for conducting an inquiry coupled with the grant of an opportunity of being heard, as envisaged under Article 311, does not arise at all. Succinctly put, the action contemplated against the public servant must assume the character of 'punishment' in order to attract the safeguards under Article 311. The policy, object and scope of Article 311 has been clarified by this Court in *State of Bombay* v. *Saubhagchand M. Doshi*,[43] wherein the court observed thus:
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> 10. Now, the policy underlying Article 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect to. Thus, the real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss of benefits previously earned. Applying this test, an order under Rule 165-A cannot be held to be one of dismissal or removal, as it does not entail forfeiture of the proportionate pension due for past services."

The court further discussed the test laid by the apex court in the case of *State of U.P.* v. *Shri Shyam Lal Sharma*[44] and observed:

> 13. The following propositions can be extracted from these decisions. First, in ascertaining whether the order of compulsory retirement is one of punishment it has to be ascertained whether in the order of compulsory retirement there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. Secondly, the order for compulsory retirement will be indicative of punishment or penalty if the order will involve loss of benefits already earned. Thirdly, an order for compulsory retirement on the completion of 25 years of service or an order of compulsory retirement made in the public interest to dispense with further service will not amount to an order for dismissal or removal as there is no element of punishment. Fourthly, an order of compulsory retirement will not be held to be an order in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, namely that the officer will not get his pay till he attains the

43 AIR 1957 SC 892.

44 (1971) 2 SCC 514.

> age of superannuation, or will not get an enhanced pension for not being allowed to remain a few years in service and being compulsorily retired.

The court tested the circumstances of the present case on the anvil of the above test and concluded succinctly the overall nature of the Rule 135 of the 1975 Rules and concluded:

> We also deem it necessary, at this juncture, to note that the mere fact of non-prescription of inquiry under Rule 135 of the 1975 Rules, before making the order of compulsory retirement, does not go against the constitutionality of the Rule. Additionally, the rule does not prohibit any inquiry and is in general line with the orders of compulsory retirement wherein the right of outgoing employee to participate in the process of formation of such decision is not envisaged in law, as the underlying basis of such action is the larger public interest and security of the Organisation; and not any culpable conduct of the employee. Moreover, Rule 135 incorporates a language that is self- guiding in nature. The usage of words "exposure" and "unemployability for reasons of security" are not insignificant, rather, they act as quintessential stimulants for the competent authority in passing such order. The mandatory determination of what amounts to an exposure or what renders an employee unemployable due to reasons of security under Rule 135, is both a pre-condition and safeguard, and incorporates within its fold the subjective satisfaction of the competent authority in that regard. In order to reach its own satisfaction, the authority is free to seek information from its own sources. Thus, in cases when the ingredients of Rule 135 stand satisfied in light of the prevalent circumstances, the need for giving opportunity to the officer concerned by way of an inquiry is done away with because the underlying purpose of such inquiry is not the satisfaction of the principles of natural justice or of the concerned officer, rather, it is to enable the competent authority of the organisation to satisfy itself in a subjective manner as regards the fitness of the case to invoke the rule. Therefore, the procedure underlying Rule 135 cannot be shackled by the rigidity of the principles of natural justice in larger public interest in reference to the structure of the organisation in question, being a special rule dealing with specified cases.

The court further assessed whether the rule thereof is vague and in that regard with respect to alleged vagueness of any provision of a law, the court observed:[45]

> 45. It is a settled principle of interpretation of statutes that the words used in a statute are to be understood in the light of that particular statute and not in isolation thereto. The expression used in Rule 135 is "security", as distinguished from the more commonlyused expression

45 *Supra* note 38, para 45-47.

"security of the State" used in Article 311. This deliberate widening of the expression by the enacting body points towards the inclusive intent behind the expression. The word "security" emanates from the word "secure" which, as per the Law Lexicon, means to put something beyond hazard. It is understood that the exposure of an intelligence officer could be hazardous not only for the Organisation but also for the officer concerned and the expression "security", therefore, is to be understood as securing the organisational and individual interests beyond hazard and squarely covers the security of the Organisation as well as the security of the State. Similarly, the expression "exposure" refers to the revelation of the identity of an intelligence officer as such to the public, in a manner that renders such officer unemployable for the Organisation for reasons of security.

