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ADMINISTRATIVE LAW

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I INTRODUCTION

THE YEAR 2021, in the aftermath of pandemic,brought to the Indian judiciary questions of varied administrative complexity and legality of the administrative mechanism. These questions were perused at length, in that realm, more concretely answered. The judgments pronounced in the yearundersurvey by apex court, with special reference to administrative laws, will have a more prospective way carved out for the judiciary and the executive to act. These judgements will have significant impact on the understanding of administrative mechanisms while guiding both the executive and the judiciary indetermining what actions must be taken catering to the best interests of everyone, including the government. The fact that each case mustbe understood in the context of its merits cannot be lost sight of, more so in thecontext of administrative laws. But the guiding jurisprudence developed by the courtsmust always be adhered to and the year that passed, brought with its ample opportunitiesin developing such jurisprudence for the administrative laws to operate effectivelyand efficiently.

In the year under survey, the cases decided by the Supreme Court under various headings in the field of administrative law such administrative action, judicial review, subordinate/delegated legislation, natural justice, and promissory estoppel have been reviewed.

II ADMINISTRATIVE ACTION

In the 21st Century various functions are performed by administrative entities so much so that the administrative process cuts across the traditional bounds of classification and combines into one the powers exercised by all the organs, *i.e*., legislature, executive, judiciary. It is evident that a wide variety of activities fall within the sphere of 'administrative action' and that even administrative authority does not restrict to courts and legislative bodies of the country. Residuary functions of administrative bodies may themselves partake themselves of the legislative or judicial quality.[1]

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1 See *D.D. Basu, Administrative Law, (1998) 6.*

Administrative action is an overarching nomenclature used for various types of governmental functions performed by the State. In the performance of such functions there is a possibility of excessive exercise of powers that might curtail the rights of an individual. This, however, does not entail that all administrative actions are per se *de hors* and administrative powers, whereby administrative action germinates is to be done away with. In this context, the administrative action needs a constant check and judiciary is empowered to deal with any excesses.

In *Jigya Yadav* v. *CBSE*[2] which involves batch of 22 petitions wherein questions relating to correction/change in name/surname/ date of birth of the candidates or their parents in the certificates issued by the CBSE Board were raised as the CBSE examination bye-laws restrict both qualitatively and quantitatively, the corrections/ changes that can be carried out in the certificates issued by the board. Various students with need-based requests approached different high courts resulting in inconsistent outcomes and such judgments also produced conflicting outcomes. The seminal issue before the apex court was: whether an individual's control over cardinal element of identity can be denied to him/her by the Board on the ground that its CBSE Examination Bye-laws of 2007 must prevail over claim of candidates which are merely intended to regulate such claim and to delineate the procedure for correction/change in the contents of the certificates issued by it? While deciding the issue the court held thus:[3]

> The overriding State interest, as per the Board, to retain this stringency is nothing but efficiency of administration. Administrative efficiency, despite being a crucial concern, has not been and cannot be elevated to a standard that it is used to justify non-performance of essential functions by an instrumentality of the State. Administrative efficiency, cannot be the sole concern of CBSE. Every institution desires efficiency in their functioning. But it does not mean that efficiency is achieved by curbing their basic functions. To use administrative efficiency to make it practically impossible for a student to alter her identity in the Board certificates, no matter how urgent and important it is, would be highly disproportionate and can in no manner be termed as a reasonable restriction. Reasonableness would demand a proper balance between a student's right to be identified in the official (public) records in manner of her choice and the Board's argument of administrative efficiency. To sustain this balance, it would be open to the Board to limit the number of times such alterations could be permitted including subject to availability of the old records preserved by it as per the extant regulations. But to say that post the publication of examination results and issuance of certificates, there can be no way to alter the record would be a case of total prohibition and not a reasonable restraint.

Further the court also held that the bye-laws permit change of name only if permission of the court has been obtained prior to the publication of result. The

2 (2021) 7 SCC 535.

3 *Id.,* para 135.

provision is problematic on certain counts. Firstly, it is not a mere restriction on the right, it is a complete embargo on the right post publication of result of the candidate. It fails to take into account the possibility of need for change of name after the publication of result including the uncertainty of timeline required to obtain such declaration from the court of law due to law's delay and upon which the candidate has no control whatsoever. Whereas, while amending the bye-laws in 2007, the CBSE itself had noted that children are not of mature age while passing school examinations and they may not be in a position to decide conclusively on issues concerning their identity. The bye-laws completely overlook this possibility when it ordains seeking declaration from the court prior to the publication of results of the examination concerned conducted by it.[4]

The court rejected the argument of CBSE that frequent changes cannot be permitted since there is possibility of abuse and held that mere possibility of abuse cannot be used to deny legitimate rights of citizens or deter Board from fulfilling its essential functions. Besides, balance of convenience also tilts in favor of students who stand to lose more due to inaccuracies in their certificates than Board whose sole worry is administrative burden. Also, it would be in CBSE's own interest if their records are regarded as accurate and latest, worthy of being relied upon for official purposes.[5]

The court also observed that the limitation as regards the maximum period up to which changes can permitted also requires a different approach and stated thus:[6]

> Upon receiving the certificates, the student would naturally be put to notice of the particulars of certificates. Due to young age and inadvertence including being casual and indolent, a student may fail to identify the errors or to understand the probable impact of those errors and accordingly, may not apply for rectification immediately. It is also possible that a student may not have to use the certificates immediately after passing out and by the time she uses them, the limitation period for correction may elapse. Therefore, a realistic time for permitting corrections is very important. Indeed, it can be commensurate with the statutory or mandatory period up to which CBSE is obliged to preserve its old record.

