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ADMINISTRATIVE LAW

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I INTRODUCTION

IN THE year 2013, the annual survey on the administrative law[1] revealed that the judicial trend in the area of administrative law was almost the same as was in the previous year. In the survey of 2013, the court cautioned the statutory authority not to act with pre-conceived notions.[2] The court reiterated that a statutory authority shall not act with pre-conceived notions and the court also cautioned that public money cannot be spent unless there is mutual benefit.[3] In quasi-judicial proceedings, the authority deciding a dispute has to be free from bias, without conscious or unconscious prejudice to either of the contesting parties.[4] The court also reiterated that the burden to prove prejudice caused by non-grant of opportunity of hearing lies on a person challenging order concerned on the ground that it is causing civil consequences.[5] The court made it clear that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions.[6] In judicial review cases, the court held that it is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority.[7] This trend remained continued in this year also.

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1 See S.S. Jaswal, "Administrative Law" XLIX, *ASIL* 1 (2013).

2 *State of Madhya Pradesh* v. *Sanjay Nagayach* (2013) 7 SCC 25.

3 *Sant Longowal Institute of Engineering and Technology* v. *Suresh Chandra Verma* (2013) 10 SCC 411.

4 *Union of India* v. *Sanjay Jethi*, 2013 (13) SCALE 82.

5 *Ratnagiri Gas & Power (P) Ltd.* v. *RDS Project Ltd.* (2013) 1 SCC 524.

6 *Director General of Posts* v. *K Chandrashekar Rao* (2013) 3 SCC 310.

7 *Tata Sky Ltd.* v. *State of M.P.* (2013) 4 SCC 656.

In the present survey the decisions of the Supreme Court has been limited to important pronouncements in the area of executive action, judicial review, delegated legislation and natural justice. Some of the cases decided in the previous year but reported in the year of this survey have also been covered.

II EXECUTIVE ACTION

Pre-conditions of enforceability of executive guidelines

It is a settled principle of administrative law that executive guidelines cannot be enforced unless shown to have acquired the force of law. In the survey year the principle was once again reiterated by the Supreme Court in *Gulf Goans Hotels Co. Ltd.* v. *Union of India* [8] wherein it was held that the impugned executive guidelines relied upon by the respondents failed to satisfy the essential parameters and requirements of law and same cannot be enforced to the prejudice of appellants. The court in its judgement laid down the following pre-conditions for enforceability of executive guidelines: [9]

(i) Executive guidelines must be shown to have acquired the 'force of law'. Any guideline is said to have acquired the 'force of law' if it conforms to a certain form possessed by other laws in force and encapsulates a mandate and discloses a specific purpose.[10]

(ii) Executive guidelines of the Government of India and Government of a State are required to framed in the name of the President or the Governor of the state concerned, as the case may be.[11] Additionally, the guidelines are also required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be.[12] In the absence of due authentication and promulgation of the guidelines, the contents thereof can not be treated as an order of the Government and would really represent an expression of opinion.[13]

(iii) Natural justice requires that before a law can become operative it must be promulgated or published. Therefore, it is essential that executive guidelines claimed to be a law must be notified in the Official Gazette or made public in order to bind the citizens.

So far as the mode of publication of executive guidelines is concerned, it has been consistently held by the apex court that such mode must be as prescribed

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8 (2014) 10 SCC 673.

9 *Id.* at 688; also see *Harla* v. *State of Rajasthan*, AIR 1951 SC 467.

10 *Id.* at 684.

11 See the Constitution of India, art.77 (1) and 166 (1).

12 *Ibid.*

13 *Supra* note 1 at 687; also see *State of Uttaranchal* v. *Sunil Kumar Vaish* (2011) 8 SCC 670.

by the statute. In the event the statute does not contain any prescription and even under the subordinate legislation there is silence in the matter, the legislation will take effect only when it is published through the customarily recognized official channel, namely, the official gazette.[14]

In *Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.,*[15] the court was asked to decide the value and effect of the Resolution No. 21013/1/2000-Pol, on 08.06.2002 issued by the government under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The court held that the instructions contained in the resolution are advisory in character and do not confer any rights on the tenants and observed thus:[16]

> The instructions contained in this Resolution are undoubtedly guidelines, and are advisory in character and do not confer any rights on the tenants as held in para 23 of *New Insurance Assurance Co.Ltd.* v. *Nusli Neville Wadia.*[17] At the same time, the intention behind the guidelines cannot be ignored by the public undertakings which are expected to follow the same. When it comes to the interpretation of the provisions of the statute, the guidelines have been referred herein for the limited purpose of indicating the intention in making the statutory provision, since the guidelines are issued to effectuate the statutory provision. The guidelines do throw some light on the intention behind the statute. The guidelines are issued with good intention to stop arbitrary use of the powers under the Public Premises Act. The powers are given to act for specified reasons, and are expected to be used only in justified circumstances and not otherwise.