46. It is noteworthy that in Indian constitutional jurisprudence, a duly enacted law cannot be struck down on the mere ground of vagueness unless such vagueness transcends in the realm of arbitrariness. We may usefully refer to the exposition of this court in *Municipal Committee, Amritsar* v. *State of Punjab*.However, challenge to Rule 135 on the ground of vagueness, 14 (1969) 1 SCC 475 could only be sustained if the Rule does not provide a person of ordinary intelligence with a reasonable opportunity to know the scope of the sphere in which the Rule would operate. In the present case, the test of reasonable man is to be applied from the point of view of a member working in the Organisation as an intelligence officer. The members working in the Organisation, more particularly a Class-I Intelligence Officer, ought to know the scope, specific context and import of the expressions – "exposed as an intelligence officer", "becoming unemployable in the Organisation" or "reason of security", as the case may be. A member working in the Organisation would certainly be aware of the transnational repercussions emerging from the exposure of the identity of an intelligence officer. Thus, there is no inherent vagueness or arbitrariness in the usage of above expressions so as to attach the vice of unconstitutionality to the Rule. However, whether or not an executive act of exercising the power under the Rule reeks of arbitrariness is a matter of separate examination, to be conducted on a case to case basis and does not call for a general declaration by the Court. To conclude, the challenge on this ground is rejected and the impugned judgment is, therefore, held to have answered this challenge correctly. However, despite upholding the order of the High Court as regards the constitutionality of Rule 135, we are of the view that the meaning placed by the High Court on the expression "security", in the impugned judgment, is of a wide import. As regards what would constitute a threat to security, so as to invoke Rule 135, the impugned judgment, in para 65, notes thus:

> "….. Therefore, if in a given case, any member of R&AW indulges in behaviour that is likely to prejudice its overall morale or lead to dissatisfaction, it may well constitute a threat to its security."
>
> 47. We hold that this observation does not guide us towards the true scope of the usage of the expression "reasons of security" or what would constitute a security threat and opens the contours of Rule 135 to uncontemplated areas. Thus, this observation shall stand effaced in light of the interpretation of Rule 135 by us hitherto and shall not be operative for any precedentiary purpose, or otherwise. Legality of the order of compulsory retirement.

IV JUDICIAL REVIEW

Judicial review of administrative action

Judicial review of administrative action has been one of the most contentious issues since the inception of this concept in the administrative law realm.During the survey year numerous questions on the scope of judicial review of various kinds of actions was raised and the apex court answered these questions exhaustively.

On the point of judicial review, a question was raised in the case of *Anuradha Bhasin* whereby the court used the test of proportionality to conclude accordingly. Following this an important question was raised again before the court in respect of whether indecision on part of the Speaker of a State Legislative Action can be cured by a recourse to writ before respective High Courts or the Supreme Court qua the jurisdiction conferred by Article 226, 227, or 136 respectively.[46] The court reiterated the principles and tests laid down in this regard and in doing so, it made other important observations.

The court discussed the retinue of observations and began on the note:[47]

> We have considered the aforesaid submissions of both the learned Attorney General and the learned counsel appearing on behalf of the petitioner. We feel that a substantial question as to the interpretation of the Constitution arises on the facts of the present case. It is true that this Court in KihotoHollohan's case laid down that a quiatimet action would not be permissible and Shri Jayant Bhushan, learned senior counsel appearing on behalf of some of the respondents has pointed out to us that in P. Ramanatha Aiyar's Advanced Law Lexicon a quiatimet action is the right to be protected against anticipated future injury that cannot be prevented by the present action. Nevertheless, we are of the view that it needs to be authoritatively decided by a Bench of five learned Judges of this Court, as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a legislative assembly (acting in quasi-judicial capacity under the Tenth Schedule) to decide a disqualification petition within a certain time, and whether such a direction would

46 *Keisham Meghachandra Singh* v. *Manipur Legislative Assembly*, 2020 SCC Online SC 55.