Efficacy and binding nature of statutory rules/ executive instructions

In*Mahanadi Coalfields Ltd* v. *Rabindranath Choubey*,[7] the respondent employee CGM of Mahanadi Coalfields Ltd. was alleged to have committed serious misconduct serious misconduct of dishonestly causing coal stock shortages amounting to Rs. 31.65 crores and thereby causing substantial loss to the employer. The respondent was suspended on 9-2-2008 pending departmental enquiry. The suspension was however

4 *Id*., para 134.
5 *Id.*, para 138.
6 *Id.*, para 136.
7 (2020) 18 SCC 71.

revoked on February 27, 2000 without prejudice to departmental enquiry. The respondent superannuated on July 31, 2010 on completion of 60 years of age. The departmental enquiry was pending at the time of his superannuation. Therefore, the appellant employer withheld gratuity payable to him. The respondent submitted application to the controlling authority under the Payment of Gratuity Act, 1972 for payment of gratuity. The authority considering pendency of disciplinary proceedings against him found his claim premature. The writ petition filed thereagainst was dismissed by the single judge of high court on ground of existence of alternative forum to agitate his grievance. However, instead of approaching the appellate authority, the respondent employee filed intra-court appeal before the Division Bench which was allowed directing the appellant employer to release the respondent employee's gratuity amount. Hence the instant appeal wherein the issues before the Supreme Court were:

(i) Whether it was permissible for the appellant employer under the rules concerned to withhold gratuity after superannuation of the respondent employee on grounds of pendency of disciplinary proceedings against him; and

(ii) Where departmental enquiry is instituted against the employee while in service and continued after he attaining the age of superannuation, whether punishment of dismissal can be imposed finding him guilty of misconduct in view of Rule 34.2 of the 1978 Rules?

While allowing the appeal, the Supreme Court decided both the issues in favor of appellant employer and held thus:[8]

> The appellant employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings as the relevant rules provide for the same, and the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent eve after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employer was in service, as the relevant rules provide for the same. Therefore, the impugned order passed by the high court is liable to be set aside. However, the appellant employer is directed to conclude the disciplinary proceedings at the earliest and within a period of four months from today and pass appropriate orders in accordance with law and on merits.

On the issue whether in absence of statutory provisions, statutory rules hold the field and in absence of statutory rules, executive instructions hold the field and are equally binding, the court held thus:[9]

8 *Id.*, paras 48 and 49.

9 *Id.*, para 37.

> Neither the provisions in section 4(1)[10] nor section 4(6)[11] of the 1972 Act create embargo on the departmental enquiry and its continuance after superannuation. Thus, provisions of rule 34.2 of the CDA Rules would prevail. Even the executive instruction can hold the field in the absence of statutory rules and are equally binding. No dint is caused by the 1972 Act, and the efficacy of rules is not adversely affected on the proper interpretation of sections 4(1) and 4(6) of the 1972 Act.

Impermissibility of sanctification of executive orders when challenged before court

In the survey year, the supreme court in *Opto Circuits (India) Ltd* v. *Axis Bank*[12] reiterated thatthe action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the court and held thus:[13]

> When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acts and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow old.

In fact, in the instant case such contention of having exercised power under section 102 of the Criminal Procedure Code, 1973 has not been put forth in the counter-affidavit, either in this appeal or before the high court and has only been the attempted ingenuity of the respondents before the supreme court. Such contention, therefore, cannot be accepted. In fact, in the objection statement filed before the high court

10 S. 4(1) of the 1972 Act deals with normal superannuation and does not cover the cases where the departmental enquiry is pending, or dismissal had been ordered. It did not interdict the departmental enquiry if it was initiated while the employee was in service and continued after superannuation as if the employee continued in service. Section 4 of the 1972 Act contains no bar, and purposive construction has to be made of the provisions contained in section 4(1).

11 S. 4(6) provide where particular misconduct is found established, how gratuity to be dealt with, but provisions cause no fetter on the power of an employer to impose a punishment of dismissal. It makes no provision in particular with respect to the departmental enquiry but rather buttresses the power of an employer to forfeit gratuity wholly or partially or to recover loss provided in section 4(6).

12 (2021) 6 SCC 707.

13 *Id.*, para 12.

much emphasis has been laid on the power available under the PMLA and the same being exercised though without specifically referring to the power available under section 17 of the PMLA.

