1

ADMINISTRATIVE LAW

*S. S. Jaswal**

I INTRODUCTION

IN THE survey year, the Indian judiciary faced a spectrum of inquiries pertaining to the multifaceted administrative intricacies and the legalities underpinning the existing legal framework of administrative law. These inquiries were diligently examined within the judicial sphere, leading to progressive judicial decisions. The verdicts rendered during this period by the courts, particularly concerning administrative legislation, are poised to delineate a more forward-looking path for both the judiciary and the executive in their respective functions. These judicial determinations shall have significant influence on the different aspects of the administrative law, concurrently guiding the executive and the judiciary in discerning actions that align with the collective welfare, including governmental interests. It remains crucial to consider each case in its contextual essence, especially within the domain of administrative laws. Nevertheless, it is imperative to uphold the guiding legal principles set forth by the courts, as the year in survey presented ample opportunities for the evolution of such jurisprudence which is essential for the effective and efficient operation of administrative law in India.

During the survey period, Indian courts decided cases across diverse categories within the realm of administrative law, encompassing various aspects like administrative action, judicial review, subordinate/delegated legislation, natural justice, legitimate expectation and promissory estoppels.

II ADMINISTRATIVE ACTION

Administrative action is an overarching nomenclature used for various types of functions performed by the Union Government and state government. In the performance of administrative 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 are invalid and administrative powers,

* Professor and Registrar, Himachal Pradesh National Law University, Shimla. The author acknowledges the research assistance provided by Mr. Piyush Kumar, Assistant Professor of Law, Himachal Pradesh National Law University, Shimla.

1 (2022) 11 SCC 1.

2 *Id* at 185.

whereby administrative action germinates is to be done away with. In this context, the administrative action requires a constant vigil of the judiciary which is constitutionally empowered to deal with any excesses.

In the survey year in *Rajeev Suri* v. *DDA*[1] the apex court was called upon by the petitioners to undertake a comprehensive and heightened judicial scrutiny regarding the permissibility of the central vista project of the government of India.While deciding the issue of whetherwhat is being modified is the master/ zonal plan already in existence the court held that:[2]

> True that is not an action that creates new zones or new parameters. However, the underlying nature of activity being performed here is of town planning and changes in land use of one or couple of plots in a given zone. It is a modification which will provide direction to all future development of the subject plots. There is a distinction between modifying the use of land in a given zone and demarcating fresh boundaries for various zones of land. The change of usage of government land is of a general nature, It is certainly not a purely routine administrative. That means that the function of change in for the same land use has a quasi-legislative due to it.

Further, while speaking on the extent and permissibility of public participation in the executive decision-making process the apex court observed that:[3]

> The classification of legislative or administrative functions can no more be done like a pigeon holes classification. It was because of this reason that the phrases "quasi-legislative" and "quasi-administrative" have made inroads in the modern administrative law. In fact, in practical parlance, even quasi-legislative functions are treated as falling under the wider ambit of administrative functions. However, the same cannot be accepted as a general proposition in all cases. The demarcation of an executive functions as legislative/quasi-legislative or administrative has a direct bearing on the aspect of public participation in the decision-making pro cess and thus, the classification becomes imminent in certain cases. It is settled law that public participation is permissible to the limited extent of what is provided in the statute in case of a legislative exercise of power.

In the survey year, the supreme court in *Punjab State Power Corporation Ltd.* v. *Bal Krishna Sharma*[4] reiterated that in the absence of any rules or regulations governing the service conditions of the employees, the competent authority has power to issue administrative order or executive order and held thus:[5]

> Apart from the fact that the respondents had not challenged the validity of the office order dated 29.03.1990, upgrading 20% of cadre

3 *Id* at 186.

4 (2022) 1 SCC 322.

5 *Id.* at 332.

> posts of JE-II (Civil) in scale of Rs. 1640/3200 to that of JE-I (Civil) in the scale of Rs. 1800/3500 w.e.f. 1-1-1986, in the writ petition on the ground that it was not notified as per Section 79 of the said Act, the Punjab State Electricity Board (hereinafter, PSEB having already framed the Regulations of 1965 in exercise of powers conferred under Section 79(c) of the said Act, and the said Regulations having also been published in the Official Gazette, there was no need for the PSEB to notify the office order dated 29.03.1990 which pertained to the upgradation of 20% of the posts of Junior Engineer15 II (Civil), as was permissible under Regulation 17 of the said Regulations.

In other words, the court held that in absence of any rules or regulations governing service conditions of employees, PSEB had power to issue administrative orders. While allowing the appeal the court set aside the impugned judgments and orders passed by the high court and held thus:[6]

> Thus, the claim of the respondents based on the office order dated 23.04.1990, for getting the pay scale of the next higher post of Assistant Engineer i.e. Rs. 2200-4250 on the completion of 9 years of their service and the pay scale of another next higher post of the Executive Engineer i.e. Rs. 3000-5600 on the completion of 16 years of their service, without assuming the responsibilities of the said promotional posts, was thoroughly misconceived. What they were entitled to, as per the scheme to alleviate the stagnation as contained in the office order dated 23.04.1990, was the time bound promotional/ devised promotional scale as indicated in the Schedule drawn up by the Board. The said Schedule had specified the first time bound scale to be allowed after 9 years of service as Rs. 1800-3500, and the second time bound scale to be allowed after 16 years of service as 2200-4250 for the post of Junior Engineer Grade-II (Civil), subject to the pre-conditions mentioned therein. The same having already been granted to the respondents, the pay scales as claimed by the respondents in the writ petition could not have been granted by the High Court.

In *S.K. Nausad Rahaman* v. *Union of India*[7] the apex court explained the norms applicable to the recruitment and conditions of service of officers belonging to the civil services which are as follows:

(i) A law enacted by the competent legislature;

(ii) Rules made under the proviso to Article 309 of the Constitution; and

(iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.

6 *Id*. at 336.

7 (2022) 12 SCC 1.

Further, the court reiterated the principles governing the primacy of rules over the executive instruction and ruled that where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules and held thus:[8]

> Administrative instructions, it is well-settled, can supplement rules which are framed under the proviso to Article 309 of the Constitution in a manner which does not lead to any inconsistencies. Executive instructions may fill up the gaps in the rules. But supplementing the exercise of the rule making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the rules which have been framed under Article 309. RR 2016 have been framed under the proviso to Article 309. Rule 5 of RR 2016 contains a specific prescription that each CCA shall have its own separate cadre. The absence of a provision for filling up a post in the Commissionerate by absorption of persons belonging to the cadre of another Commissionerate clearly indicates that the cadre is treated as a posting unit and there is no occasion to absorb a person from outside the cadre who holds a similar or comparable post.

During the survey year and in an opportune manner, the court had the further chance to delve into the nature of the policy decisions of the Government. In, *Indian - Ex Servicemen Movement* v. *Union of India,*[9] the petitioners under article 32 challenged the manner in which the "One Rank One Pension" ("OROP") policy for the ex-servicemen of the defence forces was implemented by the Union of India. The Koshyari committee report, which was the report submitted to Rajya Sabha by Committee on Petitions, defined OROP as a: uniform pension be paid to the armed forces personnel retiring in the same rank with the same length of service irrespective of their date of retirement and any future enhancements in the rate of pension to be 'automatically' passed on to the past pensioners".Thus, two personnel in the same rank with equal length of service should get the same pension irrespective of their retirement date and any future enhancement in the rates must be "automatically" passed to the past pensioners. The petitioners alleged that the initial definition of the OROP was altered by the respondent vide letter dated 7-11-2015 issued to the Chiefs of Defence forces and instead of automatic revision, revision was sought to be made on periodic intervals in the rate of pensions, which is violative of Article 14 and 21 of the Indian Constitution.

8 *Id.* at 27.

9 (2022) 9 SCR 885.

The court while referring to *Kalpana Mehta* v. *Union of India*[10] ruled that the Koshyari committee report cannot be enforced as a statement of government policy. The court observed thus:[11]

> The Koshyari Committee Report can be relied upon to indicate the background of the adoption of OROP. The report furnishes the historical background, the reason for the demand, and the view of the Parliamentary Committee which proposed the adoption of OROP for personnel belonging to the armed forces. Beyond this, the Koshyari Committee Report cannot be construed as embodying a statement of governmental policy. Governmental policy formulated in terms of Article 73 by the Union or Article 162 by the State has to be authoritatively gauged from the policy documents of the government, which in present case is the communication dated 7 November 2015. Prior to it , on 17 February 2014, a statement was made by the Union Minister of Finance in the Lok Sabha while presenting the interim budget for 2014-15 stating that the government had accepted the principle of OROP for the defence forces and that the decision would be implemented from financial year 2014-15. The statement of the Union Minister of Finance reflects an in-principle decision to adopt OROP for all personnel belonging to the armed forces. Evidently, the modalities of implementing OROP were yet to be chalked out and were adopted later.

