

Judicial Control of Administrative Discretion

(Synopsis)

Functions of the Modern Administrator:

- ◆ Administration Rule-making
- ◆ Administration Adjudication
- ◆ Administrative Powers

Administrative Power – Ministerial Functions and Discretionary Powers:

- ◆ Ministerial functions (Where there is no choice, can be compelled by Mandamus) (e.g. maintenance of births and deaths register)
- ◆ *Hirday Narain v. ITO*; AIR 1971 SC 33
- ◆ *Sheriff Ahmed v. RTA Meerut*, AIR 1978, SC 209
- ◆ Discretionary Power (power to choose amongst alternative courses of action) (e.g. acquisition of property, regulation of trade, industry or business, investigation, seizure and destruction of property, detention on the subjective satisfaction of the authority and the like).
- ◆ Discretion is power to make a choice between alternative courses of action.

Administrative Discretion:

- ◆ Administrators must be given the choice as to when how and whether they will act.
- ◆ To be exercised according to rules of reason and justice and not according to private opinion, according to law and not according to one's disposition, character, temperament capricious or peculiar behaviour, not arbitrary, vague and fanciful, but legal and regular.
- ◆ To exercise according to recognized principles of law so that it does not amount to arbitrariness.

Administrative Discretion and Rules of Law:

- ◆ Rule of law means absence of arbitrariness.
- ◆ When discretion becomes arbitrary it violates rule of law.
- ◆ If properly exercised, discretion will serve the purpose for which it is conferred.

Discretion is Necessary:

- ◆ Modern welfare state cannot function without conferring discretionary powers on the administrator.
- ◆ Discretion is necessary to individualise administrative action – to decide from case to case.
- ◆ It is necessary because of the impossibility of laying down rules for every conceivable eventuality.

Discretion must be controlled:

- ◆ “Where discretion is absolute, man has always suffered ... Absolute discretion ... is more destructive of freedom than any of man’s other inventions.”
- ◆ Discretion should be controlled so that it does not become arbitrary. Administrative law tries to control the exercise of discretion so that “there will be government of laws and not of men.”

Administrative Discretion:

- ◆ Discretion is conferred by law on the administrator through a variety of forms such as ‘if satisfied’, ‘is of opinion’, ‘deems necessary’, ‘thinks fit’, ‘public purpose’, ‘public interest’, ‘public health’, ‘Public morality’ etc.
- ◆ Legislations are usually drafted in general terms. They leave a large area of choice to the administrator to apply the law to actual, specific and factual situations from case to case.
- ◆ They do not specify clearly the conditions and circumstances subject to which and the norms with reference to which the administrator must exercise the powers conferred on it.

Administrative Discretion and Judicial Review:

- ◆ There is nothing like unfettered discretion immune from Judicial Review. There can be no such thing as unreviewable discretion.
- ◆ Judicial review of administrative discretion reflects reconciliation of two conflicting interests *viz*,
 - the legislature has conferred the powers on the administrator and it is not for the courts to sit in judgment over it.
 - but the authority must act within the bounds of law so that the exercise of discretion does not become arbitrary.

- ◆ Judicial Review is being exercised at two stages:
 - At the conferment stage by deciding about the constitutionality of the statute.
 - At the actual exercises stage by deciding the validity of the action.

Judicial Review at the Conferment Stage:

- ◆ The law frowns on uncanalised and unfettered discretion conferred on the administrator.
- ◆ Discretion can be conferred only subject to the fundamental rights especially Arts 14, 19 and 21.
- ◆ *Punjab v. Khemchand*; AIR 1974 SC 543.

the power conferred on the District Magistrate under the East Punjab Requisition of Movable Property Act, 1947 to requisition movable property (truck for famine-relief work, in this case) without laying down any purpose or guidelines, was held to be violative of Art. 14 as it was 'uncontrolled and untrammelled'. The court observed that arbitrariness and power to discriminate were writ large on the face of the Act.

- ◆ *State of W.B. v. Anwar Ali*, AIR 1952 SC 75

Where the executive authorities were conferred the discretion to select cases for being tried by special courts without any guidelines, the court held the provision unconstitutional as it vested uncontrolled power in the executive.