Administrative authorities as a model litigant

Supreme Court has time and again held that State should act as a model litigant.[14] In the survey year, the Supreme Court reiterated the abovementioned principle in *PopatraoVyankatrao Patil* v. *State of Maharashtra*[15] and observed thus:[16]

> This court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice.

In this case, inspite of appellant being the highest bidder and inspite of him depositing entire amount of auction, since possession of sand block was not given to him for reasons not attributable to him and he could not excavate sand, he will be entitled to get refund of amount deposited by him. Supreme Court while setting aside the impugned order of the high court held that the appellant is entitled to get refund of amount deposited by him and directed the respondents to refund the entire amount received from appellant along with interest at 6% per annum from the date on which appellant made first request for refund till date of realization.

III JUDICIAL REVIEW

Judicial review of one of the most potent tools for maintaining checks and balances in the entire politico-administrative framework of the nation and globally. This tool helps in multiple ways, first to analyses whether there has been excessive exercise of power, whether there has been curtailment of rights because of such excessiveness, and whether there was a need for crossing the threshold of violation of rights conferred. It is pertinent to note that since its inception and use in India, judicial review has come a long way and encompasses varied categories of administrative actions that may be used by the Executive.

The principle of judicial review became an essential feature of written Constitutions of many countries. H.M. Seervai in his book *Constitutional Law of India* noted that the principle of judicial review is a familiar feature of the Constitutions of Canada, Australia and India, though the doctrine of separation of powers has no place in strict sense in Indian Constitution, but the functions of different organs of the government have been sufficiently differentiated, so that one organ of the government could not usurp the functions of another.[17]

14 See, *Urban Improvement Trust, Bikaner* v. *Mohan Lal,* (2010) 1 SCC 512; *Dilbagh Rai Jarry* v. *Union of India* (1974) 3 SCC 554; *Madras Port Trust* v.*Hymanshu International* (1979) 4 SCC 176; *Bhag Singh* v. *State (UT of Chandigarh)* (1985) 3 SCC 737.

15 (2020) 19 SCC 241.

16 *Id.,* para 14.

17 See H.M. Seervai, *Constitutional Law of India* 237(3rd edn., *Vol*. 1, N.M. Tripathi Private Ltd. Bombay 1983).

In *Harshit Agarwal* v. *Union of India,*[18] Supreme Court reiterated that judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety and administrative discretion exercised by any decision-making body is subject to judicial review if a purpose different from the specified purpose is pursued. Summarizing the principles of judicial review of administrative action, the court held thus:[19]

> Judicial review of administrative action is permissible on grounds illegality, irrationality, and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which power to make the decision was conferred. There is no unfettered decision in public law. Discretion conferred on an authority has to be necessarily exercised only for the purpose provided in a statute. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. If the authority pursues unauthorized purposes, its decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law.

In the instant case, the court further held that an administrative action or decision is open to judicial scrutiny when the decision maker instead of applying his mind to pertinent and proximate matters only, takes into account irrelevant and remote matters and administrative decision which materially suffers from blemish of overlooking or ignoring, willfully or otherwise, vital facts or relevant considerations bearing on the decision is bad in law.[20]

In *Rusoday Securities Ltd.* v. *National Stock Exchange of India Ltd.,*[21] Supreme Court held that the cause of action for judicial review of administrative action would arise when the order directing the impugned action in question was passed. In the instant case, such cause of action arose when securities were withheld by the National Stock Exchange of India. Merely because a subsequent order is passed to justify a prior action, it cannot be a case of accrual of fresh cause of action to the aggrieved party.

In *Jigya Yadav* v. *CBSE*[22] the apex court held that principle of presumption of constitutional validity attached to primary statutes ought not to be extended to subordinate legislation with same vigour since legislature enjoys sacred backing of people's will, while subordinate legislation does not.

18 (2021) 2 SCC 710.
19 *Id.*, para 10.
20 *Ibid*.
21 (2021) 3 SCC 401.
22 (2021) 7 SCC 535.

Judicial review of policy decisions

There is a limited scope of judicial review in matters of economy and/or economic policy decisions. The legal position on this issue is that judges are not experts in economic and fiscal regulatory matters and thus, should not encroach upon these areas and must be more reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself or such policy could be faulted on the ground of mala fides, arbitrariness, unfairness *etc.*

In the survey year, in *Reepak Kansal* v. *Union of India,*[23] Supreme Court while summarizing the law relating to judicial review of economic policy decisions or policy decisions having financial implications stated:

> Court will not debate academic matters nor concern itself with intricacies of trade and commerce. It is neither within domain of courts nor scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor the courts inclined to strike down a policy at behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. Economic and fiscal regulatory measures are a field where judges should encroach upon very warily as judges are not experts in these matters.