47 *Id*., para 10 reference to case *Speaker, Haryana Vidhan Sabha* v. *Kuldeep Bishnoi* (2015) 12 SCC 381, and *Speaker, Orissa Legislative Assembly* v. *Utkal Keshari Parida* (2013) 11 SCC 794.

not fall foul of the quiatimet action doctrine mentioned in paragraph 110 of Kihoto Hollohan's case. We cannot be mindful of the fact that just as a decision of a Speaker can be corrected by judicial review by the High Court exercising jurisdiction under Article 226, so prima facie should indecision by a Speaker be correctable by judicial review so as not to frustrate the laudable object and purpose of the Tenth Schedule, which has been referred to in both the majority and minority judgments in Kihoto Hollohan's case. The facts of the present case demonstrate that disqualification petitions had been referred to the Hon'ble Speaker of the Telangana State Legislative Assembly on 23rd August, 2014, and despite the hopes and aspirations expressed by the impugned judgment, the Speaker has chosen not to render any decision on the said petitions till date. We, therefore, place the papers before the Hon'ble Chief Justice of India to constitute an appropriate Bench to decide this question as early as possible.

The court further referred to the decision of *Kihoto Hollohan* v. *Zachillhu*[48] and reiterated the paragraph 110, the law thus being:

> 110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/ Chairman and a quiatimet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

The court concluded thus:[49]

> A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in paragraph 110 of KihotoHollohan (supra) are quiatimet actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paragraphs 110 and 111 of Kihoto Hollohan (supra) do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a Tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period.

However, in making the said observation and limiting the scope of the judicial review in case of matter to be decided by the Speaker, a caveat was observed by the

48 1992 Supp (2) SCC 651.

49 *Supra* note 34, para 29.

minority judgement in the *Kihoto Hollohan* case and the same was reiterated by the court whereby the court further cautioned the Parliament of the country to:[50]

> ...rethink on whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority when such Speaker continues to belong to a particular political party either de jure or de facto. Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as arbiter of disputes concerning disqualification which arise under the Tenth Schedule with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy.

Judicial review of orders passed under the power of the President/ Governor to grant pardon

In *Mukesh Kumar* v. *Union of India*[51]the court was called upon to decide whether judicial review of orders passed under the power of the President/ Governor to grant pardon under Articles 72 and161 of the Constitution respectively would be permissible in cases where the mercy petition was quickly considered and swiftly rejected. The petitioner in this case challenged the rejection of mercy petition on the ground that:

(i) Relevant materials were not placed before the President of India and they were kept out of consideration while considering the mercy petition;

(ii) The mercy petition was rejected swiftly and there was pre-determined stance and complete non-application of mind in rejection of the mercy petition; among others.

The court discussed the existing principles in this regard and concluded:[52]

> It is the consistent view taken by this court that the exercise of power of judicial review of the decision taken by the President of India on mercy petition is very limited and the same can be subject to challenge only on the following grounds:
>
> a) that the order has been passed without application of mind;
>
> b) that the order is mala fide;
>
> c) that the order has been passed on extraneous or wholly irrelevant considerations;
>
> d) that relevant materials have been kept out of consideration; and
>
> e) that the order suffers from arbitrariness.

50 *Supra* note 31, para 31.

51 (2020) 16 SCC, para 1.

52 *Id*., para 18.

The court tested the facts and circumstances of the case against the said principle and concluded that mere quick consideration and swift rejection would not in itself ascertain the non-applicability of mind. Further, the court observed:[53]

> As held by the Constitution Bench in Maru Ram and referred to Bikas Chatterjee, the court shall keep in mind that where the power is vested in a very high authority, it must be presumed that the said authority would act carefully after an objective consideration of all the aspects of the matter. As pointed out earlier, the note put up before the President of India is a detailed one and that all the relevant materials were placed before the President of India and upon consideration of the same, the mercy petition was rejected. Merely because there was quick consideration and rejection of the petitioner's mercy petition, it cannot be assumed that the matter was proceeded with pre-determined mind.