The court while referring to the communication dated November 7, 2015,[12] resolved the conundrum as to whether the expression "*at periodic intervals*" was in breach of the original understanding that enhancements in the rates of pension would be automatically passed on. The court pointed out that the expression "*automatically*" was clearly not linked to a time period for the revision of pensions. None of the documents on the record prior to the communication dated November 7, 2015, suggests that the process of revising pensions was to be continued on an ongoing basis as opposed to revision at periodic intervals. The court observed thus:[13]

> Implicit in the submission of the petitioners is the premise that the original decision was based on the Koshyari Committee Report followed by the statement on the floor of the House by the Minister

10 (2018) 7 SCC 1.

11 *Supra* note 9, para 20.

12 The court at length discussed the features of the policy communication of 7 November 2015. Firstly, the policy contained the decision of the government of India to implement OROP. Secondly, it provided the date of implementation, namely, 1 July 2014. Thirdly, it embodies the understanding that OROP implies the payment of uniform pension to defence personnel retiring in the same rank with the same length of service regardless of the date of retirement. Fourthly, it emphasized the need to bridge the gap between the rates of pension of current and past pensioners at "periodic intervals".

13 *Supra* note 9, para 24.

> of Finance (17 February 2014 and 10 July 2014) and the minutes of the meeting convened by the Defence Minister (26 February 2014). Our analysis of the underlying document indicates that while a decision to implement OROP was taken in principle, the modalities for implementation were yet to be chalked out. Thus, there was no conscious policy decision on the part of the Union Government on the modalities for implementing OROP until the communication dated 7 November 2015 came into being. The communication of 7 November 2015 cannot be invalidated on the ground that it infringed the 'original understanding' of OROP. A hierarchy in law exists between statutes and rules – a statutory provision will have precedence over delegated legislation if the latter conflicts with the former. Similarly, executive instructions cannot override a statute or rules made in pursuance of a statute. But in the present case the entire canvas is governed by a policy. The terms for implementing the policy were specified on 7 November 2015. Hence, that element of the policy cannot be challenged on the notion that there is an inflexible notion of OROP couched in an original understanding. OROP is itself a matter of policy and it was open to the makers of the policy to determine the terms of implementation. The policy is of course subject to judicial review on constitutional parameters, which is a distinct issue.

Thus, the report submitted to Rajya Sabha cannot be enforced as a statement of government policy;however, it can be relied upon to understand the background and the history of OROP. The government policy formulated in terms of article 73 by the union or article 162 by the state has to be authoritatively gauged from the policy documents of the government, which in present case is the communication dated November 7, 2015.

In the survey year in*Punjab National Bank* v. *Union of India*[14] the Supreme Court primarily dealt with two major issues:[15]

(i) Whether the Ld. commissioner custom and central excise could have invoked the powers under rule 173(Q)(2) of Central Excise Rules, 1944 on 26.03.2007 and 29.03.2007 for confiscation of land, buildings etc., when on such date, the rule 173Q(2) was not on the statue book having been omitted w.e.f. 17.05.2000?

(ii) Whether in the absence of any provisions providing for first charge in relation to Central Excise dues in the Central Excise Act, 1944, the dues of the excise department would have priority over the dues of the secured creditors or not?

14 (2022) 1 SCC 661.

15 *Id.* at 669.

The court while referring to the case of *Kolhapur Canesugar Works Ltd* v. *Union of India*[16] ruled that the commissioner of customs and central excise cannot exercise powers under the said central excise rules when on such date, the rule stands omitted. Secondly, the dues of the secured creditor will have priority over the dues of the central excise department, as even after insertion of section 11-E in the Central Excise Act, 1944 *w.e.f.,* April 8, 2011, the provisions contained in the SARFAESI Act, 2002 will have an overriding effect on the provisions of the Central Excise Act, 1944.

Duty of administrative authority to give reasons of administrative action

In *National Highway Authority of India* v. *Madhukar Kumar*[17] respondent 1 to 17 in the present appeal filed writ petitions in the Patna high court and sought the relief to restrain the construction of the toll plaza at 194 km of NH-30 in the four-laning of Patna-Bakhtiyarpur section of NH-30 arguing that the construction of toll plaza is in violation of rule 8 of the National Highways Fees (Determination of Rates and Collection) Rules 2008 (hereinafter, 2008 rules). The writ petitions were allowed by the high court and the respondent 6 and 11 were directed to shift the proposed construction of toll plaza at 194 km milestone of Patna-Bakhtiyarpur section of NH-30 from its present location to any other place on new alignment which separates from NH-30 so that the violation of rule 8 of 2008 rules could be avoided and the persons who do not intend to use the toll road could be exempted from paying toll tax. In the instant case national highway authority has filed this appeal challenging the judgment of the Patna high court. While allowing the appeal the court held thus:[18]

> There is no general duty when an administrative decision is taken, to give reasons. A statute may however explicitly provide that the executive authority must provide reasons and it must be recorded in writing. A case in point is the first proviso to rule 8 of 2008 rules itself. The desirability of a general duty, in the case of administrative action to support decisions with reason, is open to question. One of the most important reason is, the burden it would put on administration. Administrative decisions are made in a wide spectrum of situations and contexts. The executive powers of the union and the states are provided in articles 73 and 162 of the Constitution, respectively. Undoubtedly, in India, every state action must be fair, failing which it will fall foul of the mandate of article 14 of the Constitution. Duty to give reasons would arise even in the case of administrative action, where legal rights are at stake and the administrative action adversely affects legal rights. There may be something in the nature and or the context, under which, the administrative action is taken, which may necessitate the authority being forthcoming with rational reasons.

16 (2000) 2 SCC 536.

17 (2022) 14 SCC 661.

18 *Id.,* para 69.

The court also enquired into the rationale, why the requirement of reasons being recorded, is not incorporated in the second proviso and held thus:[19]

> The first proviso does not provide any condition precedent for locating a toll plaza at a distance of less than 10 kilometres but 5 or more kilometres from the municipal or local town area limits. The requirement is the recording of reasons. No other guidance is forthcoming. In fact, the only check on the power to relax the rigour of the Rule, that the toll plaza must be located at a distance of more than 10 kilometres from the municipal or local town area limits, are two in number. Firstly, the power is located only with the Executing Authority. Secondly, the Executing Authority is obliged, in law, to give reasons, which must be recorded in writing. Besides these safeguards, there are no other indispensable requirements to reduce the distance, as provided in the Rule. This is in stark contrast with the purport of the second proviso. The second proviso deals with a specific situation. We have already spelt out the 81 requirements. These requirements alone would justify the location of the toll plaza either within the municipal or town limits or within a distance of 5 kilometres from such limits. The requirements are neatly articulated and cast in stone. They are objective criteria. They become the requirements of the Statue. If those requirements are met, then, the toll plaza can be established, relaxing the Rule.

Finally, the court, as stated above, while allowing the appeal set aside the decision of the Patna high court stating that it has erred in reading the second proviso of rule 8 of 2008 rules and held thus:[20]

> that in such circumstances, we are of the clear view that the High Court has erred in reading the second proviso in continuation with the first proviso and thereby concluding that, even the requirement of the first proviso, viz., the recording of reasons in writing, would also become necessary to invoke the power under second proviso. We would think that such an interpretation would fly in the face of the clear words used in the second proviso, and would, what is more, amount to rewriting the Rule. The real safeguard, which is present in the second proviso, is the nature of the objective and inflexible requirements, which are declared therein.

Exercise of discretionary power

In *State of U.P.* v. *Vikas Kumar Singh*[21] while allowing the appeal the apex court noted that as per rule 5(iii) of the U.P. Service of Engineers (Irrigation Department) (Group A) Service Rules 1990, one of the conditions to be eligible for promotion is that the superintending engineer must have completed 25 years of

19 *Id.,* para 71.

20 *Id.,* para 113.

21 (2022) 1 SCC 347.

service including at least three years' service as superintending engineer and held thus:[22]

> It is an admitted position that the original writ petitioners did not fulfil the eligibility criteria as they did not have the qualifying service of having completed 25 years of service. Thus, the eligibility lists were prepared by the department absolutely as per Rule 5(iii) and Rule 8(iii) of the Rules, 1990. The names of the original writ petitioners were excluded from the eligibility list of Superintending Engineer for promotion to the post of Chief Engineer on the ground that they did not fulfil the eligibility criteria as per Rule 5(iii) of the Rules, 1990. Therefore, as such, the High Court ought not to have set aside the said eligibility lists, which as such were prepared absolutely in accordance with the Rules, 1990.
>
> The word used in the Rule 4 of Relaxation Rules, 2006 is "may." Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.

III DELEGATED LEGISLATION

The court is entrusted by the constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of legislation or rules made under it. A statute may be invalidated if is *ultra vires* constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute be invalidated.

In the survey year, the supreme court in *Saregama India Limited* v. *Next Radio Limited* [23] while allowing the appeals by setting aside the interim order of the high court dated August 2, 2021, reiterated the settled principle that the court in the exercise of judicial review cannot supplant the terms of the provision through judicial interpretation by re-writing statutory language. Draftsmanship is a function

22 *Id.* at 351.

