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ADMINISTRATIVE LAW

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I INTRODUCTION

THE INDIAN JUDICIARY has long been at the forefront of ensuring that executive actions are consistent with constitutional mandates, particularly those ensuring fundamental rights under the Constitution of India. In India, the past few years have seen numerous landmark rulings that consistently shape the framework of administrative law, illustrating the changing equilibrium between executive authority and judicial supervision. Furthermore, the function of administrative tribunals, regulatory bodies, and public sector enterprises has faced heightened examination, as a sequence of significant rulings have emerged which has reinforced the limits of administrative discretion and the necessity of procedural fairness.

Important judgments have been passed in the past years in crucial areas like service matters, taxation, public health administration, public procurement, and regulatory supervision. In addition to strengthening judicial oversight of administrative agencies, these rulings have clarified the extent of administrative authority and the procedure that must be adhered to in order to ensure that government actions do not violate citizenry rights.

This survey aims to analyse significant judicial developments in Indian administrative law over the past year, focusing on key issues such as the scope of judicial review of administrative action *vis-à-vis* judicial review in civil cases[1], the establishment and abolition of tribunals,[2] tenets of the principle of *accountability* in administrative action,[3] the protection of individual rights against arbitrary state action when administrative action is applied retrospectively,[4] and the growing concerns surrounding fair trial[5] in case of contempt proceeding before the

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1 *Manoj Kumar* v. *Union of India* (2024) 3 SCC 563.

2 *Orissa Administrative Tribunal Bar Association* v.*Union of India* 2023 SCC OnLine SC 309.

3 *Vijay Rajmohan* v. *State represented by the Inspector of Police, CBI, ACB, Chennai, Tamil Nadu* (2023) 1 SCC 329; AIR 2022 SC 4974.

4 *Bharat Sanchar Nigam Ltd.* v. *Tata Communications Ltd.* 2022 SCC OnLine SC 1280; 2022 (14) SCALE 1.

administrative tribunal. The judiciary has played a pivotal role in scrutinising administrative actions, holding both executive and regulatory bodies accountable, and ensuring that governance mechanisms function in alignment with constitutional principles.

The cases examined in this survey cover a broad spectrum of administrative law, including challenges to the exercise of executive discretion, the rights of citizens in administrative matters, the role of tribunals and regulatory authorities, and the protection of constitutional rights in an increasingly complex administrative framework. These decisions highlight the necessity for robust processes to safeguard the public interest while maintaining the authority of the state to legislate and illustrate a dynamic and ongoing conversation between the judiciary and the executive.

As administrative law continues to evolve in response to both global and domestic challenges, it remains essential to track and critically evaluate the trends and shifts in judicial interpretations of administrative discretion, transparency, public accountability, and the protection of rights. This survey, therefore, aims to serve as a comprehensive guide for legal practitioners, scholars, and policymakers, providing an in-depth understanding of how Indian Administrative Law is progressing and adapting to meet the demands of a rapidly changing society.

II ADMINISTRATIVE ACTION

Given the centrality of executive agencies in administering laws and policies, judicial review of administrative action has become a vital tool to ensure that such actions comply with the principles of natural justice, fairness, transparency, and reasonableness. Recent judicial pronouncements have reaffirmed and expanded the scope of judicial scrutiny of administrative actions, setting new benchmarks in the protection of fundamental rights, the accountability of public authorities, and the balance between executive discretion and the rule of law.

In *Vijay Rajmohan* v. *State represented by the Inspector of police, CBI, ACB, Chennai, Tamil Nadu,*[6] the Supreme Court reiterated the essential constituent dimensions of the principle of accountability under administrative law, *viz*. (i) *responsibility*, (ii) *answerability* and (iii) *enforceability*. In the said judgment, the Appellant, who is an official of the Central Secretarial Service, Government of India, had challenged the order of the High Court Judicature at Madras whereby the Criminal Revision Petition preferred by the State against the order of the Trial Court was allowed. The trial court had discharged the appellant on the ground that the order of sanction under Section 19 of the Prevention of Corruption Act, 1988 is vitiated due to non-application of mind by the sanctioning authority and that they have relied on the advice which, more so,if not same then atleast, is a form of dictation tendered by the Central Vigilance Commission, and also that, there was delay in granting the sanction for initiating prosecution against the appellant.The

5 *Mehmood Pracha* v. *Central Administrative Tribunal* 2022 SCC OnLine SC 1029.

6 *Supra* note 3.

same issues were contended before the Supreme Court, wherein the court, after going through the scheme of the Central Vigilance Commission Act, 2003, to the *first* issue, held that there is no illegality in the action of the appointing authority if it has called for, referred, and considered the opinion of the Central Vigilance Commission beforetaking its final decision on the request for sanction for prosecuting a public servant as the decision of sanctioning department is independent and not a dictation, moreover, particularly the nature of advice is advisory.

However, regarding the *second* issue, the court observed that the public policy behind providing immunity from prosecution without the sanction of the State is for insulating the public servant against any kind of harassment and malicious prosecution that might arise in the performance of the public function. *Albeit*, the sanctioning authority stultifies the judicial scrutiny by causing delays in consideration of the sanction request, which taints the process of evaluating the allegations against the corrupt officials. Furthermore, because the prosecution of a public official for corruption involves a component of public interest that directly affects the rule of law, failure to comply with a mandatory period cannot and should not automatically result in the dismissal of criminal proceedings. The court also made the observation that:[7]

> 32. It is in between these competing interests that the Court must maintain the delicate balance. While arriving at this balance, the Court must keep in mind the duty cast on the competent authority to grant sanction within the stipulated period of time. There must be a consequence of dereliction of duty to giving sanction within the time specified. The way forward is to make the appointing authority accountable for the delay in the grant of sanction.
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> 33. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.
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> 34. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between "duty bearers" in authority and "right holders" affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015 and is also recognized as one of the six principles of the Citizens Charter Movement.
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> 35. Accountability has three essential constituent dimensions. (i) responsibility, (ii) answerability and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. Answerability requires

7 *Id.,* para 32-35.

> reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.