- ◆ *Kathi Raning v. Saurashtra*; AIR 1952 SC 123.
- ◆ *Air India v. Nargesh Meerza*; AIR 1981 SC 1829.
- ◆ *F.N. Roy v. Collector of Customs*; AIR 1957 SC 648.
- ◆ *Central Inland Water Transport Corporation v. Brojo Nath*; AIR 1986 SC 1571.
- ◆ *State of Maharashtra v. V. G. Raw*; AIR 1952 SC 196
- ◆ *Sheshadri v. District Magistrate*; AIR 1954 SC 747.
- ◆ *Delhi Transport Corporation v. DTC Mazdoor Sabha*; AIR 1991 SC 101.
- ◆ *Maneka Gandhi v. Union of India*; AIR 1978 SC 597
- ◆ *A.N. Parasuraman v. State of T.N.*; AIR 1990 SC 40
- ◆ *Accountant-General v. Doraiswamy*; AIR 1981 SC 783.

Judicial Review at the Exercising Stage:

- ◆ Courts do not go into the merits of the exercise of discretion. Nor do they substitute their own views for that of the concerned authorities.
- ◆ *Hari Shanker Sharma v. Commissioner; Agra Division*; AIR 1987 SC 556
- ◆ *Madras v. Sarathy*, AIR 1953 SC 53.
- ◆ *Vice Chancellor v. S.K. Ghosh*; AIR 1965, SC 217
- ◆ *State of Haryana v. Rattan Singh*; AIR 1977 1512
- ◆ *Arora v. U.P.*; AIR 1969 SC 1230

The argument of the petitioner whose land was sought to be acquired was that the land intended to be used for a public purpose should not be acquired for another public purpose. The court held that so long as the government required the land for a public purpose, it was for the government to decide whether or not to acquire that land for the purpose in view.

- ◆ *Jaswant Singh v. Punjab*; AIR 1991 SC 385
- ◆ *Medaboob Sheriff v. Mysore S.T.A.*; AIR 1960 SC 321

Where an authority renewed the permit for one year while the statute required the renewal for a period from 3 to 5 years, the court would only ask the authority to renew the permit for 3 to 5 years, without specifying the period.

- ◆ The courts are concerned with the legality of the action and not the merits.
- ◆ For this purpose, they have expounded a number of principles on which the discretion is to be exercised by reading implied limitations into the statutory power, so as to control the exercise of discretion.
- ◆ These principles of judicial review fall into two major categories:
 - Failure to exercise discretion and
 - Abuse of discretion.

Failure to Exercise Discretion:

- ◆ May arise due to:
 - non exercise of discretion
 - exercise of discretion by a wrong person
 - acting under dictation
 - acting mechanically

- imposing fetters on the exercise of discretion

Non Exercise of Discretion :

- ◆ If the authority does not decide or does not exercise the discretion one way or the other, the court will command the authority to exercise the discretion through mandamus.
- ◆ *Aeltemesh Rein v. Union of India*; AIR 1988 SC 1768.
- ◆ *Duda v. P. Shiv Shankar*; AIR 1988 SC 1208.

Exercise of Discretion by a Wrong Person:

- ◆ A discretionary power must, in general be exercised only by the authority to which it has been conferred.
- ◆ Delegation of discretionary power to a subordinate authority without statutory authorization and the exercise of discretion in such case by the subordinate authority is bad.
- ◆ *D. Satyanarayan v. A.P.*; AIR 1979 AP 259.

Where the Motor Vehicles Act required the nationalization scheme to be considered by the Transport Corporation, but the scheme was published by the Manager of the Corporation without being considered by the Corporation it is an exercise of discretion by a wrong person.

- ◆ See also *Ganapati Singhji v. State of Ajmer*; AIR 1955 SC 188.
- ◆ *A. K. Roy v. State of Punjab* AIR 1986 SC 2160
- ◆ Delegation of the power to launch prosecution to the Food Inspector under the PFA Act, 1954, held invalid.

Acting under Dictation:

- ◆ Where the authority acts under the dictation of superior authority it is non-exercise of discretion by the right person.
- ◆ *Commissioner of Police v. Gordhandas Bhanji*; AIR 1952 SC 16.
- ◆ *Mount Corporation v. Director of Industries*; AIR 1965 Mys. 143.

