

# WORKING PAPER

PROJECT : Procedure in Administrative Adjudication.

TOPIC : Administrative Procedure in Company Law Administration:  
Licensing and Government Permissions under Companies Act,  
I of 1956.

## PRELIMINARY EXPLANATION

THIS topic was chosen for study as part of the Administrative Procedure Project. The aim was to identify the significant discretionary functions vested in the Government under the Companies Act (I of 1956) affecting matters important to the conduct of companies and to discover what procedural safeguards exist for the exercise of such functions. In particular it was desired to discover what deficiencies, if any, exist in such procedural safeguards and to suggest corrective measures where necessary.

## PLAN OF WORK

The first steps taken in the study were (i) an analysis of the Act and Rules framed thereunder to select and tabulate matters under the Act requiring Government permission and (ii) a study of relevant case-law. This has been done.

The second stage planned was to obtain familiarity with the actual working of the system by interviews and by study of closed cases in the files of the Government department concerned. This part has yet to be done.

## OUTLINE OF SCOPE AND NATURE OF WORK DONE

A company engaging in an industrial undertaking has to obtain a licence issued in that behalf by the Central Government under section 11 (1) of the Industries (Development and Regulation) Act (LXV of 1951.<sup>1</sup>)

Also for the issue of capital exceeding five lakhs of rupees<sup>2</sup> in the States or outside the States, consent of the Central Government is necessary under sub-sections (1) and (2) of section 3 of the Capital Issues (Continuance of Control) Act (XXIX of 1947.<sup>3</sup>)

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1. Also a licence is required for substantial expansion of industrial undertaking under section 13 of the Act. The licence is subject to such conditions as are imposed by the Central Government under section 11(2). The procedure for grant of the licence is given by section 14 of the Act, and by rules 7 to 15 and 18 of the Registration and Licensing of Industrial Undertakings Rules, 1952. That for revocation or amendment of the licence is given by section 12 of the Act and by rules 16 and 17 of the Registration and Licensing of Industrial Undertakings Rules, 1952.
  2. Refer Clause 3(a) of the Capital Issues (Exemption) Order, 1949.

Matters requiring Government permissions under the Companies Act (I of 1956) can be tabulated under the following five categories :—

1. Licence required by a company under section 25 to be registered as a charitable or other non-profit making company.<sup>4</sup>
2. Matters in relation to which previous written approval of the Central Government is required. Such matters can further be divided into two sub-categories :

First, consisting of those in respect of which the Advisory Commission constituted under section 410 of the Act has been made by section 411 in mandatory terms to enquire into and advise the Central Government.<sup>5</sup>

Second, consisting of matters in respect of which no procedure has been laid down by the Act or Rules or Regulations for the grant of Government approval.<sup>6</sup>

3. Cases where a certificate of the Registrar of Companies has been made necessary by the Act.<sup>7</sup>
4. Those cases where the company is required to file certain documents with the Registrar of Companies and in default a penalty has been provided. It is presumed that in such cases the Registrar is obliged to issue a letter of acknowledgment which may be an evidence of the fact of filing of the documents and a defence against penalty.<sup>8</sup>
5. Matters respecting which the Registrar of Companies has been given a discretionary power to grant or refuse permission.<sup>9</sup>

There has not been much case-law on those provisions of the Act which fall within the scope of our study, because most of them were put on the statute book for the first time in the new Act.<sup>10</sup>