In *Small Scale Industrial Manufacturers Association* v. *Union of India,*[24] apex court was confronted with an interesting issue relating to scope of judicial review of policy decisions concerning various relief measures and packages declared by union government and Reserve Bank of India (hereinafter, 'RBI') during COVID-19 pandemic. In essence the issue was: whether writ of mandamus warranted against financial relief packages declared by Government and RBI during COVID-19 pandemic. While deciding this issue the court held thus:[25]

> No writ of mandamus can be issued as the issues arising from grievance against the relief packages declared by Government and/or RBI are in realm of the policy decisions and if reliefs prayed for herein is granted, it would seriously affect the banking sectors and it would have far-reaching financial implications on the economy of the country. When government forms its policy, it is based on a number of circumstances on facts and law including constraints based on its resources. No state or country can have unlimited resources to spend on any of its projects, that is why it only announces the financial reliefs/packages to the extent it is feasible and it is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its

23 (2021) 9 SCC 251.

24 (2021) 8 SCC 511.

25 *Id.*, paras 69 to 77.

> appraisal based on facts set out on affidavits. Merely because some class/sector may not be agreeable and/or satisfied with such packages/ policy decisions, courts should not ordinarily interfere therewith, unless it is illegal or faulted on the ground of mala fides, arbitrariness, unfairness etc.

The court further held that government and RBI are confronted with many complex issues while determining such packages and COVID-19 pandemic has affected the entire country barring few of the sectors. Government is required to take various measures in different fields/sectors like public health, employment, providing food and shelter to the common people/migrants, transportation of migrants *etc*. and therefore, as such, the government has announced various financial packages/reliefs.

IV SUBORDINATE/DELEGATED LEGISLATION

Legislation is either supreme or subordinate. The former is that which proceeds from the supreme or sovereign power in the State, and which is, therefore, incapable of being repealed, annulled or controlled by any other legislative authority. Subordinate legislation is that which proceeds from any authority other than the sovereign power, and is, therefore, dependent for its continued existence and validity on some superior or supreme authority. The idea is to supplement Acts of supreme legislative body by prescribing detailed rules required for their operation.[26]

Subordinate legislation is another important practice that helps in conferring autonomy to the administrative bodies, in the absence of which unfettered delays would emerge and subsequently hamper the legitimate interests of various communities across the nation. While recognizing the importance of delegated legislation, The United State's Attorney General's Committee on Administrative Action observed:[27]

> We do not agree with those critics who think that the practice of delegated legislation is wholly bad. We see in it definite advantages, provided that the statutory powers are exercised and the statutory functions performed in the right way. But risks of abuse are incidental to it, and we believe that safeguards are required, if the country is to continue to enjoy the advantages of the practice without suffering from its inherent dangers.

In *NHAI* v. *Aam Aadmi Lokmanch,*[28] Supreme Court reiterated that courts are empowered to set aside irregular and arbitrary regulation in exercise of their power to judicially review subordinate regulatory legislation. In this case, the court set aside the impugned notification and the impugned order of high court and held thus:[29]

> the impugned notification issued under section 154 of the Maharashtra Regional and Town Planning Act, 1966 is vague and arbitrary and is

26 See, John Satmond: Jurisprudence, 9thEdition, London, Sweet and Maxwell Limited, 1937, at 210. Also see Black's Law Dictionary, 8thEdition at 918.

27 Report of the United State Attorney-General's Committee on Administrative Procedure, (1941) 225.

28 (2021) 11 SCC 566.

29 *Id*.

> not based on any reason and it is solely based on direction of National Green Tribunal (NGT) without any application of mind on part of the state. The impugned notification is not based on any scientific evidence or report of technical expert. It is a blanket change of all regional and development plans. Therefore, the said notification issued under section 154 and the impugned order of high court is set aside.

Coming into force of subordinate legislation and its retrospective operation

In the survey year, supreme court in *Union of India* v. *G.S. Chatha Rice Mills*[30] (hereinafter, 'Chatha Rice Mills case') clarified the concept nature and scope of subordinate legislation; summarized the principles relating to commencement or coming into force of delegated legislation and also reiterated that delegated or subordinate legislation does not have retrospective effect unless the statutory provision under which it is framed allows retrospectivity either expressly or impliedly. In the foregoing paragraphs the aforesaid decision of the court is discussed in detail on the above-mentioned points.

Firstly, in this case the court clarified that delegated legislation does not lose its character even when it has the same force and effect as if contained in the statute. A notification issued by the government pursuant to the conferment of statutory power is distinct from an act of legislature and administrative notifications, even when they are issued in pursuance of an enabling statutory framework, are subject to the statute.

Secondly, the court reiterated that delegated or subordinate legislation does not have retrospective effect unless the statutory provision under which it is framed allows retrospectivity either by the use of specific words to that effect or by necessary implication. Furthermore, fact that subordinate/delegated legislation may have been framed in pursuance of a resolution passed by the legislature or that it may have to be placed on the table of the legislative body, does not lead to an inference that legislature had authorized the framing of subordinate legislation with retrospective effect. Applying this principle to the issue whether notification issued under section 8-A of the Customs Tariff Act, 1975 has a retrospective operation, the court held thus:[31]

> Issuance of notification under section 8-A(1) of the Customs Tariff Act, 1975 is an exercise of delegated legislative power and in issuing such a notification, the central government exercises powers as a delegate of the legislature. In this case, the entrustment of the power to issue a notification enhancing the rate of custom duty under section 8-A of the 1975 Tariff Act is not accompanied by a statutory entrustment of authority to the central government to exercise it with retrospective effect. Thus, an enhancement of the rate of duty pursuant to the exercise of power under section 8-A of the 1975 Tariff Act can only be prospective.