Discretion was vested with the Director of Industries for the issue of an essentiality certificate - the government constituted a committee consisting of the Deputy Minister as the Chairman, the Director of Industries and two other officers as members. The Committee rejected the application for the certificate. The court held that the decision was invalid as the Director did not exercise his own judgment but acted as a conduit pipe of the Committee. To the contention that it was only an advisory committee, the court pointed out that the Director could not

have disregarded the committee's decisions as the Deputy Minister was the Chairman of the committee.

Other Cases:

- ◆ *Nagraj Shivarao Karjagi v. Syndicate Bank*; AIR 1991 CS 1507.

In this case the bank had power to take disciplinary action against its officers and employees under the service regulations. Under the regulations, the bank was required to consult the CVC in cases having a vigilance angle. By a circular issued by the Ministry of Finance, Dept. of Economic Affairs, Govt. of India, the bank was directed to follow the advice of the CVC. Acting on the CVC's advice, the bank passed an order of compulsory retirement against the appellant. Quashing the order, the court held that the bank could not act under the dictation of the CVC or of the Central Government. No third party like CVC or the Central Government could dictate the disciplinary authority or the appellate authority as to how, they should exercise their power and what punishment they should impose on the delinquent employee. The action of the bank in complying with the directions of the authority was not permissible under statutory regulations. The court took this view even though the Central Government has statutory power to issue directions to the bank under S.8 of the relevant Act.

- ◆ *Punjab v. Hari Kishan*; AIR 1966 SC 1081.
- ◆ *Sunil Kumar v. W.B.*; AIR 1981 SC 477.
- ◆ *Orient Paper Mills v. Union of India*; AIR 1970 SC 1498.
- ◆ Advice can be taken so long as the authority does not act mechanically on it and itself taken a final decision in the matter.
- ◆ Taking advice of subordinate is not bad as the authority can act independently despite the advice.

Acting Mechanically:

- ◆ When discretion is exercised mechanically without applying one's mind to the facts of the case it is a case of non-exercise of discretion. It may be because of inertia or laziness or it has relied on the opinion of subordinates.
- ◆ *Jagannath v Orissa*; AIR 1966 SC 1140

Where six grounds mentioned in the order of detention on the basis of which the subjective satisfaction of the government was formed were verbatim reproduction of the relevant provisions of the Act and the affidavit filed by the Home Secretary indicated only two grounds, the court inferred casual attitude of the authority and held that it was a case of 'acting mechanically.'

Other cases:

- ◆ *Srilekha Vidyarthi v. State of U.P.*; AIR 1991 SC 537

In this case, the government issued a general circular terminating the services of the district government counsel in all districts. As per the provision of the Legal Remembrancer's Manual the appointment of the counsel was only professional engagement terminable at will on either side and was not appointment to a post under the government. Accordingly, "the government reserves the power to terminate the appointment of any District Government Counsel at any time without assigning any cause."

Held:- The non-assigning of reasons or their communication might be based on public policy, but the termination of appointment without the existence of any cogent reason was arbitrary and against public policy. The court did not accept the argument that contractual matters fell outside the purview of Art. 14. The non-application of mind to individual cases, before issuing a general circular terminating the services of all District Government Counsel throughout the State was itself an eloquent testimony to the arbitrariness writ large on the face of the circular. The essence of the circular was not governed by any rule of law and court quashed the same restoring all appointment.

- ◆ *M. Satyanarayan v. A.P.*; AIR 1982 SC 1543.
- ◆ *G. Sadanandan v. Kerala*; AIR 1966 SC 1925.
- ◆ *Management of Monghyr Factory v Labour Court*; AIR 1978 SC 1428
- ◆ *Abdul Razak Abdul Wahab v. Commr. of Police*; AIR 1989 SC 2265.
- ◆ *V.C. Mohan v. Union of India*; (2002) 3 SCC 451

Preventive Detention- Non-application of mind-non placement of relevant material before detaining authority by sponsoring authority- detention quashed.

Imposing Fetters on the Exercise of Discretion:

- ◆ When the authority imposes restrictions on the exercise of its own discretion by announcing rules of policy to be applied rigidly in all case, it is a case of non-exercise discretion.
- ◆ The authority is expected to decide each case on its merits by scrutinizing them from case to case.
- ◆ *Gell v. Teja Noora* (1903) 27 ILR Bom. 307.

