



THE PRESENT SCOPE OF JUDICIAL REVIEW OVER ADMINISTRATIVE TRIBUNALS

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ABSTRACT

The aim of this study is to analyse the scope of judicial review by High Courts and the Supreme Court over Administrative Tribunals in India. This paper also highlights the changes in the administration of justice. Tribunals are a “Judgment seat, a court of justice; board or committee appointed to adjudicate on claims of a particular kind”. The essence of the meaning of the word tribunal which can be culled out from the various Supreme Court authorities is that they are adjudicatory bodies (except ordinary courts of law) constituted by the State and invested with judicial and quasi-judicial functions as distinguished from administrative or executive functions. Firstly, this study analyses the Constitutional mechanism for control of Administrative Tribunals. Then, the Administrative Tribunals Act 1985 and the interpretation of the ‘ouster clause’ is looked into. Finally, the Judiciary’s triumph over the Legislature in retaining Judicial Review and the existing grounds for Judicial Review are discussed.

INTRODUCTION

As the concept of welfare state changed radically and many allied welfare measures were introduced, the disputes arising on such matters raised not only legal matters but also matters which affect the society at

large. The inherent procedural limitations made it difficult for the courts to dispose these cases promptly thus leading to a huge backlog of cases in all levels of the judiciary. In many quarters, the members of the judiciary were neither adequately trained nor equipped to deal with the complex socio-economic and technical matters at hand. Thus, specialised adjudicatory bodies such as tribunals needed to be created to resolve such disputes fairly and effectively. Irrespective of such Administrative Tribunals having their own procedures, the decisions of Administrative Tribunals are not free from Judicial Scrutiny.

JUDICIAL REVIEW OVER ADMINISTRATIVE TRIBUNALS.

The Tribunalisation of Justice.

Administrative Adjudication through tribunals or *quasi - judicial* bodies has become a common phenomenon and an indispensable instrumentality in judicial machinery of the contemporary states. The advent of the welfare state, which not merely aims at distribution of bounties and benefits among the subjects but also envisages multifarious regulations or interferences with various interests and human activities, gave a boost to administrative law and such specialised administrative adjudication. In India too, innumerable tribunals have been constituted by, and are functioning under, different statutes. Their constitution, function, operation and subject-matter, however, differ from each other depending upon the purpose of constituting such bodies. In common law countries, unlike France, such ‘administrative adjudication’ co-ordinates



with 'judicial adjudication' and operates under judicial supervision.

Control over Tribunals and Constitutional Mechanism.

The objects behind such judicial supervision over the tribunals are to, (i) prevent them from emerging as tiny despots; (ii) maintain rule of law; (iii) protect and redress the private interests against unwarranted administrative action; and (iv) keep them within their legal bounds. In pursuance of these objects administrative laws of different countries have developed some kind of control mechanism over the administrative adjudication.

However, this mechanism has different contours ranging from the establishment of an independent institution like Conseil d'Etat as in the French system or by judicial institutions by way of prerogative writs or judicial review of their decisions as in English public law. In common law countries judicial review of decisions of administrative agencies is also allowed on a few legal grounds such as denial of principles of natural justice, failure to observe prescribed procedure, want or abuse of jurisdiction, error of law, ultra vires decision, etc. Indian administrative law, more or less, has adopted the second control mechanism namely judicial review of administrative agencies.

A reading of Indian statutes constituting the tribunals reveals the following control mechanism over them. However, there is no consistent pattern. The broad patterns¹ are, (i) reference to the High Court on a question

of law; (ii) power with the tribunal to refer such question to that court in a proceeding pending before it and also a right of appeal to it in cases involving substantial question of law; (iii) appeal to a higher administrative tribunal; (iv) appeal on a question of law to the High Court, first appeal to a higher administrative tribunal and a further appeal to the High Court on substantial question of law; and (v) direct appeal to the Supreme Court in some cases. Beside this statutory control mechanism operating on the respective tribunals, the Constitution, by virtue of Articles 32, 136, 226 and 227, guarantees a comprehensive judicial review and judicial supervision by the Supreme Court and High Courts over tribunals. These constitutional provisions are so broadly framed that it is left to the courts themselves to work out the limit on their jurisdiction as a matter of judicial policy and it remains unaffected by an Act of Parliament.