23 (2022) 1 SCC 701.

entrusted to the legislature and craftsmanship on the judicial side cannot transgress into the legislative domain by re-writing the words of a statute and held that:[24]

> We are, therefore, clearly of the view that an exercise of judicial re-drafting of Rule 29(4) was unwarranted, particularly at the interlocutory stage. The difficulties which have been expressed before the High Court by the broadcasters have warranted an early listing of the matter and this Court has been assured by the copyright owners that they would file their counter affidavits immediately so as to facilitate the expeditious disposal of the proceedings. That having been assured, we are of the view that an exercise of judicial re-writing of a statutory rule is unwarranted in the exercise of the jurisdiction under Article 226 of the Constitution, particularly in interlocutory proceedings. The High Court was also of the view that the second proviso may be resorted to as a matter of routine, instead of as an exception and that the ex post facto reporting should be enlarged to a period of fifteen days (instead of a period of twenty-four hours). Such an exercise was impermissible since it would substitute a statutory rule made in exercise of the power of delegated legislation with a new regime and provision which the High Court considers more practicable.

In the survey year in *Union of India* v. *Mohit Minerals Pvt. Ltd.*,[25] the court was being asked to iterate on the nature, extent and scope of the legislature's authority to delegate its legislative functions. In this case the government by exercising its powers under the IGST Act issued an impugned notification 10/2017 which specified the 'categories of the supply' which shall be subject to reverse charge. The notification also mentioned the corresponding recipient in those categories. The contention of the respondents is that section 5(3) of the IGST act only delegates the power to identify the categories of goods or services on which the tax shall be paid on reverse charge basis. It is contended that since notification 10/2017 identifies an importer as a service recipient for the purposes of section 5(3), it is *ultra vires* the parent act on the ground of excessive delegation.The court unequivocally stated that the legislation is required to perform its essential legislative functions and the court observed thus:[26]

> The legislature is required to perform its essential legislative functions. Once the skeletal structure of the policy is framed by the legislature, the details can emerge through delegated legislation. It is a settled position that the legislature cannot delegate its 'essential legislative functions'.The essential legislative functions with respect to the GST law are the levy of tax, subject matter of tax, taxable

24 *Id.* at 710-711.

25 (2022) 9 SCC 300.

26 *Id.* at 414.

> person, rate of taxation and value for the purpose of taxation. The principles governing these essential aspects of taxation find place in the IGST Act.

Retrospective effect of delegated legislation

In *Punjab State Co-operative Agricultural Development Board Ltd.* v. *Registrar Co-operative Societies*[27] the question that emerged for consideration before the apex court was: what is the concept of vested or accrued rights of an employee and at the given time whether such vested or accrued rights can be divested with retrospective effect by the rule making authority? The court ruled that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be violative of the rights guaranteed under articles 14 and 16 of the constitution and held that:[28]

> In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting clause 15(ii) of Punjab State Cooperative Agricultural Land Mortgage Banks Service (Common Cadre) Rules, 1978by an amendment dated 11th March, 2014 which was introduced with effect from 1st April, 1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.

Primacy of subordinate/delegated legislation over executive instructions/orders/ circulars

In *Bank of Baroda* v. *G. Palani*[29] the apex court reiterated that subordinate/ delegated legislation shall have primacy over administrative order or executive instructions/circulars and ruled that the Bank (Employees) Pension Regulations, 1995 (hereinafter, '1995Regulations') having been framed under section 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (hereinafter, '1970 Act') have statutory force and hence, are binding. They cannot

27 (2022) 4 SCC 363.
28 *Id.*at 381-382.
29 (2022) 5 SCC 612.

be supplanted or amended (that too retrospectively) by any executive fiat or order or joint note as in this case and held thus:[30]

> Joint note indicates that date of effect of scale of pay, dearness allowance and pension as was agreed, would be enforced w.e.f. from 1-4-1998, consequent to which 'pay' as defined in regulation 2(s) of the 1995 Regulations was amended and explanation (c) thereto was added, have no statutory force and cannot obliterate any provision of 1970 Act or the 1995 Regulations. Joint note cannot be in derogation of statutory regulations and regn.2(s) explanation (c) cannot be given retrospective effect.

Validity of subordinate/delegated legislation

In *Adani Gas Ltd.* v. *Union of India*[31] the question before the apex court was, whether, regulation 18 is ultra vires the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter, 'PNGRB Act'). The court recollected the principles applicable to adjudge the validity of subordinate legislation, including regulations.There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)

The court opined that the regulation 18 is not *ultra vires* the PNGRB act and the challenge to regulation 18 cannot succeed and held thus:[32]

In the present case, the purpose and objective for framing Regulation 18, is compatible to the overall objectives of the PNGRB Act. The various factors mentioned in it, provide an objective basis for the Board to consider the proper method of granting authorization, under Section 17 (2); in their absence, the PNGRB would have experienced difficulty in dealing with every application for authorization, on a case-by-case basis. More importantly the content of Regulation 18 is not contraindicated by any specific provision of the Act. It is recognized, in certain decisions, by this Court, that regulations and rules framed in exercise of

30 *Id.*at 627.

31 (2022) 5 SCC 210.

32 *Id.*at 290.

statutory empowerment, by expert statutory bodies, and regulatory authorities, should be interpreted deferentially, with the foreknowledge that such bodies know their task and are best equipped for it. As the sectoral regulator, PNGRB is entrusted with the power to frame appropriate regulations to ensure the objectives of the Act, and also bring about fairness in the marketplace. It has sought to achieve that, through Regulation 18. For the above reasons, it is held that the challenge to Regulation 18 cannot succeed.

In *Dental Council of India* v. *Biyani Shikshan Samiti* [33]the appellant challenged the judgment and order of the high court of judicature for Rajasthan, striking down the notification dated 21st May, 2012, *vide* which the appellantdental council of India (hereinafter,'the Council'), had substituted regulation 6(2)(h) of the Dental Council of India (Establishment of New Dental Colleges, Opening of New or Higher Course of Studies or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (hereinafter 'the regulations'), on the ground of the same being inconsistent with the provisions of the Dentists Act, 1948 (hereinafter 'the said act') and also being violative of articles 14 and 19(1) (g) of the constitution of India. While deciding the appeal the apex court reiterated the grounds on which subordinate legislation may be challenged and declared invalid and observed thus:[34]

> This Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is notreasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

Allowing the appeal, the apex court quashed and set aside the impugned judgment and order dated April 24, 2018 passed by the division bench of the high court and held thus:[35]

> We find that the Division Bench has failed to take into consideration clause (g) of subsection (7) of Section 10A of the said Act. It is to be

33 (2022) 6 SCC 65.

34 *Id.* at 78.

35 *Id*. at 80.

> noted that whereas clauses (a) to (f) of subsection (7) of Section 10A of the said Act deal with various factors, clause (g) thereof, which can be said to be a residual clause, enables the Council to take into consideration also any other factor as may be prescribed.We further find that the Division Bench of the High Court has also failed to take into consideration clause (fb) of subsection (2) of Section 20 of the said Act. A conjoint reading of these provisions would reveal that the Council is also empowered to take into consideration any other factor as may be prescribed and also to make a Regulation with regard to any other factor under clause (g) of subsection (7) of Section 10A of the said Act.
>
> We are, therefore, of the considered view that the amended Regulation cannot be said to be one, which is manifestly arbitrary, so as to permit the Court to interfere with it. On the contrary, we find that the amended Regulation 6(2)(h) has a direct nexus with the object to be achieved, i.e., providing adequate teaching and training facilities to the students.

On the permissibility of court's power to sit in judgment over the policy made by the executive, the court held thus:[36]

> This court in unequivocal terms has held that it would be wholly wrong for the court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act. It has been held that it is not permissible for the Court to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulationmaking body and declare a regulation to be *ultra vires* merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act.The division bench of the high court has erred in substituting its wisdom with that of the rulemaking body, which is an expert body. We are, therefore, of the considered view that it was not permissible for the Division Bench of the High Court to enter into an area of experts and hold that the unamended provisions ought to have been preferred over the amended provisions.

Interpretation of subordinate legislation

In, *Patil Automation Private Limited* v. *Rakheja Engineers Private Limited* [37] The seminal question which came for consideration before the court was whether the statutory pre-litigation mediation contemplated under section 12 A of the Commercial Courts Act, 2015 is mandatory and whether the courts below have erred in not allowing the applications filed under order VII rule 11 of the Civil

36 *Id*. at 81.

37 (2022) 11 SCR 808.

