

# Judicial Review of Administrative Action/ASR

# ADMINISTRATIVE ACTION

- Simply speaking, it means “act of an administrative authority”. It is, however, a term of wider connotation. It is said that the administration is the meeting point of three kinds of governmental functions ,namely legislative, judicial and executive.

## **Classification of Administrative Action:-**

- I. Quasi-legislative
- II. Quasi-Judicial
- III. (Purely) administrative (an action which is neither Quasi-legislative nor Quasi-Judicial).

# Purely Administrative function/action

- Power to issue license or permit.
- An order of preventive detention
- An order of acquisition or requisition of property
- An order setting up a commission of inquiry.
- Withdrawal from Prosecution
- **PURELY ADMINISTRATIVE ACTION –PRINCIPLES**

**Most of the actions of an administrator are not quasi-legislative/ quasi judicial actions, but they are purely administrative actions.** An administrative decision with respect to purely administrative functions is usually subjective rather than objective<sub>3</sub>

# Quasi-judicial function/action

- Cancellation, suspension, revocation or refusal to renew licence or permit by licensing authority
- Imposition of fine
- Dismissal of an employee on the ground of misconduct.
- Disciplinary proceedings against students.
- Determination of citizenship
- Determination of statutory disputes.

# Quasi-legislative function/action

- Imposition of tax
- Imposition of fee
- All India Services (Conduct) Rules, 1968
- All India Services (Discipline & Appeal) Rules, 1969.
- **Prescribing dress code from time to time**
- **Fixing Physical Training type, venue & timings**

# Quasi-Legislative functions - Ingredients

- Order is Legislative in character, it has to be **published.**
- Order is Legislative in character, **the court will not issue a writ of certiorari (or prohibition) to quash it**
- There is **no right to a notice or hearing.**
- **Rules of Natural Justice do not apply in case of quasi-legislative function.**

# Judicial Action distinguished from Quasi-Judicial Action

1. A court cannot be a judge in its own cause , while an *administrative authority vested with quasi judicial powers may be party to the controversy but it can still decide*
2. A court is bound to follow the *rules of Indian Evidence Act,1872 and Civil Procedure Code,1908* while a quasi-judicial authority is free from such requirements
3. A quasi-judicial authority has *some of the trappings of a Court*, but not all of them; nevertheless there is an obligation to act judicially.
4. A court is bound by *precedents*, quasi-judicial authority is not.
5. A *lis inter (dispute between )* parties is an essential characteristic of a judicial function, but this may not be true of a quasi-judicial function (Enquiry into lost laptop).

# DISTINCTION BETWEEN QUASI-LEGISLATIVE AND QUASI-JUDICIAL FUNCTIONS

- A legislative function (framing rules/regulations) **prescribes future pattern of conduct and creates new rights and liabilities**, whereas a decision (judicial function) **determines rights and liabilities on the basis of present or past facts and declares the pre-existing rights and liabilities**.
- Legislative function **is general** and relates to the future whereas the Judicial Function is **specific and ordinarily relates to the past**.



# Distinction between Administrative and Quasi-Legislative Functions

1. **Duty to give reasons** applies to administrative orders but not to legislative orders.
2. Since a quasi-legislative function is legislative in character, there is **no right to a notice and hearing unless specifically so required by the statute.**
3. The **rules of Natural Justice do not apply in case of quasi-legislative function.**
4. If an order is legislative in character, it has to be **published in a certain manner**, but it is not necessary if it is of an administrative nature.

## DISTINCTION BETWEEN ADMINISTRATIVE & Q- JUDICIAL ACTS

- In case of the administrative decision there is *no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh-submissions and arguments or to collate the evidence* .

However, with respect to a quasi-judicial decision, there is *a legal obligation upon the person charged with the duty of reaching the decision to consider and weigh-submissions and arguments or to collate the evidence* .

# Judicial Review

- The key word is “Review” which used as noun, ***means looking over something again; judging again; reconsideration; reassessment; critical examination.***
- Broadly speaking, judicial review in India deals with these aspects:
  - I. Judicial Review of Legislative Actions
  - II. Judicial Review of Constitutional Amendments
  - III. Judicial Review of Administrative Actions

*Here we are concerned with judicial review of administrative actions*

# Judicial Review/ Appeal/

## Administrative review

- Judicial review is different from an appeal. The *appeal is concerned with the merits of the case*, in the sense that *the appellate court can substitute its opinion for that of the decision-maker*. Judicial review, on the other hand, is concerned with *the validity or the scope of the authority's power*.
- Judicial review should be distinguished from administrative review. Many statutes set up a hierarchy of administrative authorities, with provisions of appeal or revision of orders at various levels of seniority

# GROUNDS FOR THE EXERCISE OF THE POWER OF JUDICIAL REVIEW

- A. Illegality;
- B. Irrationality;
- C. Procedural Impropriety;
- D. Disproportionality;
- E. Deprivation of Legitimate Expectation.