The Constitution (Forty-Second Amendment) Act 1976 has inserted Part XIVA, comprising Arts. 323A and 323B, in the Constitution to empower Parliament to constitute administrative tribunals in the areas of, (i) civil service; (ii) levy, assessment, collection and enforcement of any tax; (iii) foreign exchange, import and export across custom frontiers; (iv) industrial and labour disputes; (v) land reforms; (vi) ceiling on urban property; (vii) elections to the legislature; (viii) production, procurement, supply and distribution of foodstuffs and offences relating thereto. The amendment provides for exclusion of jurisdiction, powers and authority of all courts, except the Supreme Court under Art. 136, with respect to all or any of the matters

¹ S.N. Jain, Administrative Tribunals in India: Existing and Proposed 25-26 (1977).



falling within the jurisdiction of the proposed tribunals.²

The Administrative Tribunals Act, 1985.

Art. 323A(1) provides for adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to the Public Service and posts in connection with the affairs of the Union or of any state, local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the government and for matters connected therewith or incidental thereto. The Indian Parliament in pursuance of Art. 323A(1) enacted the Administrative Tribunals Act 1985 (hereinafter referred to as the Act) to provide for the adjudication or trial of disputes and complaints' regarding service matters of Central and state government employees.

In pursuance of the provisions of the Act, the Central Government has established CAT with five branches, in November 1985. Prior to its establishment, writ petitions were filed in the High Courts and the Supreme Court challenging the constitutional validity of Art. 323A and various provisions of the Act. The main contention was that the writ jurisdiction of the Supreme Court, under Art. 32, and the High Courts under Art. 226, cannot be taken away by an amendment to the Constitution. The wide wording of Art. 226, enables the High Courts 'to reach injustice wherever it is found' and 'to mould the relief to meet the peculiar and complicated requirements'.³

²Arts. 323A(2)(d) and 323B(3)(d).

³ The Comptroller v. K.S. Jagannath, (1986) (1) SLR 713 (SC).

The Supreme Court, admitting the writ petitions, did not stay the operation of the Act. However, by an interim order, it stayed the transfer of writ petitions filed under Art. 32 to the CAT and ruled that it is entitled to deal with writ petitions under Art. 32⁴ and pass orders. But it refused to issue an order⁵ to stay their transfer under Art. 226 to the tribunals subject to a few suggestions, which were incorporated by Parliament in the Act by the Administrative Tribunals (Amendment) Act 1986.

The petitioners including Mr. Sampath Kumar relied on *Minerva Mills Ltd. v. Union of India*,⁶ where P.N. Bhagwati CJ enumerated that: "The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. I am of the view that if there is one feature of our constitution which, more than any other, is basic and fundamental to the maintenance of democracy and the rule of law, it is the power of judicial review, and it is unquestionably, to my mind, part of the Basic Structure of the Constitution. Of course, when I say that I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament."

⁴ Powers of the Supreme Court under article 32 is restored by the Administrative Tribunals (Amendment) Act 1986 w.e.f. 22 January 1986.

⁵ S.P. Sampath Kumar v. Union of India, (1985) 4 SCC 458. (The order was passed on 31 October 1985)

⁶ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.



Ranganath Misra J. and Bhagwati C. J., relying on the view taken Bhagwati J. in *Minerva Mills* that though basic and essential feature of judicial review cannot be dispensed with, it is within the competence of Parliament to create alternative effective institutional mechanisms or arrangements or judicial review, opined that exclusion of jurisdiction of the High Courts in the specified service matters and vesting them in the administrative tribunals does not go against the Basic Structure Doctrine provided the tribunal is equally efficacious and effective as the High Court, and it substitutes, not only in form and de jure but in content and de facto, the High Court so far as the power of judicial review over service matters is concerned.

Interpreting the ouster clause.