Effect of an executive order on the rules framed under proviso to article 309 of the Constitution

It is a settled principle of the administrative law that an executive order cannot supplant the rules framed under proviso to article 309 of the Constitution but can only supplement them. In the survey year the same principle was reiterated by the Supreme Court in *Public Service Commission Uttaranchal* v. *Jagdish Chandra Singh Bora*[18] in the following words:[19]

> However, we find substance in the submission made by Mr. C.U. Singh that 2004 clarification would not have the effect of amending 2003 Rules. Undoubtedly, 2004 clarification is only an executive order. It is settled proposition of law that the executive orders cannot supplant the

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14 *B.K. Srivastava* v. *State of Karnataka* (1987) SCC 658.

15 (2014) 4 SCC 657.

16 *Id.* at 687-688.

17 2008 (3) SCC 279.

18 (2014) 8 SCC 644.

19 *Id.* at 656.

> rules framed under the proviso to Article 309 of the Constitution of India. Such executive orders/instructions can only supplement the rules framed under the proviso to Article 309 of the Constitution of India.

Exercise of discretion by the administrative authorities

Courts in India have always held that the judge-proof discretion is a negation of rule of law. Therefore, they have developed various formulations to control the exercise of administrative discretion. Renowned administrative law scholar Professor I.P. Massey has grouped these formulations into two broad generalizations which are as follows:[20]

(a) That the authority is deemed not to have exercised its discretion at all or failure to exercise discretion.

(b) That the authority has not exercised its discretion properly or excess or abuse of discretion.

In the survey year the apex court decided two cases relating to improper or excessive exercise of discretion by the administrative authorities. The first case was *Dipak Babaria* v. *State of Gujarat* [21] wherein the main issue before the court was: whether the collector, who is the competent statutory authority to exercise the administrative discretion under the provisions of Gujarat Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 (hereinafter '1958 Act)', acting on the instructions of the minister is a case of *ultra vires* dictation? The court answered the issue in positive and held that collector, the competent statutory authority under the provisions of 1958 Act; acting on the instructions of minister is clearly a case of *ultra vires* dictation by state government to the collector. In this regard the court made the following observation:[22]

> It is not merely the end but the means which are of equal importance, particularly if they are enshrined in the legislative scheme. The minimum that was required was an enquiry at the level of the collector who is the statutory authority. Dictating him to act in a particular manner on the assumption by the minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The ministers are not expected to act in this manner and therefore, this particular route through the corridors of the ministry, contrary to the statute, cannot be approved. The present case is clearly one of dereliction of his duties by the collector and dictation by the Minister, showing nothing but arrogance of power.

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20 See I.P. Massey, *Administrative Law,* 69 (Eastern Book Company, Lucknow, 7th edn., 2008).

21 (2014) 3 SCC 502.

22 *Id.* at 544.

Further, the court also made important observations regarding a situation in which a senior civil servant had expressed his views through notings in official files which were overruled by the minister who had taken a different view. In the instant case, the secretaries had given advice in accordance with the statute and yet the minister has given a direction to act contrary thereto and permitted the sale. The court held that directions given by the minister amounts to a clear breach of the statutory requirements provided under the 1958 Act and observed thus:[23]

> A higher civil servant normally has had a varied experience and the ministers ought not to treat his opinion with scant respect. If ministers want to take a different view, there must be compelling reasons, and the same must be reflected on the record. In the present case, the Secretaries had given advice in accordance with the statute and yet the minister has given a direction to act contrary thereto and permitted the sale which is clearly in breach of the statute.
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> The court also opined that if the law requires that a particular thing should be done in a particular manner it must be done in that way and none other. The state cannot ignore the policy intent and the procedure contemplated by the statute.[24]

Secondly, in *J. Jayalalitha* v. *State of Karnataka*[25] Supreme Court made strong observations regarding the use of discretionary power by the state government to promote vested interest by making a mockery of justice, equity and fair play. The court came down heavily on the Government of Karnataka for exercising the power available to it under section 21 of the General Clauses Act, 1897 in bad faith and with vested interest and observed thus:[26]

> In the instant case, as disclosed during the course of arguments, there has been a change of the political party in power in May 2013 and thus, the order of the State Government is alleged to be politically motivated. In our opinion, though there is an undoubted power with the Government to withdraw or revoke the appointment within section 21 of the General Clauses Act, but that exercise of power appears to be vitiated in the present case by *malafides* in law inasmuch as it is apparent on record that the switch-over of government in between has resulted in a sudden change of opinion that is abrupt for no discernable legally sustainable reason. The sharp transitional decision was an act of clear unwarranted indiscretion actuated by an intention that does not appear to be founded on good faith.