30 (2021) 2 SCC 209.

31 *Id*., paras 57 and 58.

Thirdly, in *Chatha Rice Mills case*on the issue whether section 5(3) of the General Clauses Act is applicable to the notification issued under section 8-A of 1975 Tariff Act the court held thus:[32]

> Under section 5(3) of the General Clauses Act, it is only a 'Central Act' or 'Regulation' which comes into operation immediately on the expiration of the day preceding its commencement. A notification issued by the central government under section 8-A(1) of the 1975 Tariff Act does not fulfil the description of a 'Regulation' under section 3(50) of the General Clauses Act and the definition does not extend to all subordinate legislation or to notification issued by a delegate of the legislature acting in pursuance of a statutory authority. Thus, in present case as section 5(3) of the General Clauses Act did not apply therefore the notification in question issued under section 8-A(1) of the 1975 Tariff Act came into effect when it was uploaded on the e-gazette at 20:46:58 hours on 16-2-2019, and not with effect from mid-night/ 00:00 hours on 16-2-2019.

On this issue K.M. Joseph J., concurred with the majority and held that the principle incorporated under section 5(3) of the General Clauses Act that fractions of the day are eschewed from consideration, is not a universal principle which knows no exception and therefore the notification in question came into effect when it was uploaded on the e-gazette at 20:46:58 hours on 16-2-2019.

Fourthly, in this case the court summarized the principles applicable to commencement or coming into force of delegated or subordinate legislation and stated:[33]

> Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. Any additional requirement of publication can only be introduced by statute and the court is bound by the applicable statutory scheme for determining enforceability. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognized official channel, namely, the official gazette or some other reasonable mode of publication.

The court applied the above-mentioned principle relating to manner of publication of subordinate legislation to decide the date or time of coming into force of the notification issued under section 8-A of the 1975 Tariff Act and held thus:[34]

> Section 8 of the Information Technology Act, 2000 creates a legal basis for the publication of laws through e-gazette. With the change in the

32 *Id.*, paras 66 to 69.

33 *Id.*, paras 96 and 97.

34 *Id*., paras 91 and 94.

> manner of publishing gazette notifications from analog to digital, the precise time when the gazette is published in the electronic mode assumes significance. Notification No. 5 of 2019, which is akin to the exercise of delegated legislative power, under the emergency power to notify and revise tariff duty under section 8-A of the Customs Tariff Act, 1975, cannot operate retrospectively, unless authorized by statute. In the era of electronic publication of gazette notifications and electronic filing of bills of entry, the revised rate of import duty under the notification applies to bills of entry presented for home consumption after the notification was uploaded in the e-gazette at 20:46:58 hours on 16-2-2019.

In *State of U.P.* v. *Birla Corp. Ltd.*[35] the apex court held that on a bare reading of section 5 of the U.P. Trade Tax Act, 1948, it is evident that there is no express authority given to the executive to issue notification for 'withdrawing or rescinding the rebate facility' from a date prior to the date of notification. Section 5(2) merely constricts that power only for 'allowing' rebate with effect from a date prior to the date of notification. That does not include, by necessary implication or otherwise, power to 'withdraw' or 'rescind' the rebate from a date prior to the date of notification.[36]

The court also held that section 21 of the U.P. General Clauses Act, 1904 is in *parimateria* with section 21 of the General Clauses Act, 1897 and will be of no avail for withdrawing the rebate from a date prior to the date of notification. In the present case, the plain language of the notification dated October 14, 2004 itself expressly rescinds notification dated February 27, 1998 with effect from October 14, 2004. There is no express or tacit intent manifested from this notification, so as to construe it as bestowing power to withdraw the rebate facility with effect from a date prior to the date of notification as such. On this finding, nothing more is required to be said as the concomitant of this finding would necessarily be that all the industrial units set up after February 27, 1998 and before October 14, 2004 which had commenced commercial production, must continue to qualify for rebate for specified term mentioned in notification dated February 27, 1998, subject to fulfilling all other conditions specified therein. Any other interpretation of the impugned notification would entail in giving retrospective effect thereto. That is not predicated by section 5 of the 1948 Act or the impugned notification itself.[37]

Challenge to subordinate/delegated legislation on ground of manifest arbitrariness

Principle of manifest arbitrariness requires something to be done in the form of delegated legislation which is capricious, irrational or without adequate determining principle. Delegated legislations that are forbiddingly excessive or disproportionate can also be manifestly arbitrary and can be declared unconstitutional as violative of article 14 of the Constitution of India.

35 (2020) 20 SCC 320.

36 *Id.*, para 28.

37 *Id.*, paras 30& 31.