Now, the Act by virtue of Secs. 14(1), 15(1) and 16, vests in the administrative tribunals all the powers of the ordinary civil courts and the High Courts pertaining to service matters. The legislative intent for conferment of such wide powers becomes crystal clear from Secs. 28 and 29 of the Act also. The latter section provides for automatic transfer of pending suits and proceedings before any court to such tribunals, while the former precludes any court, except the Supreme Court, industrial tribunal and labour court, from exercising, 'any jurisdiction, powers or authority' pertaining to specified service matters.

Sec. 28 of the Act dealing with the exclusion of jurisdiction of courts, reads:

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters

concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any service or post, no Court except a) the Supreme Court; or b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment of such service matters.

The term 'all courts' except the Supreme Court used in Secs. 14(1), 15(1) and 16 read with the above-mentioned ouster clause, prima facie, reveals the legislative intent to bar the High Courts, along with ordinary civil courts, from exercising 'any jurisdiction, power or authority to adjudicate disputes or entertain any complaints' in specified service matters. It is further reflected in Sec. 27 of the Act dealing with the execution of orders of a tribunal. It is particularly clear from the Administrative Tribunals (Amendment) Act 1986, that an order of a tribunal is final and cannot be challenged in any court including a High Court.

High Courts' power of Judicial Review over Administrative Tribunals.

Constitutionality of the ouster clause.

The comprehensive scheme of the Act regarding, (i) vesting of wide jurisdiction in the tribunals,⁷ (ii) exclusion of jurisdiction, power and authority of all courts, except the Supreme Court, labour court and industrial tribunals⁸ in the matters falling under their

⁷ Sections 14, 15 & 16.

⁸ Section 28.



jurisdiction⁹ coupled with the transfer of pending suits or proceedings to the tribunals¹⁰ and finality given to their orders and protecting them from challenges in any court including a High Court, as stated earlier, reflects Parliament's intention¹¹ to exclude all the jurisdiction, powers and authority of a High Court including its power to issue appropriate writ, order or direction under Art. 226 of the Constitution in the specified service matters.¹²

Not only does it give finality to the orders of the tribunal but also keeps them free from challenge in any court including a High Court. The only exception made therein is approach to the Supreme Court under Arts. 32 and 136. Then, it does not make any reservation with respect to jurisdiction, power and authority of the High Court in service matters. It is important to note at this juncture that Art. 32 can be invoked if there is violation of a fundamental right and Art. 136 does not entitle a person to appeal to the Supreme Court as a matter of right as it is within the court's discretion to grant or refuse special leave to appeal. It is, generally, not invoked unless there are sufficient extraordinary exceptional circumstances which warrant invocation of this power. Thus, the mechanism for judicial

review provided in the Act is ineffective and inadequate.

Ordinarily such a provision is unconstitutional as Parliament's power to enact laws is subject to provisions of the Constitution. However, it is important to note that the object of the Act was to give effect to Art. 323A which among other things, provides for exclusion of jurisdiction, power and authority of all courts except the Supreme Court under article 136. The privative clause is almost verbatim what is laid down in clause 2(d) of Art. 323A. And Sec. 29, dealing with the transfer of pending cases, reproduces, in essence, clause (2)(e) of Art. 323A. And the provisions of Art. 323A are given overriding effect by virtue of Art. 323A (3). The validity of Art. 323A(2)(d) and the Act was upheld by the Supreme Court in *Sampath Kumar*.¹³

It is important to note that the scheme of the Act, as pointed out earlier, makes it amply clear that it only precludes the High Courts from exercising its jurisdiction, power and authority to adjudicate disputes involving consideration of merits of the case in specified service matters and confers these powers (only) on the tribunals constituted under it. The Act debars the High Courts from adjudicating a dispute or entertaining a complaint as it always involves consideration of the merits of the cases thereby leaving its power untouched/unaltered in those cases not involving such consideration. Thus, it makes a distinction between the power and authority of the High Court to issue writs in

⁹ Section 29.

¹⁰ Section 27.