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23 *Id.* at 543.

24 *Ibid.*

25 (2014) 2 SCC 401.

26 *Id*. at 413.

> The court also held that unless it is found that the act done by the authority earlier in existence is either contrary to the statutory provisions or unreasonable, or is against public interest, the state should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.[27]

Fairness in administrative action

There should be fairness in administrative action and it should be free from the vice of arbitrariness. It is highly advisable for administrative authorities that they should not allow their actions to be influenced by undue sympathy. In the survey year the advisory was also reiterated by the Supreme Court in *Vinod Kumar* v. *State of Haryana*[28] wherein the expunction of adverse remarks based on representation which was not maintainable and without valid reason or justification was held to be an act of undue sympathy and declared unsustainable in the eyes of law. Showing undue sympathy in administrative action without stating any such sympathetic grounds would be anathema to fairness and was further held to be violative of article 14 of the Constitution.

The court also made an important observation regarding the permissibility of administrative review and grounds thereof. The court held that the wrong and illegal acts committed by administrative authorities can be undone by themselves by reviewing such orders if found *ultra vires* and on the same grounds which are available to courts exercising powers of judicial review, after following principles of natural justice and observed thus:[29]

> Thus, if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be *ultra vires*. Of course, it is to be done after following the principles of natural justice. This is precisely the position in the instant case and we are of the opinion that it was open to the respondents to take corrective measures by annulling the palpably illegal order of the earlier DGP, Haryana.
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> The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi- judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land

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27 *Ibid*. See also: *M.I. Builders Pvt. Ltd.* v. *V. Radhey Shyam Sahu,* AIR 1999 SC 2468; *Onkar Lal Bajaj* v. *Union of India,* AIR 2003 SC 2562; *State of Karnataka* v. *All India Manufacturers Organization*, AIR 2006 SC 1846 and *A.P. Dairy Development Corporation Federation* v. *B. Narasimha Reddy*, AIR 2011 SC 3298.

28 AIR 2014 SC 33.

29 *Id.* at 41.

> or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.[30]

In *Bihar State Government Secondary School Teachers Association* v. *Ashok Kumar Sinha*[31] the issue of value and effect of noting made by an officer in education department on a resolutions passed by the state cabinet for merger of BSES and BES while issuing an order dated 24.4.2013 for grant of assured career progression to officers of the merged cadre was raised before the court. The court declared the noting inconsequential and held that the resolution was passed by cabinet which means that it was the decision at the highest level. Hence it was not open to the officer to make such comments by exhibiting his purported superior knowledge, that too in order granting assured career progression to officers in merged cadre.

Duty of the government in implementing policy decisions

Under the Indian constitutional scheme it is the domain of the executive to frame policies or to take policy decisions. Once a policy has been framed or a policy decision has been taken then it is the obligation of the executive to fulfill the promises made under such policy. Therefore, before laying down any policy which would give benefits to its subjects, the executive must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the state should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the state not to act as per its promise. In *S.V.A. Steel Re-Rolling Mills Ltd.* v *State of Kerala*[32] wherein respondent-government was desirous of having industrial development in the State of Kerala and therefore, it had framed certain policies so as to encourage and invite businessmen for setting up their manufacturing units in the state. Due to shortage of electricity supply in the state, interested entrepreneurs were not inclined to set up their units in the State of Kerala. In view of the above stated circumstances, the state government had laid down a policy whereby it declared to give continuous electricity supply at a particular rate to certain new manufacturing units. The policy was declared under a executive order dated 21st May 1990 by virtue of which, the respondent-state had assured the manufacturing units to be set up in the State of Kerala that electricity connection would be given to the projects which might be set up and they would be exempted from power cut for a period of 5 years from the date of commencement of commercial production. Such new units were also given certain exemption in relation to payment of electricity duty for a period of five years. In pursuance of the abovementioned policy the appellants had established their manufacturing units in the respondent-state. Further, the requisite conditions, which had been imposed upon such new units, had been fully

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30 *Ibid.*

31 (2014) 7 SCC 416.

32 (2014) 4 SCC 186.

complied with by the appellants and therefore, the appellants were entitled to an uninterrupted electricity supply for a period of 5 years from the date on which they had commenced their commercial production. In spite of the assurance given by the respondent-state to the new units that they would not suffer any power cut, because of certain difficulties faced by the board with regard to supply of electricity to new units, there used to be power cuts which adversely affected the new units.