Further, the court held that *accountability*, as a principle of administrative law, when applied to the issue that we are dealing with, translates in the manner discussed above. Since the appointing authority is always in charge of granting sanction for a public servant's prosecution under Section 19 of the Prevention of Corruption Act, the aggrieved party, whether they be the victim, accused, or complainant has the right to approach the relevant writ court after the three months have passed and the additional one month has passed. They have the right to pursue suitable remedies, such as instructions on how to proceed with the sanction request and the corrective action on accountability that the sanctioning authority is responsible for. This is particularly important if the sanction is denied without cause, which would stifle a legitimate case of corruption.[8] As even in this case, the appellant and his relatives were found with assets disproportionate to his known sources of income.

In *State of Maharashtra* v. *Shaikh Mahemud,*[9] the appeal against the High Court of Bombay judgment was allowed, and the high court had quashed the notification cancelling the appointment of Shaikh Mahemud as a Member of the Maharashtra State Board of Waqfs. The court held that the high court's findings were not sustainable. The high court at their instance had observed, that the term of office of a Board member, as stipulated under Section 15 of the Waqf Act, can only be curtailed in the event of disqualification under section 16 or removal under section 20, and that the cancellation of the appointment was arbitrary. Thereby, the Supreme Court observation that:[10]

> For holding that the cancellation of appointment of the first respondent was arbitrary, the High Court did not really have any material. The only reason why the High court held it to be arbitrary is that the order of cancellation of appointment did not contain any reason and that the cancellation went against Section 15. For holding the action of the Executive to be arbitrary, there must be a factual basis. It did not exist in this case.

Thus, for holding the action of the Executive to be arbitrary, there must be a factual basis.

8 *Id.,* para 36 and 37.

9 (2022) 18 SCC 573; 2022 (6) SCALE 104.

10 *Id.,* para 12.

In *Director of Teacher's Training Research Education* v. *OM Jessymol,*[11] the apex court, while holding the judgment passed by the high court to be not tenable in the eyes of the law, held that the executive power of the state government cannot be in contradiction with the specific provisions of the statutory rules; however, in cases where the statute and the rules are silent, the state government could use its executive power to add to the rules. The executives of the State are meant to support, not replace, the legislative branch. The issue arose in lieu of the executive order made by the Tamil Nadu State Government whereby minimum eligibility conditions of 50 percent marks were fixed for the appointment to secondary grade teacher. The candidate had obtained less than 50 percent marks in the State of Nagaland's one-year Teachers' Training Certificate. As a result, it was decided that she was not eligible to be appointed as a secondary grade teacher. The court ruled in favour of the reiterated the same while relying on *para* 59 of *Union of India* v. *Ashok Kumar Aggarwal,*[12] wherein it was observed that:

> 59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/ office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions…

Therefore, the apex court, while maintaining the government order that requires a minimum of 50 percent marks in the teachers' training certificate program for candidates to be appointed in the State of Tamil Nadu, further held that the high court's decision that the government order violates the statutory rules is unconstitutional.

Retrospectivity

Retrospectivity of law refers to the application of a law to events or actions that occurred before its enactment. Generally, the principle of *prospectivity* is upheld in legal systems to ensure fairness, certainty, and predictability, protecting individuals from being penalized under rules that did not exist when their actions took place. However, retrospectivity may be allowed in specific cases where the law expressly provides for it, and even then, such power is granted sparingly to administrative authorities. Without explicit legislative authorization, administrative bodies cannot retroactively impose obligations, liabilities, or penalties, as this could violate the principles of natural justice and the rule of law. This safeguard ensures that retrospective laws are applied judiciously and only when explicitly intended by the legislature, balancing public interest with individual rights.

In *Bharat Sanchar Nigam Ltd.* v. *Tata Communications Ltd.*[13] apex court held that administrative/executive order/circular cannot be given effect of

11 2022 LiveLaw (SC) 759 | Civil Appeal 6991 of 2015.

12 (2013) 16 SCC 147.

13 *Supra* note 4.

retrospective nature in the absence of any legislative competence. The issue in question was the increase of charges for infrastructure facilities which were provided by the BSNL (Appellant) to telecom service providers by Circular dated June 12, 2012 with effect from April 1, 2009. The court observed:[14]

> It is a settled principle of law that it is the Union Parliament and State Legislatures that have plenary powers of legislation within the fields assigned to them, and subject to certain constitutional and judicially recognized restrictions, they can legislate prospectively as well as retrospectively. Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject. By a retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.
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> The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, it is opined that applicability of the circular dated June 12, 2012 to be effective retrospectively from April 1, 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.

Malafide

Malafide actions usually arise out of personal prejudices, revenge, corruption, or favoritism, and they contravene the ideals of fairness, natural justice, and the rule of law. Judicial bodies examine *malafide* administrative activities to make certain that public servants do not misuse their discretionary authority for inappropriate purposes. When *malafide* is proven, the actions involved can be deemed invalid and overturned, as they exceed the limits of legitimate administrative power.

In *Chandra Prakash Mishra* v. *Flipkart India Private Limited*[15], the appeal in apex court challenging the adverse remarks made in the High Court of Allahabad judgment concerning the statutory authority was allowed. The court observed that even though the high court found that the actions of the authorities, particularly those of the appellant, were not strictly in conformity with the law, were irregular, illegal, or even perverse, such findings, by themselves, did not necessarily imply that there had been any deliberate action or omission on the part of the Assessing Authority or the Registering Authority, nor did they support the inference that

14 *Id.,* para 29-30.

15 2022 SCC OnLine SC 423.

any 'tactics' had been employed. Court further held that every erroneous, illegal or even perverse order/action, by itself, cannot be termed as wanting in good faith or suffering from *malafide.*[16] For imputing motives and making inferences about lack of good faith in any person, in the present case, a statutory authority, something more than mere error or fault ought to exist, it cannot be the case that mere existence of error would suffice. It was further observed that, nothing concrete is available on record in the case, to impute motives to the appellant, even if their actions or omissions while functioning as the assessing authority otherwise are called for disapproval.[17]

III NATURAL JUSTICE

Natural justice in administrative action embodies the fundamental principles of fairness, impartiality, and reasonableness that administrative authorities must uphold when making decisions affecting individuals. These principles ensure that the affected individuals can express their case, understand the rationale behind the decision of action taken against them, and obtain an impartial judgment. Natural justice protects individuals against arbitrary or biased administrative actions, promoting confidence in the decision-making process. Although these principles are adaptable and may differ depending on the situation, any major deviation from them without proper rationale can make an administrative decision invalid. Courts frequently step in to uphold natural justice, making sure that authorities utilize their powers in accordance with fairness and the law.