¹¹ P.R. Shenoy and CM. Stephen, while taking part in the debate on the relevant provision of the Forty-Second Amendment Constitution Bill, had expressed the view that the jurisdiction of the High Courts under article 226 should be mentioned specifically and in its absence, they apprehended, it would not be possible to exclude jurisdiction of the High Courts. (1976) LXV L.S.D. (5th Lok Sabha) col. 83, 92 (1-11-1976).

¹² Subramanian v. India, A.T.R. 1986 Ker. HC 15.

¹³ S.P. Sampath Kumar v. Union of India, (1985) 4 SCC 458.



specified service matters under Secs. 14(1), 51(1) and 16 and against the administrative tribunals. The former involves consideration of the case on merits while the latter does not. Therefore, the jurisdiction of the High Court to issue writs under Art. 226 against the tribunal is not barred by the Act as it does not involve any consideration of the merits of the case.

Change from S.P. Sampath Kumar to L. Chandrakumar.

In the case of *J.B. Chopra v. Union of India*¹⁴ it was held that since the Administrative tribunals are meant to be substitutes of High Courts (as held in *Sampath Kumar*), their power of judicial review extended to power as to decide on the constitutionality of service rules. However, soon there was a reversal of trend leading to a lot of confusion. In *M.B. Majumdar v. Union of India*¹⁵ the Supreme Court refused to extend the service conditions and other benefits enjoyed by ordinary High Court judges to the members of these Tribunals.

Three years later, in *R.K. Jain v. Union of India*¹⁶, the Supreme Court opined that these Tribunals could not be effective substitutes of High Courts under Arts. 226 and 227. A very clear expression of dissatisfaction of the apex court regarding the functioning and effectiveness of Administrative Tribunals especially with regard to their power of judicial review was also seen through the judgment of this case.

*Sakinala Harinath v. State of Andhra Pradesh*¹⁷: In this case, the Andhra Pradesh High Court dropped a bomb shell by expressing serious doubts about the wisdom of the learned Judges in *Sampath Kumar*'s case. The Full Bench ruled that the ruling in the above case equating Administrative Tribunals to the High courts with respect to their jurisdiction under Arts. 226 and 227 was inconsistent with the Apex Court's ruling in cases like *Kesavanda Bharati v. State of Kerala*¹⁸ and *Indira Gandhi v. Raj Narain*¹⁹. It was pointed out that the constitutional courts could only exercise the power of judicial review. Since the logic of alternative institutional mechanism propounded in *Sampath Kumar*'s case does not fit into this scheme, it is constitutionally impermissible. As a result, both Articles 323A(d) and Sec. 28 of the Act were struck down as unconstitutional. The judicial green signal given for tribunalisation given in *Sampath Kumar* can be seen to be slowly fading because of the subsequent decisions. The confusion created by these conflicting decisions ushered in the need for taking a second look at S.P. *Sampath Kumar*'s case.

This opportunity arrived when a three-judge bench of the Supreme Court in *L. Chandrakumar v. Union of India* decided to refer the matter to a larger bench. This eventually led to the famous ruling of the Seven Judge Bench of the Supreme Court on *L. Chandrakumar v. Union of India*, which is now the law of the land.

¹⁴ *J.B. Chopra v. Union of India*, (1987) 1 SCC 422.

¹⁵ *M.B. Majumdar v. Union of India*, (1990) 4 SCC 501.

¹⁶ *R.K. Jain v. Union of India*, (1993) 4 SCC 119.

¹⁷ *Sakinala Harinath v. State of Andhra Pradesh*, 1993 (2) An. W.R.484 (FB).

¹⁸ *Kesavanda Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹⁹ *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2291.



L. Chandrakumar's Case²⁰: The important issues considered by the Apex Court were as follows: (1) Whether Art. 323A (2) (d) and Art.323B (3) (d) of the constitution which give the power to the Union and State Legislatures to exclude the jurisdiction of all courts except that of the Supreme Court under Art.136, is in accordance with the power of judicial review embodied in Art.32 and 226. (2) Whether the power of High Courts to exercise the powers of superintendence over the subordinate judiciary under Articles 226 and 227 form part of Basic Structure. (3) The competence of the aforesaid tribunals to determine the constitutionality of any law. (4) Whether the aforesaid tribunals are acting as effective substitutes to High Courts in terms of efficiency.