The apex court elaborately discussed the nature and extent of the duty of any government, while framing a policy to confer benefits on its subjects the step which ought to be taken by the government to implement such policies and came to the following conclusion:[33]

> Framing such policies and doing the needful for its implementation are administrative functions of the respondent-State and therefore, normally this Court would not like to interfere with its policies but looking at the peculiar facts of the case, where an assurance had been given for uninterrupted supply of electricity, one would presume that the respondent-State must have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units. If for any reason it was not possible to supply electricity as assured, the respondent-State ought to have extended the period of 5 years by the period during which assured electricity was not supplied. By doing so, the respondent-State could have made an effort to fulfill its promise and satisfied the persons who had acted on an assurance given by the State and set up their manufacturing units in the State of Kerala.

In the instant case, a very pertinent issue before the court was as to how the adversely affected persons who had been assured by a promise with regard to continuous supply of electricity for five years can be fairly compensated. Deciding the issue the court held thus:[34]

> …[T]hat the benefit extended by the respondent State is not sufficient. The respondent-State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured under G.O. dated 21.5.1990 and 6.2.1992. We, therefore, direct the respondents to give the said benefit by extending the period of incentive.

The judgment of the apex court in the instant case has done a great service to the nation by reminding the central as well as state governments of their legal duty of do the needful for implementing any policy framed by them. If the government(s) has failed to perform their duty under any policy, then the policy shall be implemented under the supervision of the court. The court had also

33 *Id.* at 194.

34 *Id.* at 195.

made it clear that it shall not hesitate in interfering with such policy decisions which are not being adequately implemented on the petition of those who are legally entitled for the benefits conferred by such policy.

III JUDICIAL REVIEW

Judicial review of the policy decision of state authorities based on the opinion of experts

The apex court has been consistent in its observation that the power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic, set-up to which polity is so deeply committed cannot function properly unless each of three organs appreciates the need for mutual respect and supremacy in their respective fields. The trend is continued in the survey year in *Jal Mahal Resorts (P) Ltd.* v. *K. P. Sharma,*[35] wherein the apex court declined to interfere with the technical and administrative aspects of the decision of the state government to execute lease deed in favour of the appellants for 99 years which was based upon the opinion of the experts from the field of environment, architecture, archeology etc. and quashed and set aside the impugned judgment and order of the high court to the extent by which the lease deed executed by the State Government in favour of the petitioner has been cancelled except an area of 13 bighas 17 biswas equivalent to 8.65 acres and the balance disputed area claimed to be lakebed comprising 14.15 acres shall be shall be notionally treated as part of the lease deed but the same shall remain a construction free zone where neither the State Government of Rajasthan nor the appellant-lessee/Jal Mahal Resorts Pvt. Ltd. shall have the right to raise any/ construction on this area as the same shall remain exclusively for the use of public promenade / walkway free of charge. While quashing the judgment of the high court the apex court reiterated the importance of doctrine of separation of power and also discussed elaborately its limitations to review the technical and administrative aspects of the decisions of the state government, especially if it is a result of opinions of the experts and observed thus:[36]

> From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State Authorities specially if it based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved

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35 (2014) 8 SCC 804.

36 *Id.* at 861.

by one Government after the other, will have to be given due credence and weightage. In spite of this if the Court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers.

The court further held that in the era of liberalization, globalization and privatization the courts should exercise the power of judicial review by drawing a *laxman rekha* while examining the correctness of the decisions of executive which are taken after a due deliberation and diligence and which do not reflect any arbitrariness and illegality in their formation and execution and observed thus:[37]

What is sought to be emphasized is that there has to be a boundary line or the proverbial *'laxman rekha'* while examining the correctness of an administrative decision taken by the State or a Central Authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalization wherein global players are also involved as per policy decision.

In *Secretary Government (NCT of Delhi)* v. *Grade I Dass Officers Association,*[38] the apex court once again explained the scope of judicial review of policy decision and held that assured career progression scheme being a policy decision of the government would not be amenable to judicial review.

IV DELEGATED LEGISLATION

Promulgation of rules to nullify the orders of the court is impermissible and amounts to contempt of court

The government has the prerogative to frame service rules in one way or the other, subject to judicial review on settled principles. But can such a power be exercised to nullify the orders of the court is an important question which was

37 *Id.* at 862.

38 (2014) 13 SCC 296.

answered by the Supreme Court in *Bihar State Government Secondary School Teachers Association* v. *Ashok Kumar Sinha.*[39] In its judgment the court not only declared any promulgation of rules impermissible but also held that any such promulgation shall amount to contempt of court.