Procedure Code, 1908 to reject the plaint's which have not complied with the procedure laid down under section 12 A.The court before proceeding further made it clear that, in order to find out whether section 12 A of the said act is mandatory or not, resort should be made to the intention of the legislature. Thus the court by the use of the golden rule of interpretation asserted that, "any reluctance on the part of the court to give section 12A, a mandatory interpretation, would result in defeating the object and intention of the parliament". Hence the court observed that:[38]

> The Act did not originally contain Section 12A. It is by amendment in the year 2018 that Section 12A was inserted. The Statement of Objects and Reasons are explicit that Section 12A was contemplated as compulsory. The object of the Act and the Amending Act of 2018, unerringly point to at least partly foisting compulsory mediation on a plaintiff who does not contemplate urgent interim relief. The provision has been contemplated only with reference to plaintiffs who do not contemplate urgent interim relief. The Legislature has taken care to expressly exclude the period undergone during mediation for reckoning limitation under the Limitation Act, 1963. The object is clear. It is an undeniable reality that Courts in India are reeling under an extraordinary docket explosion. Mediation, as an Alternative Dispute Mechanism, has been identified as a workable solution in commercial matters. In other words, the cases under the Act lend themselves to be resolved through mediation. Nobody has an absolute right to file a civil suit. A civil suit can be barred absolutely or the bar may operate unless certain conditions are fulfilled. Cases in point, which amply illustrate this principle, are Section 80 of the CPC and Section 69 of the Indian Partnership Act. The language used in Section 12A, which includes the word 'shall', certainly, go a long way to assist the Court to hold that the provision is mandatory. The entire procedure for carrying out the mediation has been spelt out in the Rules.

The court further explained that the use of the word 'shall' in the section assists the court in holding that the section is mandatory and observed that a trained mediator can work wonders. mediation must be perceived as a new mechanism of access to justice. We have already highlighted its benefits. Any reluctance on the part of the court to give section 12A, a mandatory interpretation, would result in defeating the object and intention of the Parliament.

IV JUDICIAL REVIEW

Judicial review may be defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Power of judicial review is within the domain of the judiciary to determine the legality of administrative

38 *Id.* at 861.

action and the validity of legislations and it aims to protect citizens from abuse and misuse of power by any branch of the State.[39] The power of judicial review is a basic feature of the Constitution of India.[40] Judicial review has certain inherent limitations. However, it is suited more for adjudication of disputes other than for performing administrative functions. It is for the executive to administer law and the function of the judiciary is to ensure that the government carries out its duties in accordance with the provisions of the Constitution.[41]

In *Mohd. Mustafa* v. *Union of India*[42] the Supreme Court reiterated that the grounds on which administrative action is subject to judicial review are illegality, irrationality and procedural impropriety.[43] In this case, the court also explained the *wednesbury principle* propounded by king's bench in *Associated Provincial Picture Houses* v. *Wednesbury Corp.* and observed thus:[44]

> The discretionary power vested in an administrative authority is not absolute and unfettered. In *Wednesbury*, Lord Greene was of the opinion that discretion must be exercised reasonably. Explaining the concept of unreasonableness, Lord Greene stated that a person entrusted with discretion must direct himself properly in law and that he must call his own attention to the matter which he is bound to consider. He observed that the authority must exclude from his consideration matters which are irrelevant to the matter he is to consider. Lord Greene concluded that if an authority does not obey aforementioned rules, he may truly be said, and often is said, to be acting unreasonably.

Keeping in mind the afore stated principles of law, the court proceeded to examine whether the selection and appointment of respondent no.4 as director general of police (HoPF) on the basis of the draft guidelines is contrary to the judgment of this court in *Prakash Singh*, suffers from the vice of irrationality and is vitiated due to malice and bias. The court decided this issue in negative and held thus:[45]

> In the instant case, Empanelment Committee decided to assess the range of experience of officers to head the police force in the State of Punjab after considering the peculiarities of the State. Identification of five core policing areas out of a domain of twenty policing areas cannot be said to be an arbitrary exercise of power.

39 *Minerva Mills Ltd.* v. *Union of India* (1980) 3 SCC 625.

40 *Kesavananda Bharati* v. *State of Kerala* (1973) 4 SCC 225.

41 *S.R. Bommai*v. *Union of India* (1994) 3 SCC 1.

42 (2022) 1 SCC 294.

43 The court summarized the grounds on which administrative action is subject to judicial review by relying upon the observation made by Lord Diplock in *Council of Civil Service Unions* v. *Minister for Civil Service*, 1985 AC 374.

44 *Supra* note 42 at 305.

45 *Id.* at 310-11.

> The Tribunal committed an error in accepting the submission of the Appellant that the core policing areas, identified by the Empanelment Committee was only to favour Respondent No.4 on the basis of unsubstantiated allegations. Empanelment was directed to be done by UPSC on the basis of length of service, very good record and range of experience for heading the police force in *Prakash Singh*. Later, in the order dated 13.03.2019, this Court clarified its earlier order dated 03.07.2018 and directed UPSC to prepare the panel purely on the basis of merit. Be that as it may, the recommendation of the names of 12 officers for consideration is on the basis of completion of thirty years' service in the cadre of ADGP. Length of service as mentioned in *Prakash Singh* is considered for determination of zone of consideration.

The other two factors namely, good record of service and range of experience of all the 12 officers recommended on the basis of length of service are assessed by the Empanelment Committee. *Inter se* merit of the candidates was evaluated according to the objective criteria followed by the Empanelment Committee. The preparation of panel for appointment as DGP (HoPF) for the State of Punjab, by the Empanelment Committee is in compliance of the Draft Guidelines, which are in conformity with the directions issued by this Court in *Prakash Singh* as the panel was prepared after taking into account the relevant considerations as directed by this Court in *Prakash Singh* and stipulated in the Draft Guidelines. As no irrelevant consideration prompted the decision, the preparation of the panel by the Empanelment Committee cannot be said to be irrational. Having regard to the nature of the function and the power confided to the Selection Committee, it is not a legal requirement that reasons should be recorded for its conclusion The Tribunal committed an error in holding the decision of the Committee as arbitrary in the absence of reasons. Therefore, the preparation of the panel by the Empanelment Committee cannot be said to be suffering from unreasonableness.

In *Punjab State Power Corporation Limited* v. *EMTA Coal Limited*[46]a question relating to interpretation of section 11 of the Coal Mines (Special Provisions) Act, 2015 (hereinafter, the Act') which is an outcome of the judgment of this court in the case of *Manohar Lal Sharma* v. *Principal Secretary*[47] and an ancillary question pertaining to scope of judicial review of an administrative action of the state authority arise for consideration before apex court. While deciding the above-mentioned question the court reiterated the following principle which governs the scope of judicial review of administrative action:[48]

> It could thus be seen that while exercising powers of judicial review, the Court is not concerned with the ultimate decision but the decision-making process. The limited areas in which the court can

46 (2022) 2 SCC 1.

47 (2014) 9 SCC 516.

48 *Supra* note 46, para 33.

> enquire are as to whether a decision- making authority has exceeded its powers, committed an error of law or committed breach of principle of natural justice. It can examine as to whether an authority has reached a decision which no reasonable Tribunal would have reached or has abused its powers. It is not for the court to determine whether a particular policy or a particular decision taken in the fulfilment of that policy is fair. The court will examine as to whether the decision of an authority is vitiated by illegality, irrationality or procedural impropriety. While examining the question of irrationality, the court will be guided by the principle of Wednesbury. While applying the Wednesbury principle, the court will examine as to whether the decision of an authority is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

Applying the aforesaid principle, the court while upholding the decision of Punjab State Power Corporation Ltd. (PSPCL) declared the impugned judgment and order passed by the high court of Punjab and Haryana unsustainable in law and allowed the appeals and held thus:[49]

> It can clearly be seen that the decision of PSPCL dated 6th April 2018, cannot be questioned on the ground of illegality or procedural impropriety. The decision is taken in accordance with Section11 of the said Act and after following the principle of Natural Justice. The limited area that would be available for attack is as to whether the decision is hit by the Wednesbury principle. Can it be said that the decision taken by the authority is such that no reasonable person would have taken it? No doubt, that the authority has also relied on Clause 12.4.1 of the Allotment Agreement, however, that is not the only ground on which the representation of EMTA is rejected. No doubt, that while considering EMTA's representation, PSPCL has referred to Clause 12.4.1 of the Allotment Agreement which requires the coal mines to be developed through contractors who were selected through a competitive bidding process, however, that is not the only ground on which the representation of EMTA is rejected. It will be relevant to refer to the following observations in the order passed by PSPCL dated 6th April 2018: - Moreover, there is no reason why competitive bidding process for the purposes of eliciting the best operator is not preferred. Needless to mention that as the composition with respect to capital/revenue investment is altogether different, hence the bidding parameters have entirely changed.
>
> It could thus be seen that PSPCL has decided to go in for competitive bidding process for the purpose of eliciting the best operator. It has further noticed that the composition with respect to capital/revenue

49 *Id.*, para 35.