Where the Police Commissioner who was given the discretion to give licence to 'land conveyances' (Victoria) made a sample of the same and insisted that all applicants should have the same type of land

conveyance if licence was to be granted, the court held that it was a clear case of imposing fetters on the exercise of discretion.

- ◆ *UPSRTC v. Mohd. Ismail* (1991) SCC 239.

Where the Regulation gave a discretion to the concerned authority to offer alternate jobs to those whose services were dispensed with for want of medical fitness, the General Manager issued a circular to all Regional Managers to terminate the services of all who were found medically unfit to drive the vehicles, the court held that it was a case of imposing fetters on the exercise of discretion. "Statutory discretion cannot be fettered by self-created rules of policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate the exercise of discretion, it cannot deny itself the discretion which the statute requires it to exercise in individual cases. The concerned authority of the Corporation, is required to consider the cases of retrenched drivers for alternate jobs, notwithstanding the circulars."

See also:

- ◆ *Rama Sugar Industries v. State of A.P.*; AIR 1974 SC 1745.
- ◆ *Jit Singh v. State of Punjab*; AIR 1979 SC 1034.
- ◆ *Keshavan Bhaskaran v. State of Kerala*; AIR 1960 KER 23.

Abuse of Discretion:

- ◆ May arise due to:
 - Malafide action.
 - Exercise of Discretion for an improper purpose.
 - Taking into account irrelevant considerations.
 - Leaving out relevant considerations.
 - Unreasonableness.
 - Mixed Considerations.

Malafide:

- ◆ Malafide means dishonest intention or corrupt motive.
- ◆ Where the motive force behind an administrative action is personal animosity, spite, vengeance, personal benefit to the authority itself or its relations or friends.

- ◆ *Pratap Singh v. Punjab*; AIR 1964 SC 72.

Where disciplinary action was initiated against a doctor on the verge of his retirement on a charge of taking bribe of Rs. 16/- at the instance of the Chief Minister, the court inferred malafide from the course of events, tape-recorded conversations between the doctor and the Chief Minister who had made certain illegal demands from the doctor, absence of affidavit from the Chief Minister rebutting the allegations etc.

Other Cases:

- ◆ *Raojee v. A.P.*; AIR 1964 SC 962.
- ◆ *Punjab v. Gurdial Singh*; AIR 1980 SC 319.
- ◆ *G. Sadanandan v. Kerala*, AIR 1966 SC 1925.
- ◆ *E.P. Royappa v. T.N.*; AIR 1974 SC 555.
- ◆ *Shivajirao Patil v. Mahesh Madhav Gosavi*; AIR 1987 SC 294.
- ◆ *Express Newspapers (P.) Ltd. v. Union of India*; AIR 1986 SC 872.
- ◆ *Collector Allahabad v. Rajan Ram Jaiswal*; AIR 1985 SC 162

Improper Purpose:

- ◆ If a statute confers power for one purpose, its use for a different purpose will not be regarded as valid exercise of the power and the same may be quashed.
- ◆ *ACC Store v. R. K. Mehra*; AIR 1973 P&H 342.

Here the purpose of requisition was the office/residence of a government officer, but the property was left in the possession of a cooperative society for running a fair-price shop. The order of requisition was quashed as under the relevant law no order of requisition could be passed for a cooperative society.

Other Cases:

- ◆ *State of Mysore v. P.R. Kulkarni*; AIR 1922 SC 2170.
- ◆ *Manik Chand Mehta v. Corporation of Calcutta*; ILR 1921 Cal. 916.
- ◆ *Ahmed Hussain v. State*; AIR 1951 Nag. 138.
- ◆ *Ahmedabad Mg. Co. Ltd. V. Municipal Corporation*; AIR 1956 Bom. 117.
- ◆ *State of Bombay v. K.P. Krishnan*; AIR 1960 SC 1228.

Taking into account Irrelevant Considerations:

- ◆ Where the authority takes into account irrelevant considerations in exercising a discretionary power vested with him, it is bad. If the statute does not mention any such considerations, then the power is to be exercised on considerations relevant to the purpose for which it is conferred.
- ◆ *Hukum Chand v. India*, AIR 1976 SC 789.

Where the General Manager, Telephones disconnected the petitioner's telephone under Rule 422 of the Telegraph Rules on the ground that the telephone was used for 'satta' purposes, the court quashed the decision on the ground that the Rule empowered the authority to disconnect the telephone in the event of any emergency and the disconnection was made on a ground which was not germane to Rule 422.