In the instant case the petitioner is an association representing the teachers of the Bihar Subordinate Education Service (hereinafter 'BSES'). They had filed a writ petition in the Patna High Court claiming merger of their cadre with the Bihar Education Service (hereinafter 'BES'). The writ petition was allowed and the Letters Patent Appeal (hereinafter 'LPA') and Special Leave Petition (hereinafter 'SLP') filed against the same were dismissed. Since the benefits of merger of cadre were still not being granted, another writ petition was filed, which too was allowed and affirmed in LPA. Although leave was granted in the SLP filed by the State of Bihar, ultimately the civil appeal was dismissed by the judgment dated 19.04.2006 resulting in the outcome in favour of the petitioner. Complying with the aforesaid judgment of the Supreme Court the state government passed a resolution dated 07.07.2006 merging BSES cadre with BES cadre on the basis of seniority of members and consequential benefits of the merger like enhancement of pay, promotion *etc.* were granted to the members of BSES cadre.

The second round of litigation was started by BES by filing a writ petition challenging the merger. A single judge of the high court allowed it vide judgment dated 31.10.2007,[40] which was affirmed by a division bench on 21.05.2010. This judgment was challenged before this court by filing SLP. The SLP was granted leave and appeal was ultimately heard finally. Eventually this appeal was allowed by a detailed judgment dated 23.11.2012, thereby setting aside the judgment of the high court. This court also quashed the notification of the state government dated 19.11.2007, by which the benefits of merger granted to the teachers had been withdrawn. As a corollary state government's resolution dated 07.07.2006 was upheld and restored by which the cadre of the BSES teachers, teaching branch had been merged with that of BES and the state government was directed to act accordingly. The present contempt petition has been filed by the petitioner alleging that the respondents herein had deliberately, willfully and intentionally failed to comply with the directions contained in the judgment dated 23.11.2012 by refusing to grant all admissible benefits of mergers to the petitioners. The

39 (2014) 7 SCC 416.

40 Immediately after the judgment of the learned single judge, the state government withdrew the resolution of merger dated 07.07.2006 by a notification dated 19.11.2007 expressly mentioning therein that the same was being issued in light of the high court judgment dated 31.10.2007 and thereby all benefits of merger of cadre were withdrawn. Several consequential benefits had been granted to the teachers pursuant to the merger by issuing various resolutions. These benefits were also withdrawn and in fact a resolution was passed by the state government on 17.01.2008 directing that the teachers would get pay and other benefits, as they were getting prior to the merger, thereby nullifying the effect of earlier Resolution of merger dated 7.7.2006.

petitioner further alleged that there were three rounds of litigation earlier and the petitioners were fighting for justice since 1977 when decision was taken by the government to merge the two cadres. By framing 2014 Rules, the government negated the effect of merger thereby leaving the petitioners in lurch once again and now the plea was taken to approach the court again with fourth round of litigation. Allowing the contempt petition the court held that the through rule 4 and 27 of the 2014 rules, the respondent had given a go-by to the combined gradation list which was prepared after the merger of the two cadres and had achieved segregation between the two cadres, hence the whole exercise of delegated legislation had been undertaken to nullify the directions of the Supreme Court in *Bihar Education Service Association* v. *State of Bihar*[41] and observed thus:[42]

> By placing the erstwhile BSES teachers in teaching sub cadre, are allowed to go upto the position of Principal which is the highest promotional post in their sub cadre. On the other hand BES Officers who are put in administrative sub cadre would continue to control the schools. Moreover, each sub cadre is to have its separate seniority list. It means the combined gradation list is given a go bye and even by bringing BSES in BES, segregation between the two cadres is achieved with these provisions. To our mind the aforesaid provisions of 2014 Rules negate the very effect of merger which was envisaged way back in the year 1977. In spite of succeeding in three rounds of litigation, the petitioners are not only treated as a distinct and separate class with the creation of the aforesaid sub cadre, the benefit which could accrue to them in a combined seniority list, as a result of merger, have been snatched away from them. What was given to these petitioners by the respondents in compliance of the judgment earlier has now been taken away with the promulgation of 2014 Rules.

The court further held that the respondent has promulgated the 2014 rules with an objective to frustrate the effect of the judgement which had made the petitioner entitled for the merger of their cadre with the BES and the consequential benefits. Instead of complying with the orders of the court the respondent had adopted mischievous means to nullify the effects of the previous judgment of the court, hence their act amounts to contempt of court and held thus:[43]

> …[b]y well crafted technique of creating sub cadres and treating teaching category as dying sub cadre, almost the same result, which was the position before the merger, is achieved. It is obvious that such provisions in 2014 Rules are made with the sole intention to frustrate

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41 (2012) 13 SCC 33.