> investment is altogether different. Hence, the bidding parameters have entirely changed. It has further referred to the decision of this Court wherein it has been held that the allotment should be through competitive bidding process. We ask a question to ourselves, as to whether the said reasoning can be said to be irrational or arbitrary. A policy decision to get the best operator at the best price cannot be said to be a decision which no reasonable person would take in his affairs. In that view of the matter, the attack on the order/letter dated 6th April 2018, is without merit.

In the case of *Indian - Ex Servicemen Movement* v. *Union of India,*[50] The court, while having special reference to the views of Lon Fuller,[51] explicitly clarified the demarcation between adjudication and the role of other organs. The court iterated that, "an increased reliance on judges to solve matters of pure policy diminishes the role of other political organs in resolving contested issues of social and political policy, which require a democratic dialogue". Thus, adjudication can never serve the purpose of public policy. Most of the questions of public policy involve complex considerations of not only technical and economic factors but also require balancing of competing interests for which democratic dialogue is the best remedy. The court concluded by saying that OROP policy dated 7thNovember 2015 can only be challenged and can be judicially reviewed on the ground of manifest arbitrariness or capriciousness, which is not the case and hence the policy stands valid.

In *Mohd. Islam* v. *Bihar State Electricity Board* [52] the court was called upon to decide on the judicial review of the date chosen for applicability of a particular notification. The court while dismissing the appeal held that any notification issued by the government of Bihar will neither *ipso facto* nor *mutatis mutandis* apply to the employees of electricity board until and unless the same was adopted by the board. Further even adapted it would depend on the manner and to the extent in which it is adapted. The court observed thus:[53]

> The appellants, in any event, cannot contend that the Scheme should be applicable from the very same date on which it had been made applicable to the State Government employees when the respondent no.1 had the discretion to either adapt or not to adapt the Scheme. When the Board had decided to adapt, in such an

50 *Supra* note 9.

51 Lon Fuller described public policy issues that come up in adjudication as "polycentric problems", that is, they raise questions that have a "multiplicity of variable and interlocking factors, decisions on each one of which presupposes a decision on all others". Such matters, according to Fuller, are more suitably addressed by elected representatives since they involve negotiations, trade-offs and a consensus-driven decision-making process. Fuller argues that adjudication is more appropriate for questions that result in "either-or" answers.

52 (2022) 7 SCC 57.

53 *Id.*at 59.

> event it has also the discretion to alter the date of its applicability as against the date notified by the State Government. Judicial review on the date chosen for applicability would arise only if such choice of date is demonstrated to be *malafide* or with ulterior motive.

Limited scope of judicial review of policy matters

In *Satya Dev Bhagaur* v. *State of Rajasthan*[54] the respondent-, state of Rajasthan has issued a notification on 30.05.2018, thereby providing that such of the candidate who had worked under the government, Chief Minister BPL Life Saving Fund, NRHM Medicare Relief Society, AIDS Control Society, National TB Control Program, Jhalawar Hospital and Medical College Society, Samekit Rog NirgraniPariyojna or State Institute of Health Family Welfare (SIHFW), would be entitled to bonus marks as per the experience attained. For 1 year of experience, the bonus marks will be 10, for 2 years of experience the bonus marks will be 20 and for 3 years of experience it will be 30. The advertisement also provided that only such of the candidates who were having experience certificate from the competent authority as mentioned in the said advertisement would be entitled to the bonus marks.Appellants herein, who have the experience of working under the NRHM scheme on contract basis in different states, approached the high court vide various writ petitions seeking a direction to the respondent-, State of Rajasthan to accept the experience certificate of the petitioners which was issued by the NRHM authorities of different States, so as to qualify them for getting the bonus marks. The high courtby the impugned order dated August 13, 2018 and held that the intention of the State of Rajasthan was to confine the benefit of award of bonus marks to those employed in the schemes within the State of Rajasthan and not in other states. Being aggrieved thereby, the appellants approached the apex court.

While deciding the appeal the apex court observed that from the material placed on record, it appears that the policy of the State of Rajasthan is that while selecting nurse compounder junior grade, the bonus marks are to be given to such employees who have done similar work under the state government and under the various schemes. The question thus, would be whether such bonus marks would also be available to the contractual employees working under the NHM/NRHM schemes in other states. The court dismissed the appeal and found that the policy of the State of Rajasthan to restrict the benefit of bonus marks only to employees who have worked under different organizations in the State of Rajasthan cannot be said to be arbitrary and held thus:[55]

> It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved.

54 (2022) 5 SCC 314.

55 *Id.* at 321.

> The Government of Rajasthan has conducted several training programmes for the persons working with it on contractual basis, as well as under different schemes. The training programmes mainly pertain to the peculiar working pattern in the rural areas of the State of Rajasthan including tribal and arid zones. The Division Bench has further come to a finding that participation in such a training is mandatory and non--joining of the same would result in non--renewal of service contracts. It has been held that persons having special knowledge in working in the State of Rajasthan form a class different than the persons not having such experience of working in the State. It was found that the benefit extended by the State policy was only that of giving a little more weightage on the basis of experience and all the candidates were required to undergo the rigor of selection process. The Division Bench has clearly held that the experienced candidates in other States cannot be compared with the candidates working in the State of Rajasthan, as every State has its own problems and issues and the persons trained to meet such circumstances, stand on a different pedestal. We are in complete agreement with the aforesaid observations of the Division Bench. We find that the policy of the State of Rajasthan to restrict the benefit of bonus marks only to such employees who have worked under different organizations in the State of Rajasthan and to employees working under the NHM/NRHM schemes in the State of Rajasthan, cannot be said to be arbitrary.

In *Indresh Kumar Mishra* v. *State of Jharkhand*[56] the dispute was with respect to the posts namely, postgraduate trained teacher in history and graduate trained teachers in history/civics. As per the state, so far as the G.T.T. is concerned, the requirementwas a combination of history/civics. As per the advertisement, a candidate must have the postgraduate/bachelor degree in the subject history. So far as the G.T.T. is concerned, the educational qualifications required were bachelor degree in 'history' as well as political science as the requirement was for history/ civics. The court agreed with the common judgments and order passed by the single judge, which has been confirmed by the division bench of the high court and ruled that the candidature/selection of the respective petitioners are rightly cancelled on the ground that they were not having the requisite qualification for the post – postgraduate/bachelor degree in history as per the advertisement no. 21 of 2016 and 10 of 2017 and ruled that:[57]

> In the present case, the educational qualifications required have been specifically mentioned in the advertisement. There is no ambiguity and/or confusion in the advertisement providing educational qualification and the post for which the applications

56 (2022) 12 SCC 42.

57 *Id.* at 51.

> were invited (History/Civics). There cannot be any deviation from the educational qualifications mentioned in the advertisement. Once having found that the respective writ petitioners – appellants herein were not having the requisite qualification as per the advertisement, namely, the Postgraduate/Bachelor degree in History, which was the requirement as per the advertisement and thereafter their candidature was cancelled, both the learned Single Judge as well as the Division Bench of the High Court have rightly refused to interfere with the same. We are in complete agreement with the view taken by the learned Single Judge and the Division Bench of the High Court.

The court also reiterated the settled proposition of non-interference with the decision arrived at by the expert committee and observed that as per the settled proposition of law, in the field of education, the court of law cannot act as an expert normally, therefore, whether or not a student/candidate is possessing the requisite qualification should better be left to the educational institutions, more particularly, when the expert committee considers the matter.

In *National Highway Authority of India* v. *Madhukar Kumar*[58] the Supreme Court while deciding the issue of exclusion of judicial review of detailed project report (DPR) prepared by an expert body held thus:[59]

> The fact that the DPR was not challenged by the writ petitioners in the high court cannot by itself, pose a hurdle in the allowing of the writ petition by the high court. It is, admittedly, a study with recommendations. Therefore, it constitutes the opinion of the expert body at best. However, what it does mean, is that, the court can proceed on the basis of the facts, which are brought out in the report, and in the absence of a challenge to the same, proceed on the basis that, they are correct. In fact, the only case of the writ petitioner in this regard, is that, after the preparation of the report, certain developments took place, but which are in the form of constructions which are made. Equally, the fact that the report was not challenged, would allow the court to acknowledge that there was, indeed, a study by an expert body. More pertinently, the expert body did recommend the location of toll plaza at km 194. Equally, there is nothing expressly stated that the location is justified with reference to the second proviso to rule 8 of the 2008 rules.

Judicial review of government contract and tenders

In*National High Speed Rail Corporation Ltd.* v. *Montecarlo Ltd*.[60] the issue was whether in facts and circumstances of the case and with respect to such a foreign funded project the high court was justified in interfering with the tender process in the absence of any specific allegations of mala fides and/or favouritism.

58 *Supra* note 17.

59 *Id*.

60 (2022) 6 SCC 401.

While deciding the appeal, the apex court reiterated the principles governing the scope of judicial review of government contracts and observed that a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:[61]

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected?If the answers are in the negative, there should be no interference under article 226.