Scope of judicial review

The court was further called upon to decide the question of scope of judicial review in cases where order has been passed by the Election Commission for disqualification of a candidate for a period of five years for default in filing the election expenses.[54] In this case the plausibility of the administrative action and its relation with proportionality was discussed. The court observed:

> In a judgment reported as *Chief Executive Officer, Krishna District Co-op. Central Bank Ltd.* v. *K. Hanumantha Rao*,[55] this Court held that the limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which is a concept of judicial review. If the punishment is so disproportionate that it shocks the judicial conscience, the court would interfere. The relevant extract reads as under:
>
> 7.2 Even otherwise, the aforesaid reason could not be a valid reason for interfering with the punishment imposed. It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority/employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes.
>
> No doubt, the award of punishment, which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under limited scope for judicial review. This limited power of judicial

53 *Id*., para 36.

54 *Laxmibai* v. *Collector, Nanded* (2020) 12 SCC 186.

55 (2017) 2 SCC 528.

> review to interfere with the penalty is based on the doctrine of proportionality which is a well-recognised concept of judicial review in our jurisprudence.

The court thus laid the following law in cases where disqualification is to be decided in cases pertaining to section 14(B) of the Representation of Peoples Act, 1959:[56]

> The disqualification of a candidate for five years passed under Section 14B of the 1959 Act leads to disqualification for future election as well. Though, Section 14B of the 1959 Act empowers the Commission to disqualify a candidate for a period not exceeding five years from the date of the order, but to pass an order of disqualification for five years, which may disqualify him to contest the next elections as well requires to be supported by cogent reasons and not merely on the fact of not furnishing of election expenses.

Further, the court in the survey year again pointed that the judiciary must never perform Executive function in lieu of rendering justice.[57] Such actions do not confirm with the well-established principles of judicial review and therefore are bound to fail in the eyes of law. In cases involving the governmental tender, the court observed that while exercising the power of judicial review, the court must not second-guess or overwrite the requirements which have been prescribed by the authoring entity and must judicially review in light of what has been prescribed by the said authority.[58]In the present case the Supreme Court has sought to strike a balance in recognising the rights of the public authority under private law and enforcing the parallel obligations of the authority to the public at large. While it has been established through a series of judicial pronouncements that courts have a limited role in deliberating upon government tenders, the present case clarifies the independence that must be attributed to administrative actions. It highlights the sanctity that must be afforded to administrative action and at the same time reiterates the concomitant duty associated with administrative discretion. Thus, by clearly demarcating the role of judicial review *vis-à-vis* government contracts and tenders, the court has given a lucid understanding of the doctrine of separation of powers.

Scope of judicial review in service matters

In another case, at the cost of reiteration, the court was called upon to decide the scope of judicial review in service matters. After referring to the relevant observations of the court and deciding on the basis of the catena of judgements, the court observed:[59]

> It is thus well settled that the Constitutional Courts while exercising their powers of judicial review would not assume the role of an appellate

56 *Supra* note 41, para 20.

57 *State of Kerala* v. *RDS Project Limited* (2020) 9 SCC 108.

58 *Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers* v. *New J.K. Roadways, Fleet Owners and Transport Contractors* 2020 SCC Online SC 1035.

59 *Pravin Kumar* v. *Union of India,* (2020) 9 SCC 471, para 28.

> authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.

The court while referring to the scope of applicability of judicial review in matters of compulsory retirement of personnel in the armed forces observed:[60]