Though *these grounds of judicial review are not exhaustive*, yet these provide an apt base for the courts to exercise their jurisdiction.

# A. Illegality

- 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. Therefore, if the authority **(i) lacks jurisdiction, or (ii) exceeds jurisdiction, or (iii) abuses jurisdiction, or (iv) fails to exercise jurisdiction**, it shall be deemed that the authority has acted “illegally”. Court may quash an administrative action on the ground of illegality in following situations.

## A (i) Lack of jurisdiction

- In *State of Gujarat v. Patel Raghav Nath*(1969), *the revisional authority exercising powers under the Land Revenue Code went into the question of title.* The Supreme Court observed that when the title of the occupant was in dispute, *the appropriate course would be to direct the parties to approach the civil court* and not to decide the question
- In *R v. Minister Of Transport*(1934) ,even though the minister had no power to revoke the licence, he passed an order of revocation. The action was held ultra vires and without jurisdiction.

## A (ii) Exceeding Jurisdiction

- An administrative authority must exercise the power within the limits of the statute and if it exceeds those limits, the action will be held ultra vires.
- For example, *if an officer is empowered to grant a loan of Rs.1,00,000 in his discretion for a particular purpose and if he grants a loan of Rs.2,00,000, he exceeds his power (jurisdiction)* and the entire order is ultra vires and void on that ground.



# GES Corporation v. Workers Union (1959)

- The authority is empowered to award a claim for the medical aid of the employees. The authority granted the said benefit to the family members of the employees. Held that the authority exceeded his powers.

# A (iii) Abuse of jurisdiction

- All administrative powers must be exercised fairly, in good faith, for the purpose it is given, therefore, if powers are abused it will be a ground for judicial review
- Abuse of jurisdiction may be inferred from the following circumstances:
  - a) Irrelevant considerations;**
  - b) Mala fide;**
  - c) Improper purpose: Collateral purpose;**
  - d) Colourable exercise of power;**

## (a) Irrelevant considerations

- A power conferred on an administrative authority by a statute *must be exercised on the considerations relevant to the purpose for which it is conferred.* Instead, *if the authority takes into account wholly irrelevant or extraneous considerations the exercise of power by the authority will be ultra vires and the action bad.*

# Hukam Chand v. Union of India (1976)

- In Hukam Chand v. Union of India, under the relevant rule, the Divisional Engineer was empowered to **disconnect any telephone on the occurrence of a 'public emergency'**. When the petitioner's telephone was disconnected on the **allegation that it was used for illegal forward trading (satta)** the Supreme Court held that it was **an extraneous consideration and arbitrary exercise of power by the authority.**

## (b) Mala fide

- If the power is not exercised *bona fide*, the ***exercise of power is bad and the action illegal.***
- Though precise and scientific definition of the expression “mala fide” is not possible, it means ***ill-will, dishonest intention or corrupt motive.***

# Rowjee v. State of A.P. (1964)

- In Rowjee v. State of A.P., the State Road Transport Corporation had framed *a scheme for nationalization of certain transport routes.* This was done as per the directions of the then Chief Minister. *It was alleged by the petitioner that particular routes were selected to take vengeance against the private transport operators of that area as they were the political opponents of the Chief Minister.* The Supreme Court upheld the contention and quashed the order.

## (c) Improper object: Collateral purpose

- In *Nalini Mohan v. District Magistrate* (1951), the relevant statute empowered the authority to *rehabilitate the persons displaced from Pakistan as a result of communal violence.* That power was exercised *to accommodate a person who had come from Pakistan on medical leave.* The order was set aside.

## (d) Colourable exercise of power

- *Where a power is exercised by the authority ostensibly for the purpose for which it was conferred, but in reality for some other purpose, it is called colourable exercise of power.* Here, though the statute does not empower the authority to exercise the power in a particular manner, the authority exercises the power under the ‘colour’ or guise of legality.
- ***WHAT CANNOT BE DONE DIRECTLY CANNOT ALSO BE DONE INDIRECTLY***



## Nader v. Bork (1973)

- In the leading American case of Nader v. Bork, by revoking a regulation, Cox, a Special Prosecutor was relieved by the Attorney-General **by abolishing that office. However, within few days, once again, the regulation was reinforced. The court held the revocation illegal** since “it was simply a ruse to permit the discharge of Cox, **purpose that could never be legally accomplished with the original regulation in effect**”.

# Vora v. State of Maharashtra (1984)

- In Vora v. State of Maharashtra, *the State Government requisitioned the flat of the petitioner, but in spite of repeated requests of the petitioner, it was not derequisitioned.* Declaring the action bad the court observed that though the *act of requisition was of a transitory character, the Government in substance wanted the flat for permanent use, which would be a 'fraud upon the statute'*.