The apex court while allowing the appeal answered the aforesaid issue in negative and quashed and set aside the impugned judgment and order passed by the high court and held thus:[62]

> Under the circumstances, the High Court has committed a grave error in holding that Clauses 28.1 and 42.5 are patently illegal, more particularly, in absence of any challenge to the same and also on the ground that once the original writ petitioner participated having knowledge of the aforesaid clauses in the ITB, thereafter it was not open for the original writ petitioner to challenge the same. If the original writ petitioner was aggrieved either it would not have participated and/or ought to have challenged such clauses before participating in the tender process. Under the circumstances, the impugned judgment and order passed by the High Court holding Clauses 28.1 and 42.5 as patently illegal cannot sustain and the same also deserves to be quashed and set aside.
>
> Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project

61 *Id.*at 438.

62 *Id.*at 455.

> due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advise, we rest the matter there and leave it to the wisdom of the concerned Court(s), which ultimately may look to the larger public interest and the national interest involved.

Judicial review of decision of high court on administrative side

In *X* v. *High Court of Madhya Pradesh*[63] the apex court held that while exercising its functions on the administrative side, the high court would also be part of 'the state' within the meaning of article 12 the constitution. The scope of judicial review of a decision of the full court of a high court is extremely narrow and the Supreme Court cannot sit in an appeal over the decision of the full court of a high court. The court further held that the present matter is being examined purely considering it as a *lis* between an employee and an employer, without in any way being influenced by the fact that one of the parties to the *lis* is M.P. High Court on the administrative side, and the other one a judicial officer. The legal principles, which would govern the dispute between an employer who is a state and an employee, will have to be equally applied in the present case, irrespective of the fact that one of the parties is a high court and the other one is a judicial officer.

***Ultra vires* administrative notification: grounds**

In the survey year in *Independent Schools' Association, Chandigarh (Registered)* v. *Union of India*[64] The appellants had assailed the notification dated 13.04.2018 issued by the appropriate authority in exercise of powers under section 87 of Punjab Re- organisation Act, 1966, (for short, 'the 1966 act'), by way of writ petition(s) under article 226 of the constitution of India. The high court dismissed the writ petition(s) opining that the appropriate authority was competent to issue such government order/notification. The limited challenge before the supreme court is to clauses (a) and (b) of the proviso, which have been inserted in terms of the impugned order/notification by way of paragraph 6 thereof.While deciding the validity of clauses (a) of the proviso the apex court ruled that the change introduced *vide* the impugned government order/notification in terms of clause (a) in the third proviso inserted by way of paragraph 6 thereof, is not a peripheral or insubstantial change and therefore, needs to be struck down being *ultra vires* and held thus:[65]

> Reverting to the stipulation specified in clause (a), we have no manner of doubt that the same cannot be considered as peripheral and insubstantial change. For, it is a substantive matter. We say so because the Principal Act (2016 Act), which is extended in terms of the impugned Government Order/Notification, makes no provision regarding disclosure of income, expenditure, account and balance

63 (2022) 14 SCC 187.

64 (2022) 14 SCC 387.

65 *Id*., para 10.

> sheet on website of the unaided schools, including as applicable in the State of Punjab. It would be a different matter if the Parliament or the State Legislature, as the case may be, were to incorporate such condition in the enactment such as the 2016 Act. Had it been so incorporated, it would then be open to the unaided institutions to question the validity of such a provision, which could be tested by the Constitutional Court on the basis of doctrine of fairness, arbitrariness and other grounds available under Part III of the Constitution of India or otherwise.Suffice it to observe that the change introduced vide the impugned Government Order/ Notification in terms of clause (a) in the third proviso inserted by way of paragraph 6 thereof, is not a peripheral or insubstantial change. Hence, it is clearly outside the scope of the authority bestowed on the competent authority in terms of Section 87 of the 1966 Act. That stipulation, therefore, needs to be struck down being *ultra vires*.

Further, while deciding the validity of clauses (b) of the proviso the apex court ruled that the change introduced *vide* the impugned government order/ notification in terms of clause (b) in the third proviso inserted by way of paragraph 6 thereof,is tenuous as this stipulation merelyprohibits the unaided institutions from charging any kind of cost from the parents and the court held thus:[66]

> We find that the challenge to clause (b), is tenuous. In that, this stipulation merely prohibits the unaided institutions from charging any kind of cost from the parents. In our opinion, this is consistent with the legislative intent and mandate of the 2016 act. In fact, it restates the inbuilt policy, essence and substance of the 2016 act. Thus, it is in no way a substantial change as in the case of clause (a), referred to above. Be it noted that as per clause (c) of paragraph 6 of the impugned Government order/notification — validity whereof has not been challenged — the unaided institutions are obliged to disclose complete fee structure at the beginning of the academic year. The obligation of the unaided institutions in terms of clause (b) of the same paragraph is in reference to the disclosure of fee structure as per clause (c). In other words, the unaided institutions can charge only the disclosed fee structure amount from its students and no further. This provision, therefore, is appropriate and necessary for better administration of the unaided institutions to which the 2016 act gets extended in terms of the impugned Government order/notification.Accordingly, challenge to clause (b) of the third proviso inserted by virtue of Government order/ notification by way of paragraph 6, cannot be countenanced and is rejected.

66 *Id*., para 12.

The court also ruled that paragraph 8 of the impugned government order/ notification also cannot stand the test of judicial scrutiny and the same needs to be struck down being unconstitutional and *ultra vires* and held thus:[67]

The challenge to paragraph 8 of the impugned Government order/notification, whereby the penalty amount is enhanced in respect of unaided institutions governed by the 2016 Act within the Union Territory in terms of impugned Government order/notification is not a peripheral or insubstantial alteration or modification of Section 14. Inasmuch as, what should be the quantum of penalty amount or punishment, is a legislative policy. It must be left to the concerned legislature. It cannot be provided by way of an executive order, including in exercise of powers under section 87 of the 1966 Act — being a substantial change to the regime predicated in section 14 of the 2016 Act.

V NATURAL JUSTICE

In *Mohd. Mustafa* v. *Union of India*[68] it was contented by the appellant before the supreme court that the respondent 5 should have recused himself from the selection panel since he was inimically disposed towards appellant. While rejecting this contention the court held that it was within the knowledge of the appellant that respondent 5, being DGP of state concerned was to be member of the empanelment committee according to the draft guidelines issued by union public service commission. But the appellant did not challenge the constitution of empanelment committee which indicates that he was satisfied that respondent-5 was not prejudiced against him and any belated plea taken by appellant does not merit acceptance. There was no real likelihood of bias in the present case against appellant.

Audi alteram partem

Traditional Englishlaw recognised and valued the rule against bias that no man shall be a judge in his own cause and the obligation to hear the other or both sides as no person should be condemned unheard *i.e., audi alteram partem*. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in facts of the case.

In *Chairman, State Bank of India* v. *M.J. James*[69] the respondent who was the bank manager of the Quilon branch of Bank of Cochin was charge-sheeted on February 9, 1984 alleging to have committed grave misconduct by sanctioning

67 *Id*., para 14.

68 *Supra* note 42 at 315-316.

69 (2022) 2 SCC 301.

advances in violation of head office instructions causing financial loss to the bank. In the departmental enquiry proposed to be conducted the respondent requested for permission to engage services of one C, organising secretary of the allIndia confederation of bank officersorganisation which was rejected. The respondents' request for directions to the management to produce certain documents was also rejected by the enquiry officer. Thereupon, the respondent stated that he had no witnesses to examine, or any other evidence to be adduced and abruptly stood up and walked out without signing the order-sheet. The enquiry officer found the charges to be proved pursuant to which the respondent was dismissed from the service.

On August 26, 1985, Bank of Cochin, a private bank, got amalgamated with State Bank of India. Nearly four years and five months after his dismissal, the respondent filed appeal before the chief general manager, SBI which was rejected. However, writ petition filed thereagainst was allowed by the single judge primarily on the ground that the respondents' request for representation was wrongly rejected violating principles of natural justice. The intra-court appeal was dismissed vide impugned judgment aggrieved by which the appellant approached the Supreme Court. Firstly, on the issue of the choice of representation in domestic enquiry the court reiterated the following principle:[70]

> The right to representation of choice in domestic enquiry is not essential principle of natural justice and its denial does not invalidate enquiry. Representations are often restricted by law, such as under section 36 of the Industrial Disputes Act, 1947 as also by Certified Standing Orders. Thus, the right to be represented by a counsel or agent of one's choice is not an absolute right but one which can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of severe and complex nature, then the request to be represented through a counsel or agent should be considered. As far as importance of evidence to show prejudice to get relief is concerned, there is difference between 'adequate opportunity' and 'no opportunity at all' and prejudice exception operated more specifically in latter case.

While allowing the appeal, the court upheld the order of dismissal of respondent from the service and set aside the impugned judgment and held thus:[71]

> The respondent was aware that his request to be represented by a representative of his own choice had been rejected. Even then he took time and decided not to file an appeal before the Board of Directors against the order of the inquiry officer rejecting his request. He allowed the inquiry proceedings to continue. In spite of ample opportunity, the respondent did not adduce evidence or examine witnesses, and abruptly stood up and walked out. Clause 22(ix)(a),

70 *Id.* at 317.