It was held that the power of judicial review over legislative and administrative action is expressly vested with the High Courts and the Supreme Court under Arts. 226 and 32 respectively. The contention that the constitutional safeguards which ensure the independence of the higher judiciary is not available to the lower judiciary and bodies such as Tribunals was upheld and the Apex Court consequently held that the lower judiciary would not be able to serve as effective substitutes to the higher judiciary in matters of constitutional interpretation and judicial review. Hence the power of judicial review is vested in the higher judiciary and the power of High Courts and the Supreme Court to test the constitutional validity of legislative and administrative

action cannot ordinarily be ousted. However, it was held that these tribunals and the lower judiciary could exercise the role of judicial review as supplement to the superior judiciary. The court applied the provisions of Art. 32(3) to uphold the same.

PRESENT SCOPE OF JUDICIAL REVIEW.

Generally, judicial review of any administrative tribunal can be exercised on four grounds viz,

- Jurisdictional Error
- Irrationality
- Procedural impropriety
- Proportionality
- Legitimate Expectation

These grounds of judicial review were developed by Lord Diplock in *Council of Civil Service Union v. Minister of Civil Service*²¹. Though these grounds of judicial review are not exhaustive and cannot be put in watertight compartments yet these provide sufficient base for the courts to exercise their review jurisdiction over administrative action in the interest of efficiency, fairness and accountability.

Jurisdictional Error.

The term “jurisdiction” means “power to decide”. The jurisdiction of the tribunal depends upon facts the existence of which is necessary to the initiation of proceedings and without which the act of the Tribunal is a nullity. These are called “jurisdictional facts”. This ground of judicial review is based on the principle that administrative authorities must correctly understand the law and its limits before any action is taken. Court may quash an administrative action on

²⁰L. Chandrakumar v. Union of India, AIR 1995 SC 1151.

²¹Council of Civil Service Union v. Minister of Civil Service, (1985) AC 410.



the ground of ultra vires in following situations.

Lack of Jurisdiction:

It would be a case of “lack of jurisdiction” where the tribunal has no jurisdiction at all to pass an order. Court may review an administrative action on the ground that the authority exercised jurisdiction which did not belong to it. This review power may be exercised inter alia on following grounds:

- That the law under which administrative authority is constituted and exercising jurisdiction is itself unconstitutional.
- That the authority is not properly constituted as required by law.
- That the authority has wrongly decided a jurisdictional fact and thereby assumed jurisdiction which did not belong to it.

- **Improper purpose:** Administrative power cannot be used for the purpose it was not given.
- **Error apparent on the face of the record:** An error is said to be apparent on the face of the record if it can be ascertained merely by examining the record & without having to have recourse to other evidence. In *Syed Yakoob vs. K.S. Radhakrishnan*[vi], the Supreme Court explained, there would be a case of error of law apparent on the face of the record where the conclusion of law recorded by an inferior tribunal is:

- Based on an obvious misinterpretation of the relevant statutory provision,
- In ignorance of it,
- In disregard of it,
- Expressly founded on reasons which are wrong in law.

Excess of Jurisdiction:

This covers a situation wherein though the tribunal initially had the jurisdiction but exceeded it and hence its actions become illegal. This may happen under following situations:

- Continue to exercise jurisdiction despite occurrence of an event ousting jurisdiction.
- Entertaining matters outside its jurisdiction.

- **Non-consideration of relevant material:** In exercising discretion, a decision-maker must have regard to relevant matters & disregard irrelevant matters
- **In bad faith:** Where the tribunal has acted dishonestly by claiming to have acted for a particular motive when in reality the decision was taken with another motive in mind, it may be said to have acted in bad faith.
- **Fettering discretion:** An authority may act ultra vires if, in the exercise of its powers, it adopts a policy which effectively means that it is not truly exercising its discretion at all.