> 54. …It is settled law that the scope of judicial review is very limited in cases of compulsory retirement and is permissible on the limited grounds such as non-application of mind or mala fides. Regard can be had to *Pyare Mohan Lal* v. *State of Jharkhand*.[61] The above- quoted set of events are so eloquent that it leaves us with no other conclusion but to hold that the action of compulsory retirement was the just option. Assuming that some other option was also possible, it would not follow that the decision of the competent authority to compulsorily retire the appellant was driven by extraneous, malicious, perverse, unreasonable or arbitrary considerations. The pre-requisite of due application of mind seems to be fulfilled as the decision has been reached in the aftermath of a series of discussions, exchanges and consultations between the Organisation and the PMO over the course of 15 months from 22.9.2008 to 18.12.2009.
>
> 55. Moreover, the preliminary inquiry conducted against the appellant, commencing 8.8.2008, forms a crucial building block in the chain of events and calls for our attention. This inquiry was ordered in the aftermath of a series of complaints made against the appellant by the fellow officers. Such complaints pertained to misbehaviour, unauthorised communication, vulgar SMSes, media contact etc. A notice of this inquiry was communicated to the 21 (2010) 10 SCC 693 appellant on 19.8.2008 (the day of the PMO incident), seeking her participation in the inquiry. However, the appellant refused to participate, thereby leading to an *ex-parte* report of the inquiry, which concluded that most of the allegations against the appellant stood substantiated. This report was submitted to Secretary (R) on 11.9.2008 and the first proposal for invocation of Rule 135 against the appellant was made on 22.9.2008 by Secretary (R) i.e., 11 (eleven) days after the receipt of the report. The continuity of the above transactions belies the allegation of non-application of mind, as the proposal seems to have been made strictly in light of the materials on record.
>
> 56. Thus, in the present case, the appellant has not been able to establish the factum of non-application of mind in material terms and especially because the final decision has been taken at the highest level by the

60 *Nisha Priya Bhatia* v. *Union of India* (2020) 13 SCC 56.

61 (2010) 10 SCC 693.

> head of the Government in the aftermath of unfurling of successive events of exposure of appellant to the public and media in particular. In other words, even if we were to accept the argument of personal animosity between the appellant and the then Secretary (R), Shri Ashok Chaturvedi, it does not help the appellant's case as the final authority on the decision of compulsory retirement was vested in the PMO and there is no tittle of evidence regarding exercise of influence by the then Secretary (R) in the PMO. In an allegation of this nature, de-facto prejudice needs to be proved by evidence and this requirement of law fails to garner support from the factual position emanating in this case.

This case has further demarcated the general applicability of rules of natural justice when contrasted with the rules of natural justice enshrined under specific legislation or statutory provisions. In the latter cases, the extent of applicability of natural justice is limited by the provisions of the statute thereof. In that the court observed and reiterated –

> Taking cue from the procedural standards prescribed in FR 56(j), the appellant would urge that non-observance of the principles of natural justice in invoking Rule 135 had rendered the final order dated 18.12.2009 arbitrary. Though we have already stated in clear terms that Rule 135 of the 1975 Rules is not bound by the rigidity of the principles of natural justice, we deem it necessary to add that natural justice is not an all-pervasive pre-condition in all the executive decisions and its extent of applicability varies in myriad set of situations. This court, in *New Prakash Transport Co. Limited* v. *New Suwarna Transport Co. Limited*,[62] succinctly observed against the absoluteness of the rules of natural justice and stated that such rules vary with varying statutory rules governing the facts of the case. Speaking on the exclusion of such principles in the light of specific statutory rules, this Court, in *Union of India* v. *Col. J.N. Sinha*,[63] quoted *A.K. Kraipak* v. *Union of India,*[64] with approval, and observed thus:
>
> 8. ...It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural

62 AIR 1957 SC 232.
63 (1970) 2 SCC 458.
64 (1969) 2 SCC 262.

> justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

Thus, this principle guides the applicability of the principles of natural justice in the cases of armed forces and the standard applicable in such cases is at a higher threshold than would generally be applicable to the instances of service matters. This standard of natural justice is result of distinction between the kind of services rendered by employees in the armed forces or intelligence services that could *legitimately result into an embarrassing security breach with long-lasting impacts on the Organisation in question, if not the country*.[65] In these cases, the wisdom of the legislature guides the courts and their decisions more than the judicial principles. Thus, the observation of the court only edifies earlier decisions and principles thereof.

V ULTRA VIRES

The doctrine of ultra vires sits at the core of administrative law jurisprudence. *The juristic basis of judicial review is the doctrine of ultra vire*.[66] This doctrine has been refined and developed throughout the advent of jurisprudence. In many instances, the technique by which the courts have extended the judicial control of powers is that of stretching the doctrine of *utra vires*.[67]

The courts can intervene where authorities act beyond the power vested in them either by statute or by way of delegation.