71 *Id.* at 321-322.

> as worded, envisages that an employee against whom disciplinary action is proposed will be served with memorandum of charges, be given sufficient time to prepare and present his explanation and produce evidence which he may wish to render in his defence. He is permitted to appear before the officer conducting the inquiry, cross-examine the witnesses and produce other evidence in his defence. Further, the officer can also be permitted to be defended by a representative, who must be a representative of a registered union/ association of 'bank' employees, which, as held above, means a union/association of the employees of the Bank of Cochin and not association of employees of any or other banks. Notably, the provision does not stipulate that the employee requires permission from any authority or the inquiry officer for representation by a representative of a registered union or association of the Bank of Cochin. Such permission is required if an employee wants a lawyer to represent him/her in the disciplinary proceedings. In this case, contrary to the observations in the impugned judgment by the Division Bench, the respondent had never prayed or sought permission to be represented by a lawyer. This is despite the respondent being aware of the professional status of the inquiry officer and the presenting officer.

In the survey year, in *Rajasthan Marudhara Gramin Bank* v. *Ramesh ChandraMeena*[72] the respondent when working as a cashier-cum-clerk in appellant bank was alleged to have committed some irregularities amounting to misconduct. Departmental enquiry was initiated against him in which one G was appointed as the enquiry officer. An opportunity was afforded to him to take assistance of defence representative (hereinafter, 'DR') in accordance with the Rajasthan Marudhara Gramin Bank (Officers and Employees) Service Regulations, 2010 (hereinafter, 'the 2010 regulation') as also the guidelines issued by the bank. However, the respondents' request for representationthrough a legal practitioner was rejected by the appellant in view of the restrictions under regulation 44 of the 2010 regulations on engagement of legal practitioner during inquiry. His request for permission to engage any retired officer from the bank was also declined. A writ petition filed thereagainst was allowed and the appellant was directed to permit him to be represented through the retired officer of the bank in the disciplinary proceedings. An appeal filed thereagainst was dismissed vide the impugned judgment, aggrieved by which the appellant has approached the Supreme Court. The short issue for determination before the apex court was: whether the respondent employee, as a matter of right is entitled to avail the services of an ex-employee of the bank as his DRin the departmental proceedings? The court decided this issue in negative and held that the high court has committed an error in permitting respondent delinquent officer to be represented in the departmental

72 (2022) 3 SCC 44.

enquiry through ex--employee of the bank. Allowing the appeal, the court applied law laid down by it to the facts of the case on hand, the respondent delinquent has no absolute right to avail the services by ex--employee of the bank as his DR in the departmental proceedings and held thus:[73]

> It is true that Regulation 44 puts specific restriction on engagement of a legal practitioner and it provides that for the purpose of an enquiry under Regulation, 2010, the Officer or Employee shall not engage a legal practitioner without prior permission of the competent authority. Regulation, 2010 neither restricts nor permits availing the services of any outsider and / or ex-employee of the Bank as DR and to that extent Regulation is silent. The High Court has not appreciated the effect of the Handbook. As per Clause 8 of the Handbook Procedure which has been approved by the Board of Directors and it is applicable to all the employees of the Bank and Clause 8 is with respect to the defence representative, it specifically provides that DR should be serving official / employee from the Bank. The said Handbook Procedure which has been approved by the Board of Directors of the Bank is binding to all the employees of the Bank. The High Court has considered Regulation 44 of the Regulation, 2010, however has not considered clause 8 of the Handbook Procedure on the ground that the same cannot be said to be supplementary. However, we are of the opinion that Handbook Procedure can be said to be supplementary. The same cannot be said to be in conflict with the Regulation 44 of Regulation, 2010. As observed herein above, neither Regulation 44 permits nor restricts engagement of an ex--employee of the Bank to be DR. Therefore, Clause 8.2 cannot be said to be in conflict with the provisions of Regulation, 2010. Provisions of Regulation, 2010 and the provisions of Handbook Procedure are required to be read harmoniously, the result can be achieved without any violation of any of the provisions of Regulation, 2010 and the Handbook Procedure. The objects of Regulation 44 of Regulation, 2010 and Clause 8 of the Handbook Procedure seem to be to avoid any outsider including legal representative and / or even ex--employee of the Bank. At the cost of repetition, it is observed that there is no absolute right in favour of the delinquent officer's to be represented in the departmental proceedings through the agent of his choice and the same can be restricted by the employer.

In *State of Odisha* v. *Panda Infra-Project Ltd.*[74] the respondent contractor was awarded a contract for construction of a flyover over the railway level crossing at bomikhal junction in Bhubaneswar. That in pursuance of the said contract the

73 *Id.*at 54-55.

74 (2022) 4 SCC 393.

respondent contractor constructed the said flyover. In the year 2017, a ten-meter slab of the flyover collapsed during concreting of the railway over bridge at the level crossing, which resulted in loss of life and property. One person died and eleven others were injured. A high--level inquiry was conducted by the chief engineer (design) and chief engineer (DPI and roads). The committee submitted a comprehensive report after a detailed inquiry and found the contractor, respondent herein guilty. On the basis of such report the state government directed that immediate necessary action be taken for blacklisting the contractor following the procedure as per the Orissa Public Works Department (OPWD) Code. Thereafter, a show cause notice was issued to the contractor and the contractor was asked to show cause as to why it be not blacklisted for intentionally violating the relevant clauses of the agreement no.15-P1/2011-12. The respondent filed a detailed reply. That on considering the allegations in the said show cause notice and reply thereto, the chief engineer (DPI and Roads) Odisha issued an order dated December 12,2017, whereby the respondent contractor was blacklisted with immediate effect, for intentional violation of condition of the contract leading to injuries and loss of life. The respondentcontractor was banned from participating or bidding for any work to be undertaken by the government of Odisha and the contractor was also banned from transacting business with government of Odisha, either directly or indirectly.

Aggrieved by the order of blacklisting dated December 12, 2017, the contractor filed writ petition seeking quashing of the order of blacklisting and by the impugned judgment and order, the high court has set aside the order of blacklisting mainly on the ground that the order of blacklisting is in violation of principles of natural justice. In the instant appeal the appellant had challenged the impugned judgment and order passed by the high court quashing and setting aside the order of blacklisting. The Supreme Court while allowing the appeal in part set aside the impugned judgment and order passed by the high court quashing and setting aside the order dated December 12, 2017 blacklisting the respondent contractor and held that:[75]

> So far as the findings recorded by the High Court that the blacklisting order was in breach of principles of natural justice is concerned, it is to be noted that the blacklisting order was passed after issuing a show cause notice to which the contractor – respondent was called upon to reply and show cause as to why he be not blacklisted. In the present case, show cause notice was issued upon the contractor by which the contractor was called upon to show cause why he be not blacklisted; the show cause notice was replied to by the contractor and thereafter, after considering the material on record and the reply submitted by the contractor and having found the serious lapses which led to a serious incident in which one person died and eleven others were injured, the State Government took a

75 *Id.* at 400.

> conscious decision to blacklist the contractor. Therefore, it cannot be said the order blacklisting the contractor was in violation of principles of natural justice.

The next question which was posed for consideration of the apex courtwas, whether, in the facts and circumstances of the case the contractor was required to be debarred/blacklisted permanently? Answering the question, the court observed that in the instant case, it might be true that the offence was the first offence committed by the contractor. However, considering the seriousness of the matter that due to the omission and commission on the part of the contractor a serious incident had occurred as there was a collapse of a ten-meter slab while constructing a flyover in which one person died and eleven others injured, as such the contractor does not deserve any leniency an held thus:[76]

> However, to debar him permanently can be said to be too harsh a punishment. But considering the subsequent O.M. dated 26.11.2021 reproduced hereinabove (to which as such we do not agree as observed hereinabove), we are of the opinion that if the blacklisting is restricted to five years, it may be in the fitness of things.

Non- application of mind and requirement of giving reasons for administrative action

In *Rajeev Suri* v. *Delhi Development Authority*[77] and others while dealing with the question relating to non-application of mind, this court also dealt with the impact of there being no reasons. We may notice the following discussion from the majority judgment authored by A.M. Khanwilkar, J.:[78]

> Rules of natural justice are not embodied rules. They are means to an end and not end in themselves. The goal of these principles is to prevent prejudice. It is from the same source that the requirement of application of mind emerges in decision making processes as it ensures objectivity in decision making. In order to ascertain that due application of mind has taken place in a decision, the presence of reasons on record plays a crucial role. The presence of reasons would fulfil twin objectives of revealing objective application of mind and assisting the adjudicatory body in reviewing the decision. The question that arises here is, whether the statement in the recorded minutes of the CVC meeting ("the features of the proposed Parliament building should be in sync with the existing Parliament building") is or is not indicative of application of mind.
>
> In cases when the statute itself provides for an express requirement of a reasoned order, it is understandable that absence of reasons would be a violation of a legal requirement and thus, illegal. However,

76 *Id.* at 402.
77 *Supra* note 1.
78 *Id.,* para 289.