In the survey year in *Franklin Templeton Trustee Services (P) Ltd.* v. *Amruta Garg*[38]Supreme Court while applying the doctrine of manifest arbitrariness to test the constitutional validity of SEBI (Mutual Funds) Regulation, 1966 held thus:[39]

> Since the impugned regulations are in the nature of economic regulations, while exercising the power of judicial review, the court would exercise restraint unless clear grounds justify interference. The court would not supplant its views for that of the experts as this can put the marketplace into serious jeopardy and cause intended complications. Policy decisions can only be faulted on the grounds of mala fides, unreasonableness, arbitrariness and unfairness in addition to violation of fundamental rights or exercise of power beyond the legal limits. The principle of manifest arbitrariness requires something to be done in exercise in the form of delegated legislation which is capricious, irrational or without adequate determining principle. Delegated legislations that are forbiddingly excessive or disproportionate can also be manifestly arbitrary. In view of the interpretation placed and discussion above, the regulations under challenge do not suffer from the vice of manifest arbitrariness.

The court further held that the words used in the statute including delegated legislation are to be understood in the light of that particular statute and not in isolation and therefore, a duly enacted law cannot be struck down on the mere ground of vagueness unless such vagueness transcends into the realm of arbitrariness.[40]

The court also observed[41] that this is not a case of excessive delegation wherein the legislative function has been abdicated and passed on to the trustees who can act as per their whims and fancies.Complexities in matters of business and commerce can be bafflingly intricate and riddled with urgencies and difficulties, therefore, there is need for flexibility in the text of the impugned regulation.

Interpretation of subordinate legislation

In *NHAI* v. *Pandarinathan Govindarajulu*[42] the Supreme Court reiterated the principles of interpretation of subordinate legislation and their application to the interpretation of statutory notifications and stated:[43]

> A statutory rule or notification is to be treated as a part of the statute. The principles of interpretation of subordinate legislation are applicable to the interpretation of statutory notifications. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words alone in such cases best declare the intent of the law

38 (2021) 9 SCC 606.
39 *Id*., para 79.
40 *Id.*, para 73.
41 *Id.*, para 74.
42 (2021) 6 SCC 693.
43 *Id.*, para 8 & 9.

> giver. It has been repeatedly held that where there is no ambiguity in the words, literal meaning has to be applied, which is the golden rule of interpretation. The words of a statute must *prima facie* be given their ordinary meaning.

In the instant case, according to court a plain reading of item 7(f) of the notification dated August 22, 2013 would make it clear that expansion of national highway project needs prior environmental clearance in case:

(a) expansion of the national highway project is greater than 100 km, and

(b) it involves additional right of way or land acquisition greater than 40m on existing alignments and 60m on realignments or bypasses.

While explaining the aforesaid item of the notification the court stated that there is no ambiguity in the above provision as it gives no scope for doubt. The distance of 100 km is important as expansion of national highway below 100 km needs no prior environmental clearance. Also, if the project involves expansion of a national highway greater than greater than 100 km, prior environmental clearance would be required only if it involves additional right of way or land acquisition greater than 40m on existing alignments and 60m on realignments or bypasses.[44]

While applying the golden rule of interpretation to item 7(f) of 2013 notification the court held thus:[45]

> In the current case there is no ambiguity or scope for two interpretations. On a plain reading of item 7(f) of 2013 notification, the golden rule of interpretation is adopted to hold that there is no requirement of prior environmental clearance for expansion of a national highway project merely because the distance is greater than 100 km. The project proponent is obligated to obtain prior environmental clearance only if the additional right of way or land acquisition is greater than 40m on existing alignments and 60m on realignments or bypasses for a national highway project which is greater than 100 km.
>
> It is cardinal principle of interpretation that full effect has to be given to every word of the notification. Interpreting the notification dated 22-8-2013 to mean that every expansion of national highway which is greater than 100 km requires prior environmental clearance would be making the other words in item 7(f) redundant and otiose.

Finally, the court concluded[46] that a conspectus of the above discussion leads to the unerring conclusion that there is no ambiguity in item 7(f) of the 2013 notification that prior environmental clearance is required for expansion of a national highway project only if:

(a) the national highway is greater than 100km, and

(b) the additional right of way or land acquisition is greater than 40m on existing alignments and 60m on realignments and bypasses.

44 *Id.*, para 7.

45 *Id*., paras 10, 11.

V NATURAL JUSTICE

Since the principles of natural justice according to English Judges having their base in morality and ethics which are embodied in the common law justice, which they assert, "will supply the omission of the legislature". However, the position in Sub-Continent (Pakistan and India) is that these principles stand somewhere in between the English law and United States Constitution because the due process clause has not been stated in the constitution in so many words but similar principles have been laid down in the constitution though couched in different words.[47]

Natural justice can be considered as the most fundamental form of justice that can be delivered by any justice dispensation system. This fundamental framework must never be lost sight of by the officials dispensing justice. The very fundamentality of natural justice ushers it a pivotal role in which, no adjudicatory body can act beyond the purview of natural justice. Natural law is often correlated with the idea of morals that guide a society and is often signified in the idea of fairness and prevention of miscarriage of justice.