Abuse of Jurisdiction:

All administrative and statutory powers must be exercised fairly, in good faith for the purpose it is given, therefore, if powers are abused it will be a ground of judicial review. In the following situations abuse of power may arise:

Irrationality (Wednesbury Test).

A general principle which has remained unchanged is that discretionary power conferred on the administrative tribunal is required to be exercised reasonably. A person in whom is vested a discretion must



exercise his discretion upon reasonable grounds. A decision of the Tribunal shall be considered as irrational if it is so outrageous in its defiance to logic or accepted norms of moral standard that no sensible person, on the given facts and circumstances, could arrive at such a decision. Irrationality as a ground of judicial review was developed by the Court in *Associated Provincial Picture House v. Wednesbury*²², later came to be known as “Wednesbury test” to determine ‘irrationality’ of an administrative action.

Procedural Impropriety.

Failure to comply with procedures laid down by the Act may invalidate a decision. Procedural Impropriety is to encompass two areas:

- failure to observe rules laid down in Act; and
- a failure to observe the basic common law rule of natural justice.

It is a fundamental requirement of justice that, when a person’s interests are affected by a judicial or administrative decision, he or she has the opportunity both to know and to understand any allegations made, and to make representations to the decision maker to meet the allegations. The principles of natural justice which are imposed by the courts comprise two elements:

- Audi alteram partem (hear both sides)
- Nemo iudex in causa sua (there should be an absence of bias with no person being a judge in their own cause).

The essence of justice lies in a fair hearing. The rule against bias is strict: it is not necessary to show that actual bias existed; the merest appearance or possibility of bias will suffice. The suspicion of bias must, however, be a reasonable one.

Proportionality.

Courts in India have been following this doctrine for a long time but English Courts have started using this doctrine in administrative law after the passing of the Human Rights Act, 1998. Thus, if an action taken by the tribunal is grossly disproportionate, the said decision is not immune from judicial scrutiny. The sentence has to fit the offence & the offender.²³ It should not be vindictive or unduly harsh.

Legitimate Expectations

A legitimate expectation will arise in the mind of the complainant wherever he or she has been led to understand by the words or actions of the decision maker that certain procedures will be followed in reaching a decision. A Legitimate Expectation amounts to an expectation of receiving some benefit or privilege to which the individual has no right. Legitimate Expectation means expectation having some reasonable basis.

CONCLUSION.

In conclusion, administrative adjudication is a dynamic system of administration, which serves more adequately than any other method; the varied and complex needs of the modern society. However, we should not be blind to the defects from which it suffers or the dangers it poses to a democratic polity. It

²²*Associated Provincial Picture House v. Wednesbury*, (1948) 1 KB 223.

²³*Hind Construction Co. vs. Workmen*, AIR 1965 SC 917.



is in order to make up for such defects that Judicial Review over decisions of administrative tribunals is an inevitable requirement.

The overall picture regarding tribunalisation of justice in the country is far from satisfactory. A fresh look at the system of tribunals in India is required so as to ensure speedy justice and quick disposal of disputes arising out of administrative disputes which are essential for the development of the nation.

Findings of the Study.

It is thus clear that:

- The power of Judicial Review cannot be removed by way of a statute or an amendment to the Constitution.
- No Tribunal can be a substitute for High Courts.
- Judicial Review is the most important form of control over Administrative Tribunals.
- Administrative Tribunals cannot function on their own whims and fancies as their decisions are subjected to judicial review by the High Courts and the Supreme Court.

Suggestions.

It is suggested that the Courts should exercise their power of Judicial Review only in matters that demand the serious attention of Courts. To do so otherwise would strike at the very objective of creating Administrative Tribunals. In order to achieve this, members of the tribunal have to be equipped with adequate judicial acumen and expertise. These judicial officers need to be balanced with experts in the particular field. Only a judicious blend of the two will be able to provide an effective and result oriented tribunal system.

Another important measure which needs to be taken are steps to maintain the independence of the members of these tribunals from political or executive interference.