In the survey year, the Supreme Court intervened in various matters applying the doctrine of ultra vires.In *Shridhar C. Shetty* v. *Collector*,[68]the apex court answered the question that if there is any undertaking by one of the parties can a competent authority expand its jurisdiction and demand something which is beyond the power vested in the statute. In this case, question arose as to the validity of order passed by the competent authority being the Additional Collector, Konkan Division, and the demand of certain amount including interest and arrears with respect to certain land in question. The appellant in this case had seven plots of land and was granted exemption for construction whereby he had to surrender twenty percent of the constructed area to government nominees. The appellant had entered into development agreement with another party on exempted lands. The respondent never withdrew the exemption that was granted even after the fact that the appellant did not start construction on other plots. The respondent contended that the development agreement was void and in breach of the conditions of the exemption and, therefore, they were justified in levying the fine thereof. Rejecting the argument of the respondent and the authority exercising the power, the court observed:[69]

> It being a pure question of law, the facts being undisputed, we see no reason not to allow the appellant to raise the same before us for the

65 *Supra* note 60, para 63.

66 *Boddington* v. *British Transport Police*, (1999) 2 AC 143, at 164.

67 H.W.R. Wade & C.F. Forsyth, *Administrative Law* 28 (2014).

68 *Shridhar C. Shetty* v. *Collector* (2020) 9 SCC 537.

69 *Id.,* para 17.

> first time. The competent authority under the Act could have certainly withdrawn the exemption in the event of breach along with all its attended consequences. Failure to do so did not deprive the statutory authority of its powers to proceed appropriately under the Act. But the competent authority being a creature of the statute under Section 2(d) of the Act, cannot act beyond its statutory jurisdiction and the exercise of its powers shall remain circumscribed by the provisions of the Act. Any undertaking by the appellant cannot expand the statutory jurisdiction of the competent authority. The demand for the market value of the remaining seven tenements, falling outside the purview of the Act, cannot be construed as money due to the Government so as to vest in it the nature of an arrears of land revenue recoverable under Section 265 of the Maharashtra Land Revenue Code, 1966. We have, therefore, no hesitation in concluding that the impugned demand is dehors the provisions of the Act and unsustainable being beyond the statutory powers of the competent authority and thus arbitrary.

Further, a question is raised, due to a circular by a department which construed to apply to some particular facts in two cases but what if the circular render other construction then those particular facts? Is it*ultra vires*? If this circular came for particular purpose can be used for other purpose and in different situation? Supreme Court answered in *The Chief Regional Officer The Oriental Insurance Co Ltd* v. *Pradip*[70]in survey year. Where the judgment relied on law laid down in *Food Corporation of India* v. *Jagdish Balaram Bahira (FCI)*.[71]

There was writ by respondent before high court to protect his service and high court protected the same according to the pervious full bench judgment in *Arun* v. *State of Maharashtra*[72]. Further, counsel for respondent before the apex court demanded protection and relied on an office memorandum issued department of personnel & trading and subsequent circular from department of revenue, which refer two cases of Supreme Court *Gajanan Marotrao Nimje* v.*RBI (Nimje)*[73]and *S.G Barapatre*v. *Ananta Gajanan Gaiki* (*Barapatre*).[74]

In *Barapatre,* the appellants were in appeal before the apexcourt against the orders passed by the Nagpur Bench of the High Court of Bombay. The high court had noted that the appellants had declined to subject themselves to a scrutiny of their caste certificate, as a consequence of which their services were directed to be discontinued. In subsequent appeal before the apex court, a two judge bench, by its judgment dated October 10, 2018 noted that the issue raised therein had earlier been considered by the high court in connected matters. The high court, in the course of its judgment, had issued the following directions:

70 (2020) 11 SCC 144.
71 (2017) 8 SCC 670.
72 (2014) SCC Online Bom 4595: (2015) 1 Mah LJ457.
73 (2019) 12 SCC 639: (2020) 1 SCC (L&S) 623.
74 (2018) SCC Online SC 2175.