Malice in fact *vis-à-vis* malice in law

In *Ramjit Singh Kardam* v. *Sanjeev Kumar,*[48] the petitioner challenged the selection made by the Public Service Commission on the ground that marks in the *viva voce* of candidates having high academic qualifications were deliberately reduced and those, who had poor academic records were deliberately given higher marks.

It was submitted by the respondents that there were no allegations or *mala fide* against the Chairman or any member of the Commission and further neither the Chairman nor were any member being impleaded as party-respondent by the writ petitioners, the petitioners could not have challenged the allocation of marks in *viva voce* and there was no basis for any claim that marks in the *viva voce* of candidates having high academic qualifications were deliberately reduced and those, who had poor academic records were deliberately given higher marks.

Firstly, the court observed that it is well settled that law casts a heavy burden on the person alleging mala fides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. Moreover, as and when allegations of *mala fides* are made, the person against whom same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that *malice in fact* had vitiated the action taken by the authority concerned. However, present is not a case of malice in fact. The "*malice in fact*" and "*malice in law*" are two well known concepts in law. The *malice in law* is "something done without lawful excuse" which include mala fide exercise of power, exercise of statutory power for purposes

46 *Id.*, para 15.

47 See,Hamid Khan, *Principles of Administrative Law* 249-50 (Oxford University Press, 2012).

48 (2020) 20 SCC 209.

foreign to those for which it is in law intended while *malice in fact* is actual malicious intention to do wrongful act.[49]

In the present case, the power to devise 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 the post in the State in consonance with the provisions of articles 14 and 16 of the constitution. When the alteration of criteria was made, which affected the merit selection, the allegations made against the Commission in conducting the selection are allegations of *malice in law* and not *malice in fact*.

Finally rejecting the submissions made by the respondent the apex court held thus:[50]

> The high court had summoned the original records of the Commission including marks awarded to candidates both on basic qualification as well as essential qualification as well as *viva voce*. The high court had observed that it cannot be a mere co-incidence that 90% of the meritorious candidates in academics performed so poorly in viva voce that they could not secure even 10 marks out of 30 marks or that brilliance got configured only in the average candidates possessing bare eligibility. The inferences drawn by the high court reaffirms the allegations of malice in law. Hence submission that in absence of specific allegations against the Chairman and members having been made and they being not impleaded as the parties, the allegations in the writ petition regarding allocation of marks in viva voce cannot be looked into by the high court liable to be rejected.

Real likelihood of bias – *Nemo debetesse judex in propria sua causa*

In*Mohd. Mustafa* v.*Union of India*[51], respondent no. 5 (hereinafter, R-5), being DGP of state concerned was to be member of the Empanelment Committee, according to Draft Guidelines issued by UPSC, was within the knowledge of the appellant. The appellant did not challenge the constitution of the Empanelment Committee at the outset. The supreme court rejected the contention of appellant that R-5 should have recused himself from the selection panel since he was inimically disposed towards appellant and held thus:[52]

> The appellant took the plea of bias against R-5 after the completion of the appointment process in which appellant was not successful. His plea at this stage indicates that he was satisfied that R-5 was not prejudiced against him. Belated plea taken by appellant does not merit acceptance, hence, not tenable.

49 *Id.*, para 64.

50 *Id.*, paras 68 & 69.

51 (2022) 1 SCC 294.

52 *Id.*, para 33.

Effect of violation of principles of natural justice

In *State of Odisha* v.*Kamalini Khilar,*[53] the apex court while analyzing the effect of violation of principles of natural justice in the process of terminating the service of respondent 1 held thus:[54]

> …..we would think that in the present case, the failure to afford an opportunity to respondent 1 to show cause as to why her services should not be terminated cannot be held to be fatal. We cannot lose sight of the fact that nearly two decades have gone by and only for the reason that the respondent was not offered an opportunity of being heard in the facts of this case, we cannot support the order of the high court in directing the appointment of respondent 1. It is not as if the high court has found that the termination of service of respondent 1 was *ab initio* void or illegal as such. The court in fact set aside the direction of the tribunal to reinstate by creating a supernumerary post. This is not challenged by respondent 1. It directed only that the appointment of respondent 1 be made in the vacancy. Therefore, the claim of respondent 1 for back wages from the date of termination is at any rate clearly untenable.

The court finally held that the termination of the service of respondent 1 was unavoidable in the light of the binding order of the tribunal in OA no. 650 of 2000. Consequently, the order of the high court to the extent impugned is to be set aside.[55]

Exclusion or inapplicability of rules of natural justice

In the survey year, the Supreme Court in *St. John's College* v. *S. Wilson*[56], held that no useful purpose would be served by granting opportunity of hearing to those who were so appointed and whose services were thereafter terminated. The court further held that principles of natural justice cannot be put into straightjacket formula and their application would depend on fact situation of each case and directed that termination order would be treated as termination simpliciter and finding of collusion between incumbents and appointees set aside.