42 *Supra* note 31 at 439.

43 *Id.* at 34.

> the effect of the judgment. We have no hesitation to say that this would amount to contempt of the court.

Interpretation of delegated legislation

The best interpretation is one in which the court relies upon not only the test but also the context in which the provisions has been made. In *Reserve Bank of India* v. *Peerless General Finance*[44] the Supreme Court has observed and categorically held that:[45]

> Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. (emphasis supplied)

In the survey year the abovementioned ruling was followed in the case of *National Insurance Co. Ltd.* v. *Kirpal Singh*[46] while interpreting the provisions of the General Insurance (Employees) Pension Scheme 1995 (hereinafter as 'Pension Scheme 1995) and General Insurance Employees' Special Voluntary Retirement Scheme 2004 (hereinafter as 'SVRS of 2004'). In the instant case the main issue before the apex court was whether the respondents who opted for voluntary retirement from the service of the appellant-companies under the relevant rules of SVRS of 2004 are entitled to claim pension under the Pension Scheme 1995. The court held that the a conjoint reading of Para 6 of SVRS of 2004 and Para 14 of Pension Scheme, 1995 clearly shows that any employee who has rendered minimum 10 years of service would qualify for pension, therefore, respondents are entitled to claim pension. While reaching the abovementioned conclusion the court has also held that the word 'retirement'

44 (1987) 1 SCC 424.

45 *Id.* at 450.

46 (2014) 5 SCC 189.

occurring in Para 14 of the Pension Scheme, 1995 should be liberally interpreted because it is a beneficial provision and observed thus:[47]

> The term retirement must in the context of the two schemes, and the admissibility of pension to those retiring under the SVRS of 2004, include retirement not only under Para 30 of the Pension Scheme 1995 but also those retiring under the Special Scheme of 2004. That apart any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age.

The court further explained the effect of word *'means'* in the definition of 'retirement' under para 2 of Pension Scheme 1995 if the same is read subject to the expression *'unless the context otherwise requires'* and observed thus:[48]

> We are mindful of the fact that the word 'means' used in statutory definitions generally implies that the definition is exhaustive. But that general rule of interpretation is not without an exception. An equally well-settled principle of interpretation is that the use of the word 'means' in a statutory definition notwithstanding the context in which the expression is defined cannot be ignored in any forensic exercise meant to discover the real purport of an expression.

The court further clarified that:[49]

> In the case at hand Para 2 of the Pension Scheme 1995 defines the expressions appearing in the scheme. But what is important is that such definitions are good only if the context also supports the meaning assigned to the expressions defined by the definition clause. The context in which the question whether pension is admissible to an employee who has opted for voluntary retirement under the 2004 scheme assumes importance as Para 2 of the scheme starts with the words "In this scheme, unless the context otherwise requires". There is nothing in the context of 1995 Scheme which would exclude its beneficial provisions from application to employees who have opted for voluntary retirement under the Special Scheme 2004 or vice versa.

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47 *Id*. at 198.

48 *Id.* at 195.

49 *Id*. at 198.

V NATURAL JUSTICE

Fundamental principles of natural justice

In *Union of India* v. *Sanjay Jethi*[50] it was held by the apex court that the fundamental principles of natural justice are ingrained in the decision making process to prevent miscarriage of justice. It is applicable to administrative enquiries and administrative proceedings as has been held in *A.K. Kraipak* v. *Union of India.*[51]It is also fundamental facet of principle of natural justice that in the case of quasi-judicial proceeding the authority empowered to decide a dispute between the contesting parties has to be free from bias. When free from bias is mentioned, it means there should be absence of conscious or unconscious prejudice to either of the parties and the said principle has been laid down by the apex court in many cases.[52] In the instant case, the Union of India was aggrieved by an order of the Armed Forces Tribunal, Regional Bench in Mumbai, setting aside a decision rendered by the additional court of inquiry against Colonel Sanjay Jethi and another person. It ordered a fresh Court of Inquiry (COI) with a different presiding officer and other independent members.