In *Mahadeo* v. *Sovan Devi,*[18] the Supreme Court held that inter-departmental communications cannot be relied upon as a basis to claim any right as they are in the process of consideration for an appropriate decision. For this, the court made reference to a catena of cases including *Omkar Sinha* v.*Sahadat Khan,*[19] *Bachhittar Singh* v. *State of Punjab,*[20] *K.S.B. Ali* v. *State of Andhra Pradesh,*[21] *Dyna Technologies Pvt. Ltd.* v. *Crompton Greaves Limited.*[22] The court held that two requirements must be completed before something can be considered as an order of the state government. Also, in accordance with article 166, clause (1), the order must first be expressed in the name of the Governor and then be communicated. It was observed that, there was never a written order that changed the revenue secretary's judgment. The court further held that until such an order is drawn up, the state government cannot, be regarded as obligated by what was specified in the file. The court made categorical reference to *Bachhittar Singh* v. *State of Punjab*[23]wherein it was iterated that:[24]

16 *Id*., para 13.
17 *Id*., para 16.
18 (2023) 10 SCC 807.
19 (2022) 12 SCC 228.
20 1969 SCC OnLine SC 11.
21 (2018) 11 SCC 227.
22 (2019) 20 SCC 1.
23 AIR 1963 SC 395.
24 *Id.,* para 14-15.

> Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

The court in *Municipal Committee* v. *Jai Narayan and Co.*[25] held that a "noting"which is made or recorded in the file is merely a *noting simpliciter* and nothing more.

In *Ram Chander* v. *State of Chhattisgarh*[26], the Supreme Court reiterated the importance of reasoned order which must be given by the adjudicatory body, in the present case, the presiding judge. In the said matter Rule 358 of the Chhattisgarh Prisons Rule 1968, the petitioner, who is serving a life term in prison, filed an application for early release with the respondent. The Central Jail at Durg's Jail Superintendent asked the Special Judge of Durg for his ruling on whether the petitioner might be freed on remission. The special judge expressed his decision on July 2, 2021, that it would not be appropriate to allow the petitioner's remaining sentence to be remitted given all the facts and circumstances of the case. Therefore, the Government's Law Department determined that the petitioner could not be released because the sentencing court's presiding judge had not expressed a favourable opinion for his release. Aggrieved with this, the petitionerfiled a writ petition with the apex court. In *para* 23 of the judgment the court made reference to *Halsbury's principle* and observed that:

> ..the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432 (2) of the CrPC which require that the presiding judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration.

The court further quoted:[27]

> The following extract is useful for our consideration:

25 *Ibid.*

26 (2022) 12 SCC 52; AIR 2022 SC 2017.

27 *Id*., para 23.

> [005.066] Adequacy of reasons Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgement as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.
>
> Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor.

In *Deepak Ananda Patil* v. *State of Maharashtra,*[28] the issue before the Supreme Court was that complaints were filed to remove approximately 2000 members from the cooperative society on the ground that the members did not fulfil the condition of eligibility. The cooperative society is engaged in the production of sugar primary and has its own bye-laws and according to Bye-law 17-A a producer member of the society should, *firstly*, have attained the age of 18 years, *secondly,* be an occupier of land within the jurisdiction of the society/ factory as owner or tenant, and *lastly*, cultivate sugarcane in a minimum area of 10 gunthas of land.[29]

Subsequently, the cooperative society was notified by the Regional Joint Director (Sugar) that the complainants had claimed that the members whose names were listed did not meet the requirements for eligibility. After receiving the notice from the regional joint director, the cooperative society sent copies of it to each member whose eligibility was being contested. A little few members contested the claims made in the notice to show cause. The members contested the claim that they were ineligible under the bye-laws and requested a chance to present evidence of their eligibility. However, the Regional Joint Director (Sugar) directed the deletion of 1415 members. An appeal was preferred before the Minister of Cooperation which later was dismissed. Then writ petition before the high court was preferred which was also dismissed. The appellant then approached the Supreme Court, arguing that there had been no inquiry at all on an individual basis, as to, whether or not the members who were being sought to be disqualified had met the requirements outlined in the bylaws.

28 (2023) 11 SCC 130.
29 *Id*.

The appellants claimed that the cooperative society received a single omnibus notice with an annexure listing the members who were to be disqualified. They further claimed that no specific allegations of ineligibility were made against any of the members individually, and the regional joint director pursued the investigation in haste without taking into account each member's eligibility. Therefore, it was argued that the natural justice principles had been violated.

The apex court stated that a fundamental principle of administrative law is that an adjudicatory body cannot rely on any material for its decision unless the person affected by it has been informed and given a chance to reply. The same is discernible from a series of judgments. Further, it was emphasised in M.P. Jain and S.N. Jain's treatise on principles of Administrative Law that:[30]

> If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to deal with it. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. If without disclosing any evidence to the party, the authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings.

Also, court while relying on catena of judgments made specific reference to *T. Takano* v. *Securities and Exchange Board of India*[31] and iterated that:[32]

> 39. The following principles emerge from the above discussion:
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> (i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and
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> (ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

30 *Id.,* para 17.

31 (2022) 8 SCC 162.

32 *Supra* note 28, para 18.

> Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.