3. The procedure for grant or refusal of the consent is given by sub-sections (3), (4) and (5) of section 3, by sections 7 to 15 of the Act, and by the Capital Issues (Applications for Consent) Rules, 1954, issued by S.R.O. 828, dated the 9th March, 1954. That for revocation is given by sub-sections (6) and (7) of section 3 of the Act.
4. The procedure of grant of the said licence is given by Companies Regulations, 1956, issued by S.R.O. 432-B, published in the Gazette of India Extraordinary, Part II, section 3, 0. 298/74, dated 18th February, 1956, in regulations 3, 4, 5, 10 to 14. That for revocation of the said licence is given by sub-sections (7), (8) and (9) of section 25 of the Act. (Refer Main Paper, pp. 1 to 6).
5. Sections 259, 268, 269, 310, 311, 324, 326, 328, 329, 332, 343, 345, 346, 352, 408 and 409 of the Act deal with such matters (Ref. Sec. 411). Procedure is given by sections 412, 413, 414 and 415 (Ref. Main Paper, pp. 7 to 15).
6. Ss. 20, 21, 22(1) (a), 25 (6) (c) and (d), 79 (2) (ii), 89 (4), 114, 167 (1), 198 (4), 205, 208 (3), 211, 212, 213, 224 (8), 235(a) and (b), 237(a) (i), 295 (1) and (3), 300 (3), 316 (4), 327 (c), 345, 372 (3), 373, 385, 386 (4), 396, 399 (4), 439 (1) (f), 496 (1) (a), 508 (1) (a), 555 (7) (b), 572, 594 and 610 (1) (b), proviso of the Act fall under this sub-category. (Ref. Main Paper, pp. 15 to 17).
7. Such matters fall under sections 33, 567 and 568, 149, 18(1), 18(3), 23 (1) and 103 of the Act. The procedure for obtaining the necessary certificate from the Registrar of Companies is given by the Companies Regulations, 1956, Regulations 17 to 21, and by Ss. 234 and 610 of the Act. (Also refer the Main Paper, pp. 17 to 21).
8. Sections 44(1) and (2), 60 (1), 70 (1) and (2), 75 (1) and (2), 76, 95, 97, 100 to 103, 107(5), 125, 127, 130, 131, 134 to 140, 142, 145, 159, 160, 161, 162, 165, 192 (1), 220, 276, 303, 394 (3), 421, 445, 481 (3), 488 (2) (a), 493 (1), 497 (3), 501, 509 (3), 516 (1), 551 (1) (b), 559 (2), 592, 593, 594, 600 and 605 of the Act fall under this category.
9. Such matters fall under sections 166 (1) (c) proviso, 210 (4) proviso and 139 of the Act.
10. Under section 33 may be referred A.I.R. 1933 Mad. 129 (p. 129, C. 1, C.2, p. 130, C. 1); A.I.R. 1927 Cal. 299 (p. 302, C. 1); A.I.R. 1928 Notes 8d. Under section 60 may be referred A.I.R. 1936 Cal. 33 (p. 33, C. 2).

## PRELIMINARY CONCLUSIONS

Inasmuch as a great amount of discretion is exercised by the Government in respect of matters falling under categories one and two, these areas require investigation. The areas falling under categories three and four do not really involve the exercise of discretion by the Registrar of Companies. All that he has to do is to check whether the provisions of the Act and the Rules and the Regulations have been complied with. His discretion is entirely limited to cases where information or explanation asked for by him under sub-section (1) of Section 234 is not furnished and where he finds an unsatisfactory state of affairs as disclosed by documents submitted to him. In such cases he is merely authorised to report in writing the circumstances of the case to the Central Government under Section 234(6).

A comparative study of the procedures of licensing and Government permissions required by the companies was made. The following preliminary conclusions emerge therefrom :

1. In respect of the licence required for starting an industry the Government Department has been given power to call for *additional information*. In respect of the licence required for registering as a non-profit making company the Department has been given power to make *preliminary inquiry*. In respect of other Government permissions no such power has been given to the Government Department.
2. Applications for obtaining a licence for starting an industry and for obtaining Government approval on matters under the Companies Act (required to be referred to the Advisory Commission), are referred by the Government Department to advisory bodies. In case of a licence for starting an industry the advisory body consists of the representative of Ministries of Commerce and Industry, Railways, Finance and Production, and of Planning Commission. In cases of Government approval on matters required to be referred to the Advisory Commission, the advisory body consists of the representatives of the interests, any one or more of which may be affected by a particular decision.

The advisory body for licensing for starting an industry is required to hold only an *investigation*, whereas the advisory body in the other case is required to hold an *inquiry*.

3. Only in respect of Government consent to the issue of capital, and of Government approval on matters to be referred to the Advisory Commission, the Controller of Capital Issues and the Advisory Commission respectively have been given power to call for information necessary for the inquiry and to compel production of evidence and documents. The Advisory Commission has been further given power to compel attendance of witnesses and to examine a person on oath. No such powers have been given to the respective Government Departments in other cases.