The plea of bias it is to be scrutinised on the basis of material brought on record whether someone makes wild, irrelevant and imaginary allegations to frustrate a trial or it is in consonance with the thinking of a reasonable man which can meet the test of real likelihood of bias. The principle cannot be attracted in vacuum.[53]

The principle of bias that can be culled out from the number of authorities fundamentally is that the question of bias would arise depending on the facts and circumstances of the case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination. While dealing with the plea of bias advanced by the delinquent officer or an accused a court or tribunal is required to adopt a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters, for the challenge of bias, when sustained, makes the whole proceeding or order a nullity, the same being *coram non-judice*. One has to keep oneself alive to the relevant aspects while accepting the plea of bias. It is to be kept in mind that what is relevant is actually the reasonableness of the apprehension in this regard in the mind of such a party or an impression would go that the decision is dented and affected by bias. To adjudge the attractability of plea of bias a tribunal or a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition. Keeping in

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50 (2013) 16 SCC 116.

51 (1969) 2 SCC 262.

52 See *Gullapalli Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation,* AIR 1959 SC 308; *Gullappalli Nageswarrao* v. *State of A.P.* AIR 1959 SC 1376 and *Dr. G. Sarana* v. *University of Lucknow* (1976) 3 SCC 585.

53 *Supra* note 50.

view the principles laid down in the aforesaid precedents and how the court has understood and dealt with the plea of bias, the case at hand is to be appreciated in its factual backdrop whether there has been 'really likelihood of bias'. Rejecting the appeal, the bench said: [54]

> We find that the Technical Members of the COI had compiled documents, adopted the methodology, made observations, drawn inferences and expressed the view and, above all, prepared the report which has been brought on record as a document. To say, they had not played any role would tantamount to blinking at reality…Their inclusion as Technical Members is not legally permissible. Even applying the rigorous substantive test, we find that a case of prejudice comes into full play in the case at hand.

Faulting the Tribunal for not evaluating the facts, the court said it had been conferred powers to deal with the cases with promptitude. But "promptitude does not ostracise or drive away the opposite exposition of facts and necessary ratiocination. A seemly depiction of factual score, succinct analysis of facts and law, pertinent and cogent reasoning in support of the view expressed having due regard to the rational methodology… are imperative."[55]

Applicability of natural justice

Natural justice is a principle of universal application. It requires that persons whose interests are to be affected by decisions, adjudicative and administrative, receive a fair and unbiased hearing before the decisions are made. The principle is traceable to the fundamental rights under part III of the Constitution of India. Whether any reasonable restriction or limitation or exception to this principle is permissible in the interest of national security, was the issue in *Ex. Armymen's Protection Services P. Ltd.* v. *Union of India*[56] for consideration in this case. The appellant in this case was granted business of ground handling services on behalf of various airlines at different airports in the country. The ground handling service is subject to security clearance from the central government.

So far as the exception to the principal of natural justice is concerned the court observed that it is now settled law that there are some special exceptions to the principles of natural justice though according to Sir William Wade,[57] any restriction, limitation or exception on principles of natural justice is "only an arbitrary boundary". To quote further:[58]

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54 *Id.* at 145.

55 *Id.* at 147.

56 (2014) 5 SCC 409.

57 H.W.R.. William Wade and C.F. Forsth, *Administrative Law* 468-470 (10th edn., Oxford University Press Inc., 2009).

58 *Supra* note 56 at 415.

> The right to a fair hearing may have to yield to overriding considerations of national security. The House of Lords recognized this necessity where civil servants at the government communications headquarters, who had to handle secret information vital to national security, were abruptly put under new conditions of service which prohibited membership of national trade unions. Neither they nor their unions were consulted, in disregard of an established practice, and their complaint to the courts would have been upheld on ground of natural justice, had there not been a threat to national security. The factor which ultimately prevailed was the danger that the process of consultation itself would have precipitated further strikes, walkouts, overtime bans and disruption generally of a kind which had plagued the communications headquarters shortly beforehand and which were a threat of national security. Since national security must be paramount, natural justice must then give way.
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> The Crown must, however, satisfy the court that national security is at risk. Despite the constantly repeated dictum that 'those who are responsible for the national security must be the sole judges of what the national security requires', the court will insist upon evidence that an issue of national security arises, and only then will it accept the opinion of the Crown that it should prevail over some legal right.(Emphasis supplied)

Earlier also in *Chandra Kumar Chopra* v. *Union of India,*[59] the apex court held that:[60]

> … mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record should show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum.

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59 (2012) 6 SCC 369.

60 *Id*. at 379.