Moreover, the court ruled that an adjudicatory body cannot rely on any material for its decision unless the individual affected by it has been informed and allowed to respond. Additionally, it must also be established that such deficiency of disclosure and the absence of opportunity to respond to such disclosure has led to prejudice.[33]

IV JUDICIAL REVIEW

In *Manoj Kumar* v. *Union of India,*[34] the Supreme Court attempted to elaborate the distinction between judicial review in civil cases *vis-à-vis* judicial review of administrative action.The court faced a difficulty as to which such analysis of distinction was highly warranted. In the said case, the appellant had applied for the post of a teacher in the primary school as per the vacancy circular. The circular also envisaged that the institute reserves the discretionary power to review the process of selection and shortlist candidates, and also that the decision of the institute shall be final and binding. Later, due to a large number of applications, the institute did away with the earlier proscribed manner and introduced additional qualifications on the basis of which marks shall be allotted and selection would be made. Aggrieved of which the appellant had preferred grievances before the Single Bench and later before the Division Bench which dismissed the petitions and grounded their decision to contours of *restraint in judicial review* in matters relating to academic matters while placing their reliance on *UGC* v. *Neha Anil Bobde.*[35]The apex court although reversed the order of the single bench and division bench but could not order the remedy for appointment as the school for the vacancy of which the appointment was to be made had to be closed after the recommendations from the respective Standing Committee. However, the court made a remarkable distinction between the judicial review of administrative actions and judicial review in civil cases to correct the position in earlier petitions before the high court. The court observed that:[36]

> 18. Judicial review of administrative action in public law is qualitatively distinct from judicial remedies in civil law. In judicial review, constitutional courts are concerned with the exercise of power by the State and its instrumentalities.
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> 19. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions, rather than substituting their own judgment to decide the rights of

33 *Id.*, para 19; Also see, *Managing Director, ECIL, Hyderabad* v. *B. Karunakar* (1993) 4 SCC 727.

34 *Supra* note 1.

35 (2013) 10 SCC 519.

36 *Supra* note 1, para 18-20.

> the parties, which they would exercise in civil jurisdiction. [Sir Clive Lewis, Judicial Remedies in Public Law (5th Edn., Sweet and Maxwell 2015).] It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions. Wade on Administrative Law states that the purpose of quashing is not the final determination of private rights, for a private party must separately contest his own rights before the administrative authority. [HWR Wade and CF Forsyth, Administrative Law (11th Edn., Oxford University Press 2014) at pp. 596-597.] Such private party is also not entitled to compensation merely because the administrative action is illegal. [Peter Cane, "Damages in Public Law", (1999) 9(3) Otago Law Review 489.] A further case of tort, misfeasance, negligence, or breach of statutory duty must be established for such person to receive compensation. [Henry Woolf and others, De Smith's Judicial Review (8th Edn., Sweet and Maxwell 2018) at pp. 1026-1027.]

Thus, the court directed for compensation in favour of the appellant and opined that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, furthermore,it must be acknowledged that such measures may not singularly address repercussions of abuse of power. As a secondary measure, the courts also have an obligation to address the adverse consequences of arbitrary and unlawful actions. The main constitutional goal of the courts is to fulfil the corresponding obligation to take reasonable steps to compensate the injured. As the goals in the preamble are to secure Justice, Liberty, Equality, and Fraternity for all citizens, and this is how the courts have interpreted the constitutional text and have established precedents based on the objectives of the preamble to secure justice.

V TRIBUNAL

In *Daljit Singh* v. *Arvind Samyal,*[37] the Supreme Court made observation with respect to the procedure adopted by the Chairman of the Central Administrative Tribunal when there is a difference of opinion between the judicial member and administrative member of the tribunal. In this case, petitions challenging the promotion of some persons as Inspectors (Armed) in the J and K Police were referred to the full bench of the tribunal following a difference of opinion between the judicial member on the one hand and the administrative member on the other. The full bench dismissed the applications.[38] The High Court of Jammu and Kashmir set aside the order passed by the Tribunal (Full bench) observing that the entire

37 2022 LiveLaw (SC) 364; SLP(C) 5192-5194/2022 decided on April 1, 2022.

38 If There Is Difference Between CAT Judicial Member and Administrative Member, Refer To 3rd Member; Reference to Full Bench Not Required: Supreme Court, *available at:*https://www.livelaw.in/top-stories/supreme-court-cat-judicial-administrative-member-difference-opinion-full-bench-daljit-singh-vs-arvind-samyal-2022-livelaw-sc-364-196396 (last visited on Nov. 15, 2024).

procedure adopted post the minor difference of opinion between the members of the tribunal was contrary to the procedure prescribed by law. The high court referred to Section 26 of the Administrative Tribunal Act, 1986 and observed that the chairman had to decide the issue on a point of difference referred to it by the members or he could have also directed the decision upon such a reference by one or more than other members of the tribunal on the point so referred. Therefore, when a disagreement arises between the judicial member and the administrative member of the tribunal, the issue must be referred to the third member/chairman, who is then obligated to provide its own decision on that reference. Therefore, the issue is not required to be presented to the full bench.

In *Union of India* v. *Alapan Bandyopadhyay,*[39] the question was regarding the jurisdictional superintendence of high court over territorial tribunals, and it was held that an issue can only be scrutinized by a high court which has territorial jurisdiction over the tribunal in question. The case's facts centred on disciplinary actions taken against Alapan Bandyopadhyay, the West Bengal Chief Secretary at the time, for skipping a review meeting that the Indian prime minister had called to determine the number of fatalities and infrastructure damage brought on by the cyclone "YAAS". He appealed these disciplinary proceedings before the Central Administrative Tribunal's Calcutta bench. However, at the request of the appellant (central government), the Principal Bench of the Central Administrative Tribunal in New Delhi moved the respondent's (then Chief Secretary) original application from the Calcutta CAT branch to New Delhi. The principal bench did this by using the authority granted to the tribunal's chairman by section 25 of the Administrative Tribunals Act, 1985.

Bandhopadhyay challenged the transfer order issued by the CAT Principal Bench in a writ suit filed with the High Court of Calcutta. The Union appealed to the Supreme Court after the High Court of Calcutta overturned the principal bench's ruling. The apex court bench proceeded to decide the main question in this case, which was whether the high court was correct in its judicial review of the order passed by the Chairman of the Principal Bench of the Central Administrative Tribunal located in New Delhi, since the Chairman's authority to transfer an original application from one bench to another (even while sitting at any other bench other than the principal bench) became uncontested on a plain reading of section 25 of the Administrative Tribunals Act, 1985, which talks about the "Power of Chairman to transfer cases from one bench to another." The bench cited the Supreme Court's ruling in *L. Chandra Kumar* v. *Union of India,*[40] which stated that:[41]

> The power vested in the High Court to exercise judicial superintendence over the decisions of all courts and tribunals within the respective jurisdictions is a part of the basic structure of the constitution. Decisions of Tribunals would be subjected to the High

39 (2022) 3 SCC 133; AIR 2022 SC 499.

40 (1997) 3 SCC 261.

41 *Supra* note 39, para 7.