> 18. In that view of the matter, we find that the petitioners are entitled to limited relief, that they are praying for. In the result, the impugned show cause notices are quashed and set aside. It is declared that the petitioners would be entitled to protection of their appointments. It is further declared that if any benefits are granted after 28.11.2000 on the basis that they belong to Scheduled Tribes, the respondent Authorities are at liberty to withdraw the said benefits and restore the position as on 28.11.2000. The respondents to take further necessary steps in accordance therewith.

The apex court noted in its decision in *Barapatre* that *Food Corporation of India* challenged the order of the high court dated November 1, 2012 before this court in Special Leave Petitions under article 136 of the Constitution which were dismissed on 12 April 2013. Review petitions were also dismissed on February 26, 2014. In this background, the Bench of two judges in the judgment dated October 10, 2018 in *Barapatre* observed as follows:

> 8. Therefore, the said judgment qua the employees, who were parties to those writ petitions have become final. The benefits which have been granted, as per the judgment specifically referred to in paragraph 18 of the judgment, which is extracted above, cannot be taken away in collateral proceedings.

Supreme Court made it clear that if there are any employees who are covered by the similar situation in *Barapatre* then they are protected accordingly by judgement in *A.P Ramtekkar* v. *Union of India*[75]and if there is any benefit grated after November 28, 2000 on the basis of Scheduled Tribes then department can withdraw the benefits. But there was some confusion that is why there was difficulty in implementation of this judgement and which was dealt by Supreme Court in *FCI.*[76]

> Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions.

Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights

75 2012 SCC Online Bom 1647.

76 *Food Corporation of India* v. *Jagdish Balaram Bahira* (2017) 88 SCC 670.

of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.[77]

Supreme Court reiterated on the principle of ultra vires and answered the question. Both *Barapatre* and *Nimje* are decisions of a two judge Bench and do not lay down any principle of law contrary to the binding three judges Bench decision in *FCI*. Neither the DoPT circular dated April 8, 2019 nor the circular dated 20 June 2019 of the Department of Revenue can depart from the principles laid down in *FCI*. The circulars must hence be construed to apply only to the peculiar facts noted in *Barapatre* and *Nimje* which the courts have explained earlier. Any other construction of the circulars will render themultra vires.[78]

VI CONCLUSION

The COVID-19 has adversely affected every organ of the society be it at the individual, organisational, or national level. No entity has remained outside the scope of the adversities of the pandemic and the private and public sectors have been affected alike. In spite of these hurdles and the impediments, thejudiciary has remarkably performed its duty in justice delivery system in our country. During the survey year under review, the apex court has largely followed the earlier trends in the field of administrative laws. In case of question of malice in administrative action the courtretreated that the malice in administrative action cannot be merely looked at from the perspective of factual circumstances, which is only one of the limbs but has also to be looked from the perspective of legal tenets thereof. There has to be substantial malice in law to conclude an administrative action as riddled with malice alleged.[79] Further, the court had a chance to elaborate the concept and understanding of malice-in-fact and malice in law.[80]

The survey year will always be counted as the vantage point in the history of development of jurisprudence of operation of administrative actions in the cyberspace and its impact and observations related to the information technology laws. [81]The apex court also dwelt on many aspects of natural justice and its operability in various realms in the survey year. The year began with a question on whether a committee member who was part of the Service Making Rules can be considered, while applying for certain position, as having violated the principles of natural justice. The court discussed that such conclusion will depend on the facts and circumstances of each case and no general conclusion can be drawn in this regard.[82]

The court in survey year was also called upon to decide whether judicial review of orders passed under the power of the President/ Governor to grant pardon under

77 *Supra* note 57, para 16.
78 *Ibid.*
79 *Supra* note 8.
80 *Supra* note 16.
81 *Supra* note 18.
82 *Supra*note 35.

articles 72 and161 of the Constitution respectively would be permissible in cases where the mercy petition was quickly considered and swiftly rejected.The apex court also decide the question of scope of judicial review in cases where order has been passed by the Election Commission for disqualification of a candidate for a period of five years for default in filing the election expenses.[83]Further, the court in the survey year also pointed that the judiciary must never perform executive function in lieu of rendering justice.[84]

83 *Supra* note 54.

84 *Supra* note57.