VI SEPARATION OF POWER

It is trite to state that separation of powers is a part of the basic structure of the Constitution. It is to be noted that policy making continues to be in the sole domain of the executive. The judiciary does not possess the authority or competence to assume the role of the executive which is democratically accountable for its actions and has access to the resources which are instrumental to policy formulation. However, this separation of powers does not result in courts lacking jurisdiction in conducting a judicial review of these policies. Our Constitution does not envisage courts to be silent spectators when constitutional rights of citizens are infringed by executive

53 (2021) 6 SCC 546.

54 *Id.*, paras 35, 36.

55 *Id.*, para 39.

56 (2020) 18 SCC 752.

policies. Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function which the courts are entrusted to perform.

In *Distribution of Essential Supplies and Services during Pandemic, In re*[57], the supreme court clarified and explained the approach, scope and extent of judicial review of government policies and also compared judicial review of such policy decisions in normal times *vis-à-vis* public health emergency situations like COVID-19 pandemic and held thus:[58]

> In grappling with the second wave of the COVID-19 pandemic the court does not intend to second-guess the wisdom of the executive when it chooses between two competing and efficacious policy measures. During public health emergency situations like COVID-19 pandemic where the executive functions in rapid consultation with scientists and other experts the constitutional scrutiny is transformed. In such emergency, the executive is given a wider margin in enacting measures which ordinarily may have violated the liberty of individuals, but are now incumbent to curb the pandemic. Courts have often reiterated the expertise of the executive in managing a public health crisis, but have also warned against arbitrary and irrational policies being excused in the garb of the 'wide latitude' to the executive that is necessitated to battle a pandemic. The policies to counteract a pandemic must continue to be evaluated from a threshold of proportionality to determine if they, *inter alia*, have a rational connection with the object that is sought to be achieved and are necessary to achieve them.

The court also held that in public health emergency situations while judicially reviewing government policies court can assume a dialogic jurisdiction where various stakeholders are provided a forum to raise constitutional grievances with respect to the management of the pandemic. Hence, the court would, under the auspices of an open court judicial process, conduct deliberations with the executive where justifications for existed policies would be elicited and evaluated to assess whether they survive constitutional scrutiny.[59]

VII PROMISSORY ESTOPPEL

In the survey year, the Supreme Court in *Union of India* v. *VVF Ltd.*[60] summarized in brief detail the principles for the application of equitable doctrine of promissory estoppel against the government. The principles reiterated and summarized by the court on the application of doctrine of promissory estoppel are as follows:[61]

i. The doctrine of promissory estoppel is applicable against the government also particularly where it is necessary to prevent fraud or manifest injustice. The

57 (2021) 7 SCC 772.

58 *Id.*, paras 16, 17 & 18.

59 *Id.*, para 19.

60 (2020) 20 SCC 57.

61 *Id.*, paras 21.1 to 21.5.

doctrine, however, cannot be pressed into aid to compel the government or the public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the government or of the public authority to make.

ii. There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expression, without any supporting material, to the effect that that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the government would not be sufficient to press into aid the doctrine. The doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the government or the public authority to its promise, assurance or representation.

iii. The withdrawal of exemption in public interest is a matter of policy and the courts would not bind the government to its policy decisions for all times to come, irrespective of the satisfaction of the government that a change in the policy was necessary in public interest. The courts, do not interfere with the fiscal policy where the government acts in public interest and neither any fraud or lack of *bona fides* is alleged much less established. The government has to be left free to determine the priorities in the matter of utilization of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification.

iv. In case there is a supervening public interest, the government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Once public interest is accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period has been indicated for operation of the promise. Therefore, when the withdrawal of exemption is in public interest, the public interest must override any consideration of private loss or gain.

v. That public interest requires that the state be held bound by the promise held out by it in such a situation. But this does not preclude the state from withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.

vi. When the government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the government would be held bound by the promise and the promise would be enforceable against the government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract is required by article 229 of the Constitution. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

vii. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel.

viii. It is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the government or public authority cannot be compelled to make a provision which is contrary to law.

Explaining the applicability of theory of promissory estoppel Supreme Court in *Manish Kumar* v. *Union of India*[62] held that a supreme legislature cannot be cribbed, cabined or confined by the doctrine of promissory estoppel. It acts as a sovereign body. The theory of promissory estoppel serves only as an effective deterrent to prevent injustice from an executive and administrative action which seek to resile from a representation made by them without just cause.[63]

VIII CONCLUSION

This survey amply reflects the balancing approach which the judiciary has always taken to protect the varying interests. It reflects the kind of respect that the executive deserves for in India it is elected government and it also reflects the kind of intervention that is required while dealing with the excesses of the executive or administrative bodies. The apex court has always carried forward the legacy of how justice dispensation system must operate and in addition to that, it has also paved the way for novel techniques of that need to be adopted with the changing times. The novelty of approach is what has helped in achieving the goals of good governance and suitable politico-administrative framework in the country.

62 (2021) 5 SCC 1.

63 *Id.*, para 64.