> Court's Writ Jurisdiction under A.226/227 of the Constitution, before a division bench of High Court within whose territorial jurisdiction the particular tribunal falls.

The Supreme Court disagreed with high court's approach, pointing out that it went against the Constitution Bench's ruling in *L.Chandrakumar*.

> When once a Constitution Bench of this court declared the law that "all decisions of Tribunals created under Article 323A and Article 323B of the Constitution will be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls", it is impermissible to make any further construction on the said issue. The expression "all decisions of these Tribunals" used by the Constitution Bench will cover and take within its sweep orders passed on applications or otherwise in the matter of transfer of Original Applications from one Bench of the Tribunal to another Bench of the Tribunal in exercise of the power under Section 25 of the Act.
>
> In other words, any decision of such a Tribunal, including the one passed under Section 25 of the Act could be subjected to scrutiny only before a Division Bench of a High Court within whose jurisdiction the Tribunal concerned falls. This unambiguous exposition of law has to be followed scrupulously while deciding the jurisdictional High Court for the purpose of bringing in challenge against an order of transfer of an Original Application from one bench of Tribunal to another bench in the invocation of Section 25 of the Act. The law thus declared by the Constitution Bench cannot be revisited by a Bench of lesser quorum or for that matter by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution. We are of the considered view that taking another view would undoubtedly result in indefiniteness and multiplicity in the matter of jurisdiction in situations when a decision passed under Section 25 of the Act is to be called in question especially in cases involving multiple parties residing within the jurisdiction of different High Courts albeit aggrieved by one common order passed by the Chairman at the Principal Bench at New Delhi.

It was additionally noted that the high court fully comprehended and regarded the contested order in the writ petition as an order issued by the Principal Bench of the tribunal located at New Delhi.The bench further stated, and as such, the high court ought to have "*confined its consideration to decide its own territorial jurisdiction for exercising the power of judicial review over this order."*

Consequently, the bench held that the High Court of Calcutta had overstepped its authority by overturning the order issued by the Central Administrative Tribunal

at New Delhi, and thus deemed its order *void ab initio* and proceeded to nullify it. The bench did, however, grant the respondent the right to contest the Central Administrative Tribunal's ruling in the high court, which had territorial authority over the matter.

In *Mehmood Pracha* v. *Central Administrative Tribunal,*[42] the appellant, an advocate who was appearing for his client was convicted by the Central Administrative Tribunal for the contempt committed. The Supreme Court ruled that the tribunal cannot forgo a trial before penalizing for contempt occurring in its presence if the accused contemnor is refuting the allegations. Prior to the tribunal, the lawyer had asked for a trial to take place. He emphasized that even in instances of contempt occurring in the presence of the court, it was necessary to carry out a trial. The bench examined Section 14 of the Contempt of Courts Act along with Section 17 of the Administrative Tribunals Act, 1985, including the associated Rules, which grant authority to the tribunals to commence contempt actions. It was observed that the appellant refuted the charges presented by the tribunal. However, no trial took place, despite his specific request for one. With reference to Section 14(1)(c), the Bench noted that the contempt proceedings encompassed 'the gathering of evidence as required' to determine the essence of the charges laid out. The court noted that the refusal of a trial right, as foreseen in section 14(1)(c) of the Act and Rule 15 of the Rules, has led to a miscarriage of justice. The court additionally noted that regarding contempt proceedings, the tribunal's authority to penalize for contempt cannot be compared to that of this court (*i.e.* writ court). This is so because, the tribunal erred in drawing support from *Leila David* v. *State of Maharashtra*[43] proceedings were launched under section 14 for contempt committed by a person in the face of the court, and trial was dispensed with. The court further held that, undoubtedly, the tribunal is endowed with the same power as are available to the high court under the Contempt of the Courts Act, 1971. But conspicuously, the powers available to this court under article 129 and 142 are not available to the tribunal.

The decision of *Orissa Administrative Tribunal Bar Association* v. *Union of India,*[44] turns out to be one of the prominent judgments for administrative law in this contemporary time as not only the constitutionality of abolition of administrative tribunals was dealt but also applicability of section 21 of General Clauses Act to administrative decisions, contours of access to justice were also reflected uponby the Supreme Court. The issue before the court was that the central government upon receiving a request from the State of Orissa had abolished the OAT[45] by issuing a notification. Such abolition was challenged before the High Court of Orissa which ruled against the interest of the appellants. The same was challenged before the Apex Court on various grounds.[46] The prominent grounds were that Article 323A of the Constitution is in nature of mandate, it

42 *Supra* note 5.

43 (2009) 10 SCC 337.

44 *Supra* note 2.

requires the Union Government to establish SAT[47] but at the same it does not enable to abolish them. Moreover, section 21 of General Clauses Act cannot be invoked to abolish the OAT as the power to abolish a SAT must flow from the same legislation which empowers the Union Government to establish it. Also, the interpretation of decision in *L. Chandrakumar*[48]is incorrectly observed by the state government. Also, such abolition impinges upon the principles of natural justice as OAT Bar Association and litigants before the OAT were not given the opportunity of being heard before abolition of the OAT, furthermore, this has violated article 14 of the appellants. Additionally, the abolition of the OAT has violated the right of access to justice and the notification by which OAT has been abolished is invalid on the ground that it was not expressed in the name of the President of India and is not in terms of requirements of Article 77 of the Constitution.

Court while analysing the issues at hand, delved into two important judgments, *firstly,* the abolition of the Madhya Pradesh Administrative Tribunal, which was decided in *M.P. High Court Bar Assn.* v. *Union of India*[49]and *secondly*, the abolition of the Tamil Nadu Administrative Tribunal which was decided in *Tamil Nadu Government All Department Watchman and Basic Servants Association* v. *Union of India.*[50] The court, however, while discussing the proceedings, attempted to examine similar circumstance that arose in the apropos matter. However, court refrained from relying on both of these judgments as in the former case the court was not called upon to adjudicate whether section 21 of General Clauses Act would be applicable to section 4(2) of Administrative Tribunals Act. Also, a conclusion regarding the abolition of a SAT through the use of special powers under a law established for the re-organisation of a state does not have any bearing on the possibility of abolishing an SAT using the powers granted by the Administrative Tribunals Act. Additionally, in so far as the latter case is concerned, there were two appeals which were preferred, the first one was dismissed *in limine,* and before the second appeal could be adjudicated on merits the Union Government issued notification to abolish the tribunal itself, as a result of which the appeal got dismissed for being infructuous.[51]

Court while examining the scheme of the Administrative Tribunal Act and scheme of Part XIV-A[52] which consists of two articles, *viz.,* Article 323A and 323B. Wherein, article 323A provides Parliament the authority to establish administrative tribunals to decide specific disputes. It further provides that administrative tribunals may decide disputes pertaining to the recruiting and conditions of service

45 Orissa Administrative Tribunal.

46 *Supra* note 2, para 19.