4. In the event of refusal of the licence or the permission, as the case may be, only in respect of licensing for starting an industry an opportunity is given to the applicant company to state its case before reaching a decision.
5. The conditions of the licence or the Government permission may be varied or amended in cases of licenses for starting an industry and for registering as a non-profit making company, and in cases of consent to the issue of capital.

The licence for starting an industry is varied or amended on the initiative of the owner of the industry, who desires a variation or amendment in the licence. The conditions of the consent to the issue of capital are varied on the initiative of the Government. And the licence of a non-profit making company is varied or amended by the Government in case an alteration in the memorandum with respect to its objects is made by the company.

In case of a licence for an industry, the licence is amended after an *investigation*. But in case of variation of the conditions of the consent to the issue of capital, the variation is made after the company has been given a *reasonable opportunity to show cause* why such order should not be made. No investigation or hearing is instituted in case of amendment of the conditions of a licence of a non-profit making company.

6. The licences for starting an industry and for registering as a non-profit making company and the consent to the issue of capital may be revoked, and in all these cases an opportunity of being heard in opposition to the revocation is to be afforded to the company before the revocation is affected.

But only in cases of the consent to the issue of capital the reasons for revocation are required to be supplied to the company, and that also when request to that effect is made by it.

7. No procedure has been provided for the grant of Government approvals on matters under the Companies Act, which are not required to be referred to the Advisory Commission.

### QUESTIONS REQUIRING FURTHER RESEARCH

1. The major portion of work that lies ahead is to understand the working of the Advisory Commission. In particular it is to be investigated what and how enquiries are conducted by the Advisory Commission before advising the grant or refusal of necessary permission. The Act gives the Commission wide powers of enquiry, including power to compel production of evidence, but is silent as to the procedure to be followed in conducting enquiries. No rules have been made under the Act to cover such procedure. This appears to be a grave deficiency with respect to which recommendations of the full investigation may be of value.

2. Also in case the Government discloses recalcitrance in referring an application falling under section 411 to the Advisory Commission, what would be the position? Will it be possible for the applicant company or for the Advisory Commission or for both to get a mandamus? In this connection it may be stated that the Sastri Committee in its report observes that the Government has been screening some of the applications made to the Central Government under sections 408 and 409, and has referred only such applications as it considered deserving of enquiry.<sup>11</sup>

3. Also the Act and Rules are silent on the question whether it is mandatory or optional for the Government to follow the advice of the Commission in a given case. Present practice assumes that it is merely optional.<sup>12</sup> This seems the correct view, but the procedure to be adopted if the Government chooses not to follow the advice of the Commission is not clear and this question requires further investigation.

4. In respect of the matters falling under sub-category two of the second category which are not required by the Act to be referred by the Central Government to the Advisory Commission, a very wide discretion has been left to the Government without providing for any procedural safeguards. It is felt that the same should be regulated by certain express provisions. It remains to be seen what procedural safeguards are observed in practice.

5. In respect of the grant of a licence under section 25, the exercise of discretion has been sufficiently limited by the provisions of clauses (a) and (b) of sub-section (1) and sufficient opportunity has been afforded to the public and to other associations to raise objections to the grant of the licence. But in respect of the revocation of the licence, the provisions of sub-sections (7) and (8) have left a wide discretion in the hands of the Government and no provision has been made for the regulation of the exercise of that discretion.

6. In respect of matters falling under categories three and four, it appears that not much discretion has been left with the Registrar of Companies. But it is clear that in cases where the provisions of the Act in respect of proper and complete filing of the documents have not been observed, the Registrar may refuse the registration of the documents. It remains to be seen whether there can be any other circumstances in which the Registrar of Companies can refuse to register the documents tendered before him for registration.

7. Under section 166 the Registrar of Companies has been required to exercise a discretionary power. The Act and Rules are silent on the question of how and with what procedure the discretion is to be exercised by the Registrar of Companies.<sup>13</sup>

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11. Refer paragraph 157, p. 156, of the Sastri Committee Report.

12. Refer paragraph 59 of the Annual Report of the Department of Company Law Administration on the 'Working and Administration of the Companies Act, 1956' for the year ended March 31, 1957.

13. Paragraph 25 of the Annual Report of the Department of Company Law Administration on the 'Working and Administration of the Companies Act, 1956' for the year ended 31st March, 1957, may be referred to.