Application of *audi alteram partem*

In *Mahipal Singh Tomar* v. *State of U.P.,*[61] the apex court held that in administrative law, the "rules of natural justice" have traditionally been regarded as comprising *audi alteram partem* and *nemo judex in causa sua.* The first of these rules requires the maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation. The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest or might otherwise be biased. The first principle is of great importance because it embraces the rule of fair procedure or due process. Generally speaking, the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue. This has been used by the courts for nullifying administrative actions. The premise on which the courts extended their jurisdiction against the administrative action was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure. Under the European Convention on Human Rights and Fundamental Freedoms of 1950, it is provided that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The rule of *audi alteram partem* was recognized in *R*. v. *University of Cambridge.*[62] In that case, the University of Cambridge had deprived Bentley, a scholar, of his degrees on account of his misconduct in insulting the vice-chancellor's court. The action of the university was nullified by the Court of King's Bench on the ground that deprivation was unjustified and, in any case, he should have been given notice so that he could make his defence. In that case, it was noted that the first hearing in human history was given in the Garden of Eden, in the following words:

> I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. "Adam', says God, 'where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldn't not eat?' And the same question was put to Eve also.

There is no gain said that the requirements of *audi alteram partem* are not capable of a strait jacket application. Their application depends so much upon the nature of the tribunal that is deciding the matter, the nature of the inquiry that is being made and the consequences flowing from the determination. A notice to the petitioners who were likely to be affected and a hearing afforded to them apart from written responses filed in reply to the notices was a substantial compliance with the principles of natural justice.[63]

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61 (2013) 16 SCC 771.

62 (1723) STRA. 557.

63 *Hitender Singh* v. *P.D. Krishi Vidyapeeth* (2014) 8 SCC 639.

Purpose of show-cause notice

In *Gorkha Security Services* v. *Government (NCT of Delhi)*[64] it was held by the apex court that the fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to court, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action. In this case an appeals raise an interesting question of law pertaining to the form and content of show cause notice, that is required to be served, before deciding as to whether the noticee is to be blacklisted or not. The question is as to whether it is a mandatory requirement that there has to be stipulations contained in the show cause notice that action of blacklisting is proposed? If yes, is it permissible to discern it from the reading of impugned show cause notice, even when not specifically mentioned, that the appellant understood that it was about the proposed action of blacklisting that could be taken against him?

The court observed that in the instant case, no doubt show-cause notice was served upon the appellant. The show cause notice is conspicuously silent about the blacklisting action. On the contrary, after stating in detail the nature of alleged defaults and breaches of the agreement committed by the appellant the notice specifically mentions that because of the said defaults the appellant was "as such liable to be levied the cost accordingly". It further says "why the action as mentioned above may not be taken against the firm, besides other action as deemed fit by the competent authority". It follows from the above that main action which the respondents wanted to take was to levy the cost. No doubt, notice further mentions that competent authority could take other actions as deemed fit. However, that may not fulfill the requirement of putting the defaulter to the notice that action of blacklisting was also in the mind of the competent authority. Mere existence of clause in the agreement entered into between the parties would not suffice the aforesaid mandatory requirement by vaguely mentioning other "actions as deemed fit".

The impugned order passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show cause notice given to this effect before taking action of blacklisting against the appellant. However, it is clarified that it would be open to the respondents to take any action in this behalf after complying with the necessary procedural formalities delineated above.

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64 (2014) 9 SCC 105.

VI CONCLUSION

The pronouncement of the apex court in the field of administrative law in this year reveals that the executive guidelines can not be enforced unless it acquires the force of law. This principle was once again reiterated by the Indian judiciary. The apex court also made strong observations regarding the use of discretionary power by the state government to promote vested interest by making a mockery of justice, equity and fair play.[65]

The court advised the administrative authorities that they should not allow their actions to be influenced by undue sympathy. This advisory was reiterated by the Supreme Court in a case wherein the expunction of adverse remarks based on representation which was not maintainable and without valid reason or justification was held to be an act of undue sympathy and declared unsustainable in the eyes of law.[66] The court also made it clear that it shall not hesitate in interfering with such policy decisions which are not being adequately implemented on the petition of those who are legally entitled for the benefits conferred by such policy.[67]

In the areas of judicial review, the court held that in the era of liberalization, globalization and privatization the courts should exercise the power of judicial review by drawing a *laxman rekha* while examining the correctness of the decisions of executive which are taken after a due deliberation and diligence and which do not reflect any arbitrariness and illegality in their formation and execution. The court has been consistent in its observation that the power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days. [68]

In this year also the apex court reiterated that the fundamental principles of natural justice are ingrained in the decision making process to prevent miscarriage of justice. It is also fundamental facet of principle of natural justice that in the case of quasi-judicial proceeding the authority empowered to decide a dispute between the contesting parties has to be free from bias. So far as the purpose of show cause notice in the principal of natural justice is concerned, the apex court reiterated that the fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same.

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65 *Supra* note 25.

66 *Supra* note 28.

67 *Supra* note 32.

68 *Supra* note 35.