47 State Administrative Tribunal.

48 *Supra* note 2.

49 (2004) 11 SCC 766.

50 2005 SCC OnLine Mad 333.

51 *Supra* note 2, para 24-25.

52 The Constitution (Forty-second Amendment) Act, 1976.

of individuals appointed to public services and positions in connection with the operations of the Union, any State, local, or other authority within the territory of India, or under the jurisdiction of the Government of India or any corporation owned or controlled by the government. Whereas, Article 323B gives state legislatures the authority to establish tribunals to decide specific disputes (listed in clause 2 of Article 323B). In pursuance of the power conferred upon it by Article 323A (1). It is pertinent to mention here that court while observing the scheme of Part XIV-A observed that:[53]

> Clauses (1) and (2) of Article 323-A use the expression "may," indicating that Article 323-A does not compel Parliament to enact a law to give effect to it. Parliament is entrusted with the discretion to enact a law which provides for the adjudication of certain disputes by administrative tribunals. It is a permissive provision. The provision is facilitative and enabling.

Court furthered its observation while relying on *Official Liquidator* v. *DhartiDhan (P) Ltd.*[54] and *Dhampur Sugar Mills Ltd.* v. *State of U.P.*[55]deliberated that it is essential to determine if the term "may" carries with it an obligation that, upon meeting specific legally defined conditions demonstrated by evidence, a certain type of order is required to be issued.

> In order for the word "may" to acquire the character of the word "shall", the following aspects of the provision or legislation (or in this case, the Constitution) must be analysed:
>
> a. The legal and factual context of the conferment of the power;
>
> b. The purpose of the power;
>
> c. Whether the statute (or the Constitution) specifies the conditions in which the power is to be exercised; and
>
> d. The intention of the legislature discerned inter alia from the scheme of the enactment, the purpose and object of the provision, the consequences of reading the provision one way or another, and other relevant considerations.
>
> This is not an exhaustive list of factors which will aid courts in interpreting whether a provision is directory or mandatory.

Nonetheless, the court, after reviewing the Statement of Objects and Reasons regarding the intent behind the authority to establish administrative tribunals "*i.e. to alleviate growing backlogs in the High Court and ensure the rapid resolution of service issues"*,[56] determined that it cannot be asserted that Parliament was required to utilize this authority upon meeting specific conditions. The court further stated that article 323-A does not remove Parliament's authority to select a different

53 *Supra* note 2, para 33.

54 (1977) 2 SCC 166.

55 (2007) 8 SCC 338.

56 *Supra* note 2, Para 37-38.

approach to decrease backlogs or guarantee prompt justice through any other means, such as enhancing other adjudicatory systems. Therefore, the term "may" in Article 323-A of the Constitution does not carry the same meaning as the term "shall". Article 323-A is a directory provision that grants the Union Government the authority to create an administrative tribunal. Consequently, Article 323-A does not prevent the Union Government from disbanding an administrative tribunal after its establishment.[57]It also made remarkable observation that:[58]

> …nothing in the scheme of Article 323-A indicates that it is a mandatory provision. The consequences of reading Article 323-A as mandating the creation of administrative tribunals, would be to foreclose the possibility of the adoption of an alternate course of action to achieve the desired objective of reducing arrears and ensuring speedy justice. This, too, indicates that it could not have been the intention of Parliament to mandate the establishment of administrative tribunals as the only remedy to mounting arrears or as the only manner in which speedy justice could be secured.

Another important question which was floating before the court was that whether section 21 of General Clauses Act can be applied to the administrative order which established the OAT. Court before answering this question went on to discuss whether the order which established the OAT *i.e.,* a quasi-judicial body is a quasi-judicial act or not. This is so because the there are impediments on application of section 21 to quasi-judicial orders or notifications.[59]The court observed that for an order, notification or decision to quasi-judicial following criterion emerges:[60]

> a. The decision of an authority is prima facie, and in the absence of any other factor, a quasi-judicial act when there is a *lis* before it, with two parties with competing claims;
>
> b. When the authority has the power to do something which will prejudicially affect the subject, the decision it takes is a quasi-judicial act even in the absence of a *lis* and two parties with competing claims, when the authority is required by the statute in question to act judicially. The express provisions of the statute, the nature of the right affected, the manner of disposal, the objective criterion (if any) to be adopted while deciding one way or the other, the effect of the decision, and other signs in the statute may be considered when evaluating whether there is a duty to act judicially; and

57 *Id*., para 42.

58 *Id*., para 38.

59 *Indian National Congress (I)* v. *Institute of Social Welfare,*(2002) 5 SCC 685; Also see, *Province of Bombay* v. *Khushaldas S. Advani* (1950) SCC 551; *Board of High School and Intermediate Education* v. *Ghanshyam Das Gupta*, AIR 1962 SC 1110.

60 *Supra* note 2, para 49.

> c. The decision of an authority is quasi-judicial when it is made in accordance with rules. The decision is administrative when it is dictated by policy and expediency.

Consequently, the Union Government was not functioning in a judicial role when it established the OAT. Upon the creation of the OAT, ongoing cases in the high court were moved to the OAT. Certainly, the choice to create a SAT is grounded in policy and practicality.