> in cases when there is no express requirement of reasons, the ulterior effect of absence of reasons on the final decision cannot be sealed in a straight jacketed manner. Such cases need to be examined from a broad perspective in the light of overall circumstances. The Court would look at the nature of decision-making body, nature of rights involved, stakeholders, form and substance of the decision etc. The list is not exhaustive for the simple reason that drawing a conclusion of non-application of mind from mere absence of reasons is a matter of pure inference and the same cannot be drawn until and unless other circumstances too point in the same direction.Therefore, the requirement of reasons in cases which do not demand it in an express manner is based on desirability and the same is advised to the extent possible without impinging upon the character of the decisionmaking body and needs of administrative efficiency.

VI LEGITIMATE EXPECTATION

In *Augustan Textile Colours Ltd.* v. *Director of Industries*[79] the apex courtwhile explaining the difference between promissory estoppel and legitimate expectation quoted with approval Justice H. L. Gokhale, who in his concurring judgment in the case of *Monnet Ispat and Energy Ltd.* v. *Union of India*[80] highlighted the difference between the doctrine of promissory estoppel and the doctrine of legitimate expectation as thus:[81]

> As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. Alternatively, the appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest.

In other words, the court observed that while the equitable principle of promissory estoppel requires a valid promise, based on which the promisee has changed its position, it is necessary to observe that the principle of legitimate expectation does not take into account such considerations. Instead, it is rooted in fundamental ideas like reasonableness, fairness and non-arbitrariness.

Finally, the court dismissed the appeal and upheld the impugned judgment of the high court and ruled that appellant cannot invoke the principle of legitimate expectation in this case, held that:[82]

> Based on the above findings, the learned Division Bench concluded that the appellant does not form a separate class of its own. Hence,

79 (2022) 6 SCC 626.

80 (2012) 11 SCC 1.

81 *Supra* note 79 at 641.

82 *Id.* at 642.

> the 2004 government order was held to be *ultra vires* the Section 10(1) of the KGST Act. The appellant has failed to bring to our attention, any intelligible differentia, based on which it can be said that they constitute a unique, separate class of its own. In absence of such differentiating factor, the benefit of tax exemptions being granted to the appellant, to the exclusion of all other sick industries involved in similar activities, do not appear to be reasonable and should be seen as arbitrary. The 2004 government order was not only *ultra vires* Section 10(1) of KGST Act, but also falls short by principle of reasonableness, fairness, and non- arbitrariness. The 2006 government order withdrawing the tax exemption was in fact issued to remedy this very mischief. Hence, the appellant cannot invoke the principle of legitimate expectation against the 2006 government order.

Legitimate expectation part of principle of non-arbitrariness

In *X* v. *Registrar General High Court of Madhya Pradesh*[83] the apex court was dealing with the transfer policy incorporated by the Madhya Pradesh High Court which provides in detail, the procedure that is required to be followed with regard to effecting the transfer of the judicial officers, their tenure at a particular posting, the circumstances in which the case should be considered for permitting the judicial officers to stay beyond the prescribed period and the manner in which the representation is to be considered, *etc.* and reiterated that doctrine of legitimate expectation forms part of the principle of non-arbitrariness, which is a necessary concomitant of the rule of law and held thus:[84]

> It could thus be seen that this court has held that mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right. The failure to consider and give due weight to it may render the decision arbitrary. The requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, which is a necessary concomitant of rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh, what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The principle of fairness has an important place in the law of judicial review and that

83 (2022) 14 SCC 187.

84 *Id.*, para 42.

> unfairness in the purported exercise of power can be such that it is abuse or excess of power. The court should interfere where discretionary power is not exercised reasonably and in good faith. It could thus be seen that though the Transfer Policy may not b enforceable in law, but when the Transfer Policy has been framed by the M.P. high court for administration of the district judiciary, every judicial officer will have a legitimate expectation that such a policy should be given due weightage, when the cases of judicial officers for transfer are being considered.

VII ADMINISTRATIVE APPEAL

In the survey year in *Abhyudaya Kumar Shahi* v. *Bharat Pradhan Filling Centre*[85] the appellant, said to be the chief divisional retail sales manager, divisional office, indian oil corporation limited, Gorakhpur has questioned the order dated 30.09.2021, as passed by the High Court of Judicature at Allahabad in contempt application, whereby the high court directed that the appeal filed by the applicant (respondent herein) shall be decided by the dispute resolution panel, Gorakhpur within a month; failing which, the present petitioner shall appear in- person before the court on the next date.The apex court allowed the appeal and set aside the impugned order dated September 30, 2021 and closed the proceedings before the high court in contempt application and held thus:[86]

> In view of the subsequent events above-mentioned, it is but clear that the present respondent has given up its insistence for decision of the appeal by way of erstwhile mechanism, and rightly so because, even if the respondent (writ petitioner) had the right of consideration of appeal, it had no corresponding right to insist for consideration of the appeal by a forum that was no longer in existence.We need not dilate further on the matter. Suffice it to observe that the impugned order dated 30.09.2021, which was even otherwise questionable for being not in conformity with law, has lost its relevance and even the contempt proceedings in the High Court in Contempt Application (Civil) No. 3938 of 2021 are rendered redundant.

VIII PROMISSORY ESTOPPEL

The doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties

85 (2022) 6 SCC 522.

86 *Id.* at 524.

In *State of Gujarat* v. *Arcelor Mittal Nippon Steel India Ltd*.[87] the apex court declared that the principle of promissory estoppel shall not be applicable and held thus:[88]

> In taxing matters, the doctrine of promissory estoppel as such is not applicable and the Revenue can take a position different from its earlier stand in a case with established distinguishing features.Therefore, the submission on behalf of the respondent – assessee that as in the earlier assessment years benefit of exemption was granted to the respondent and, therefore, in the subsequent assessment years also, despite the fact that it is found that the respondent was/is not eligible for the benefit of exemption under the original notification/entry no.255(2) cannot be accepted. If such a submission is accepted in that case it will be perpetuating the illegality and granting the benefit of exemption to 'ineligible industry', who did not fulfil and/or comply with the eligibility criteria/ conditions mentioned in the exemption notification. The principle of promissory estoppel shall not be applicable contrary to the statute. Merely because erroneously and/or on misinterpretation, some benefits in the earlier assessment years were wrongly given, cannot be a ground to continue the wrong and to grant the benefit of exemption though not eligible under the exemption notification.

In conclusion, the apex court allowed the appeal and quashed and set aside the impugned common judgment and order passed by the high court as well as that of the tribunal quashing and setting aside the demand of purchase tax from the respondent and held thus:[89]

> As observed hereinabove, as such the Essar Power Ltd. (hereinafter, 'EPL'), under the incentive scheme, was not eligible at all for exemption from payment of purchase tax as in fact power generating companies were put in the list of 'ineligible industries'. Therefore, by such a modus operandi, the benefit, which was not available to the EPL was made available by such transfer of raw materials by the Essar Steel Ltd. to Essar Power Limited. As observed hereinabove, there is a breach of declaration in Form No.26 also. It is held that the respondent Essar Steel Ltd. – the eligible unit was not entitled to the exemption from payment of purchase tax under the original Entry No.255 (2) dated 05.03.1992, firstly, on the ground that it did not fulfil the eligibility criteria/conditions mentioned in the original Entry No.255(2) dated 05.03.1992 and secondly that there was a breach of declaration in Form No.26 furnished by the respondent – eligible unit – Essar Steel Ltd. Therefore, in the facts and circumstances of

87 (2022) 6 SCC 459.
88 *Id*. at 489.
89 *Id.* at 490.

> the case, the levy of penalty is justified and warranted. The Joint Commissioner, the Tribunal as well as the High Court have committed a grave error in quashing and setting aside the penalty imposed by the Assessing Officer.The order passed by the Assessing Officer levying the demand of purchase tax and imposing the penalty is hereby restored.

IX CONLUSION

Judicial decisions during the survey period, though seems to have not done any major changes in the field of administrative law, have undoubtedly contributed to strengthen the established doctrines and principles of this branch of law. It is to be noted that in the survey year the courts have not deviated from any well settled principles, doctrines and propositions of administrative law. This survey amply reflects the balancing approach which the judiciary has always taken to protect the interests of various stakeholders. The judicial decisions reflect the incisive scrutiny of administrative decisions to check the excesses of the executive and administrative bodies. Judiciary, in the survey period, carried forward the legacy of how justice dispensation system must operate in the field of administrative law and in addition to that, it has also paved the way for use of novel judicial techniques which are required to be adopted by the courts with the changing times to exercise their power of judicial review. The novelty of approach is what has helped in achieving the goals of good governance and suitable legal and administrative framework in the country.