Other Cases:

- ◆ *Bombay v. K.P. Krishnan*; AIR 1960 SC 1223.
- ◆ *Baldev Raj v. India*; AIR 1981 SC 70.
- ◆ *Ram Manohar Lohia v. State of Bihar*; AIR 1966 SC 740.
- ◆ *State to M.P. v. Ramshanker*; AIR 1983 SC 374.
- ◆ *Sant Raj v. O.P. Singla*; AIR 1985 SC 617.

Leaving out Relevant Considerations:

- ◆ When the discretion is exercised by the authority leaving out relevant considerations which a statute prescribes expressly or impliedly, the action will be invalid.
- ◆ *Shanmugam v. S.K.V.S. (P) Ltd*; AIR 1963 SC 1626.

Where for the granting of a stage carriage permit for a certain route, the authority had adopted a marking system under which marks were allotted to different applicants on the basis of viable unit, workshop, residence (branch office) on the route, experience and special circumstances, the branch office on the route which the petitioner had, was ignore, the court held the decision invalid as it did not take into account a relevant consideration.

Other Cases:

- ◆ *Nizammudin v. State of W.B.*; AIR 1974 SC 2353
- ◆ *Ranjit Singh v. India*; AIR 1981 SC 461.
- ◆ *Srilal Shah v. W.B.*; AIR 1975 SC 393.

- ◆ *L.K. Das v. W.B.*; AIR 1975 SC 753.
- ◆ *Dhamadas v. Police Commissioner*; AIR 1989 SC 1282.

Unreasonableness:

- ◆ The discretionary power is to be exercised reasonably and fairly. The courts have ruled in a number of cases that they would quash administrative action if no reasonable person would have reached such a decision.

- ◆ *Roberts v. Hopwood* (1925) AC 578

Where it was held that a local authority having power to pay “such wages as it may think fit”, was bound to exercise its discretion reasonably. The words “may think fit” were interpreted by the court as “may reasonably think fit”.

- ◆ *Secretary of State for Education & Science v. Tameside Metropolitan Borough Council* (1977) AC 1014

The House of Lords held: “The Minister could not lawfully be satisfied if he did not have facts before him which entitled him to be satisfied.”

Other Cases:

- ◆ *Rohtas Industries Ltd. v. S. D. Agarwal*; AIR 1969 SC 707.
- ◆ *Associated Provincial Picture Houses v. Wednesbury Corporation*; (1948) 2 All ER 680.
- ◆ *Ranjit Thakur v. Union of India*; AIR 1987 SC 238.
- ◆ *Hall and Co. v. Shoreham UDC* (1964) 1 All ER 1
- ◆ *Barium Chemicals Ltd. v. Company Law Board*; AIR 1967 SC 295

It may, however, be remembered that some of the above mentioned grounds may overlap as is illustrated in an English Case by the following example:

A red-haired teacher was dismissed because she had red hair. This is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is also so unreasonable that it might almost be described as being done in bad faith; and in fact all these things run into one another.

Short v. Poole Corporation, (1926) Ch. D 66 (91) quoted in *Wednesbury Corporation's Case*.

Mixed Considerations:

- ◆ Where the discretion is exercised partly on relevant and existent considerations and partly on irrelevant considerations or non-existent considerations, the courts are not uniform in their decision.

- ◆ *Shibban Lal v. State of U.P.*; AIR 1954 SC 179.

Where the petitioner was detained on two grounds but the government revoked the order later on one ground, the court quashed the order saying that the court would not decide to what extent each of the above grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made.

- ◆ *State of Orissa v. Bidyabhushan*; AIR 1963 SC 779.

Where the employee was dismissed on some charges and the High Court found that some of the charges could not be proved, the Supreme Court upheld the order of dismissal saying that the order could be supported on any of the grounds and it was not for the court to consider whether on that ground alone the punishment of dismissal could be sustained.

Other Cases:

- ◆ *Sora Singh v. M. Tandon*; AIR 1921 SC 1537.
- ◆ *Pyare Lal Sharma v. Managing Director*; AIR 1989 SC 1854.
- ◆ *State of Maharashtra v. Babulal Takkamore*; AIR 1967 SC 1353.