The court subsequently determined that each state government must assess the necessity for a SAT in their state, weighing the pros and cons alongside the financial, administrative, and other practical considerations involved in setting up a SAT. The Union Government may subsequently form the SAT upon obtaining a request, according to Section 4(2) of the Administrative Tribunals Act. The choice to create a SAT is certainly an administrative choice. Administrative decisions, in contrast to quasi-judicial decisions, can be overturned through the invocation of Section 21 of the General Clauses Act. The use of Section 21 of the General Clauses Act is not ruled out in this instance. The Administrative Tribunals Act lacks a clause and associated procedure for dissolving an SAT after its establishment. Nonetheless, this does not imply that the elimination of a SAT, once it is established, is not allowed. Consequently, there is nothing in the Administrative Tribunals Act that contradicts the enforcement of Section 21 of the General Clauses Act. The pertinent state government possesses the implied authority to submit a request to the Union Government for the dissolution of the SAT within its state. The Union Government consequently possesses the implied authority to revoke the notification that established that SAT, thus eliminating the SAT.Furthermore, regarding the claim that the Union Government's authority to abolish SATs must originate from the same law that grants it the power to create them, and that the Union Government lacks the authority to eliminate SATs since the Administrative Tribunals Act does not allow for it. This reasoning is flawed for the straightforward reason that the primary aim of Section 21 of the General Clauses Act is to account for situations like the present one, where the relevant statute does not clearly grant the authority to add to, amend, change, or revoke a notification (or order, rule, or by-law) that has been issued.

The court also delved into the appellant's argument that introducing the Administrative Tribunal (Amendment) Bill 2006 indicates that Parliament believed the Union Government lacked the authority to dissolve SATs without an enabling provision. The court noted that it might similarly be possible that Parliament intended to clarify the Union Government's authority to abolish SATs instead of granting it that power.

It was also argued that abolishing the OAT extends the jurisdiction of the High Court of Orissa, but only Parliament has the authority to establish or expand jurisdiction, as held in *A.R. Antulay* v. *R.S. Nayak.*[61] To which, the court responded that transferring cases from the OAT to the High Court of Orissa can be accurately

61 (1988) 2 SCC 602.

viewed as a revival of the latter's jurisdiction. This is due to the fact that before OAT was established, the High Court of Orissa held jurisdiction. As the high court has previously held that jurisdiction, it is simply reinstating its authority over the same subject matter. This is why the ruling in A.*R. Antulay* does not pertain to the circumstances of the current case. Thus, the inevitable result of the Union Government revoking the notification that created the OAT would be to restore the *status quo ante*of the original situation.

Finally, the bone of the contention argument *i.e.* the state government has misinterpreted the *L. Chandrakumar's*[62] judgment as a result of which request for abolition of Orissa Administrative Tribunal (OAT) was made by the state government to the Central Government.The appellant argued that the number of tiers of litigation stays unchanged even with the abolition of the OAT, thereby, implying there is no benefit to be gained from its removal. Rather than parties initiating a case before the OAT at first, then opting for a petition under article 226 before a division bench of the high court and then special leave petition under Article 136 before the Supreme Court, they will directly file a case in the high court. This will be adjudicated by single judge bench, and then the, parties can seek a writ appeal beforethe division bench of the high court, then finally followed by an additional challenge beforethe Supreme Court *i.e.* this court. Thus, there still exists three tiers of litigation, regardless of the forum in which the proceedings are conducted.

However, the court considered the *raisen d'etre* because of which state was obliged to abolish the OAT. The reason due to which, the state government established the OAT was to ensure rapid justice. A key element (to its perspective) was the removal of tiers of legal proceedings. The state government believed that establishing the OAT would not achieve the goal of speedy redressal of grievance resolution since there was no enhancement in the justice delivery system by removing a tier of litigation. In addition to the impact of the decision in *L. Chandrakumar,*[63] the state government considered other factors related to the functioning of the OAT.

Moreover, the state government weighed the costs associated with running the OAT against the rate at which cases are disposed of. These reasons were significant to the decision about whether a tribunal should be continued. Furthermore, the state government's action of seeking the High Court of Orissa opinion (after getting a request from the Union Government) prior to the decision to eliminate the OAT was neither irrelevant nor extraneous. The cases pending before the OAT were to be moved to the High Court of Orissa, and the views of that court were pertinent to the state government's decision. Thus, the state government did not take into account factors that were either irrelevant or extraneous to its decision.

62 *Supra* note 40.
63 *Ibid*.

Furthermore, lacking a right to be heard prior to the creation or execution of a policy does not imply that those impacted are barred from contesting the policy in a court of law. This means that a policy decision cannot be invalidated simply because it was made without giving the general public (or a specific segment of it) a chance to express their views. A policy can be challenged as sustainable if it is determined to violate constitutional rights or contravene a mandate of law. Moreover, the Central Government cannot be considered *functus officio* once the OAT has been established. This is due to the fact that the choice to create the OAT was administrative and based on policy considerations. If the principle of *functus officio* were to be implemented in the realm of administrative decision-making by the state, its executive authority would be significantly hindered. The state would become incapable of altering or undoing any policy or policy-related decision, causing its operations to cripple and come to a standstill. All policies would reach a definitive state, making any alteration virtually impossible.[64]

Lastly, the argument that the notification for abolition of OAT is invalid is not tenable. The court on this argument made observation that:[65]

> A notification which is not in compliance with clause (1) of Article 77 is not invalid, unconstitutional or *non-est* for that reason alone. Rather, the irrebuttable presumption that the notification was issued by the President of India (acting for the Union Government) is no longer available to the Union Government. The notification continues to be valid and it is open to the Union Government to prove that the order was indeed issued by the appropriate authority.

Also, it is appropriately noticed by the court that the notification by which OAT was established was not issued in the name of the President. However, appellants seek to preserve the establishment of the OAT by that notification, while assailing the notification which abolished the OAT. Hence, if the argument of the appellant were to be accepted then the notification by which the OAT was established would be invalid too on this ground alone. The court thereby observed that:[66]

> Article 77 is a directory provision. Article 77(1) refers to the form in which the decision taken by the executive is to be expressed. This is evident from the phrase "expressed to be taken" in clause (1) of Article 77. It does not have any bearing on the process of decision-making itself. The public or the citizenry would stand to suffer most from the consequences of declaring an order that is not expressed in the name of the President null and void.

While responding to the argument that the right of appellants access to justice have been impinged upon by the abolition of the OAT. The court reiterated

64 *Supra* note 2, para 95.

65 *Id.*, para 101.

66 *Supra* note 2, para 107.

the ruling in *Anita Kushwaha* v. *Pushap Sudan*[67] in light of the circumstances of the present case and observed that:[68]

> …adjudicatory mechanisms must be reasonably accessible in terms of distance. The High Court of Orissa has creatively utilised technology to bridge the time taken to travel from other parts of Odisha to Cuttack. Indeed, other High Courts must replicate the use of technology to ensure that access to justice is provided to widely dispersed areas. This will ensure that citizens have true access to justice by observing and participating in the proceedings before the High Courts in cases of concern to them. The submission made on behalf of the State of Odisha that compensation schemes may be used to alleviate financial hardships must also be taken into account. Further, legal aid programs sponsored by the state are also useful in addressing any financial hardships.
>
> 114. Significantly, the Orissa High Court has established benches which will operate virtually in multiple cities and towns across the state. This negates the appellants' argument that the Orissa High Court is less accessible than the OAT.
>
> 115. Litigants may therefore approach the Orissa High Court for the resolution of disputes. The abolition of the OAT does not leave litigants without a remedy or without a forum to adjudicate the dispute in question. It is therefore not violative of the fundamental right of access to justice

VI ULTRA VIRES

In *Sivanandan C.T.* v. *High Court of Kerala,*[69] Supreme Court examined the manner in which the administrative committee applied the statutory rules and scheme of examination to the judicial service recruitment examination. The issue before the court was that the administrative committee had applied similar standards which were prescribed for written examination as the qualifying criterion to the viva voce stage of examination. The Rule 2(c)(iii) of 1961 rules provided that 25 percent posts in category of district and sessions judge including additional district judge shall be filled by direct recruitment from Bar "on basis of aggregate marks obtained in written examination and viva voce". In which general and OBC category candidates were required to secure percent marks while SC/ST candidates were required to secure 40 percent marks in aggregate for the written papers, pursuant to which candidates securing such marks shall be called for *viva voce*. However, after the *viva voce* was conducted a resolution was passed applying same standard of written examination to the *viva voce* examination. The Supreme Court observed that decision of the high court suffers from infirmities since it was contrary to Rule

67 (2016) 8 SCC 509.

68 *Supra* note 2, para 113.

69 (2024) 2 SCC 269.

2(c)(iii) of the Rules, also, decision to prescribe cut-off for viva voce was taken after test was conducted. Furthermore, the any deviation could only be made by the administrative committee after making suitable amendments to the concerned Rules, besides it is only when the statutory rules are silent, can they be supplemented in manner consistent with the object and spirit of Rules by administrative order or resolution. Therefore, the decision of high court was ultra vires the 1961 Rules and hence manifestly arbitrary.[70]

In *Independent Schools' Assn., Chandigarh* v. *Union of India,*[71] the appellant had assailed a notification passed by appropriate authority while exercising power under section 87 of Punjab Reorganisation Act, 1966 which envisaged the insertion of a proviso to upload income, expenditure account and balance sheet on website of unaided educational institutions and also to disclose complete fee structure at the beginning of academic year in booklet and also to not charge any cost from the parents and to not raise the fee any time during the academic session. The question before the court was that whether the above insertion could be regarded as peripheral or insubstantial change to the provisions of the Punjab (Regulations of Fees of Unaided Educational Institutions) Act, 2016, which have been extended vide the impugned notification issued in exercise of powers under Section 87 of the 1966 Act. To which court made observation that:[72]

> 10. … 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 (the 2016 Act), which is extended in terms of the impugned Government Order/ Notification, makes no provision regarding disclosure of income, expenditure, account and balance sheet on website of the unaided schools, including as applicable in the State of Punjab. It would be a different matter if 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.

Thus, the court after examining the scope and objective of the parent act *viz*., Act of 2016 and Act of 1966 held that the change introduced by the appropriate authority is ultra vires and cannot be regarded as peripheral or insubstantial change as 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*.

70 *Id*., para 16.

71 (2022) 14 SCC 387.

72 *Id*., para 10.

VII CONCLUSION

The survey of administrative law jurisprudence for the year under review underscores the judiciary's pivotal role in shaping the contours of executive accountability and procedural fairness. The judgments analysed reveal a consistent commitment to ensuring that administrative actions are rooted in legality, transparency, and reasoned decision-making, reflecting the broader principles of good governance.

Central to these developments is the principle of *accountability*, which intertwines *responsibility*, *answerability*, and *enforceability*, ensuring that the executive remains grounded in its purpose to serve the public.[73] The Indian judiciary have reiterated that arbitrariness in executive actions cannot be claimed in the absence of a factual basis, signalling the need for well-documented and reasoned decisions.[74] At the same time, the judiciary has shown restraint, emphasizing that every error or illegality does not equate to *malafide* intent, unless there is some evidence of ulterior motives.[75]

The interplay between statutory provisions and executive power has been clarified further, with courts affirming that while executive actions cannot contradict statutory rules, they may supplement them where the law is silent, provided such actions are consistent with the legislative intent. However, any retrospective administrative action must derive legitimacy from explicit legislative authority, reinforcing the principle of legal certainty.[76]

Administrative efficiency is balanced with procedural safeguards, particularly through the insistence on reasoned orders and the right to a fair hearing. Speaking orders that reflect the application of mind by adjudicatory bodies ensure *accountability*, while the right to respond to materials used against a party safeguards the principles of natural justice.[77]

The nuanced distinction between judicial review of civil disputes and administrative actions highlights the courts' role in maintaining the fine balance between intervention and deference, ensuring that administrative discretion is exercised within the bounds of legality and reasonableness.[78] The procedural framework within tribunals, particularly in cases of differing opinions, emphasizes structured decision-making while respecting the adjudicatory hierarchy.[79]

Lastly, the judiciary's engagement with broader themes, such as the constitutionality of administrative tribunal abolition, the application of the General Clauses Act to administrative decisions, and the doctrine of *ultra vires* in academic

73 *Supra* note 3.
74 *Supra* note 9.
75 *Supra* note 15.
76 *Supra* note 4.
77 *Supra* note 26
78 *Supra* note 1.
79 *Supra* note 37.

settings, reflects a continued effort to reconcile executive actions with the overarching principles of justice and fairness.[80]

This survey reaffirms the dynamic nature of administrative law, where evolving judicial interpretations contribute to a robust framework that holds the executive accountable while facilitating effective governance. As the interface between the state and individuals grows more complex, these principles serve as critical safeguards to uphold the rule of law in administrative processes.

80 *Supra* note 2.