# A (iv) Failure to Exercise Jurisdiction

- If any administrative authority has been given power by law, no matter discretionary, the authority must exercise it in one way or the other. Public power is not a personal power, it is a public trust and, therefore, must be exercised in public interest. Failure or denial to exercise jurisdiction will be an illegality. Such type of flaw may arise in the following circumstances:
  - a) Sub-delegation;
  - b) Imposing fetters on discretion by self-imposed rules of policy;
  - c) Acting under dictation;
  - d) Non-application of mind

## (a) Sub-delegation

- The very object of conferring a power on a particular administrative authority is that the power must be exercised by that authority and cannot be sub-delegated to any other authority or official.
- In **Sahni Silk Mills v. ESI Corpn (1994).**, the parent Act enabled the corporation to delegate its power to recover damages to the Director General, who, however, in turn sub-delegated the said power to Regional Directors. *Since there was no such provision permitting the Director General to sub-delegate his power, the action was held to be bad.*

## **(b) Imposing fetters on discretion by self-imposed rules of policy**

- In **Keshavan Bhaskaran v. State of Kerala (1961)**, the relevant rule provided that no school-leaving certificate would be granted to any person unless he had completed fifteen years of age. **The Director was, however, empowered to grant exemption from this rule in deserving cases under certain circumstances. But the Director had made an invariable rule of not granting exemption unless the deficiency in age was less than two years.** The court held that the rule of policy was contrary to law.

## (c) Acting under dictation

- Sometimes, an authority entrusted with a power does not exercise that power but acts under the dictation of a superior authority. *Here, the authority invested with the power purports to act on its own but 'in substance' the power is exercised by another. The authority concerned does not apply its mind and take action on its own judgment, even though it was not so intended by the statute.* In law, this amounts to non-exercise of power by the authority and the action is bad. *It is well-settled that if the authority permits its decision to be influenced by the dictation of others, it would amount to abdication and surrender of discretion.* If the authority “hands over its discretion to another body it acts ultra vires”.

# Commissioner of Police v. Gordhandas (1952)

- Thus, in Commissioner of Police v. Gordhandas (1952), under the City of Bombay Police Act, 1902 the Commissioner of Police was authorised to grant licenses for construction of cinema theatres. **The Commissioner granted licence for the construction of a cinema theatre. But later on, he cancelled it at the direction of the State Government.** The Supreme Court set aside the order of cancellation of licence .

# Mansukhlal v. State of Gujarat (1997)

- In that case, the government did not grant sanction to prosecute appellant (public servant) under the Prevention of Corruption Act. The complainant filed a petition in the High Court and the High Court **'directed' the authorities to grant sanction. The appellant was prosecuted and convicted. Setting aside the conviction**, the Supreme Court observed that **"by issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction"**. The sanction was, therefore, illegal and conviction bad in law.



## (d) Non-application of mind

- *When a discretionary power is conferred on an authority, the said authority must exercise that power after applying its mind to the facts and circumstances of the case in hand.* If this condition is not satisfied, there is clear non-application of mind on the part of the authority concerned. *The authority might be acting mechanically, without due care and caution or without a sense of responsibility in the exercise of its discretion. Here also, there is failure to exercise discretion and the action is bad.*

# Jagannath v. State of Orissa (1966)

- In Jagannath v. State of Orissa, in the order of detention *six grounds were verbatim reproduced from the relevant section of the statute. In the impugned order in which various grounds were mentioned, instead of using the conjunctive “and” the disjunctive “or” had been used.* Supporting the order, the Home Minister filed affidavit stating that his personal satisfaction to detain the petitioner was *based on two grounds.*
- The Court held that there was clear non-application of mind by the Home Minister and the order was liable to be quashed.

# Various forms of abuse of discretion may overlap

- The various forms of abuse of discretion may even overlap. Take the classic example of the *red-haired teacher, dismissed because she had red hair. In one sense, it is unreasonable. In another sense, it is taking into account irrelevant or extraneous considerations. It is improper exercise of power and might be described as being done in bad faith or colourable exercise of power. In fact, all these things 'overlap to a very great extent'* and run into one another.

## B. Irrationality (Wednesbury Test)

- A general established principle is that the discretionary power conferred on an administrative authority should be **exercised reasonably**. A decision of an administrative authority can be held to be unreasonable if it is so outrageous in its defiance of logic or prevalent moral standards.
- **Associated Provincial Picture Houses v Wednesbury Corporation [1948]** : "Associated Provincial Picture Houses" were **granted a licence** by the defendant local authority **to operate (SCREEN A MOVIE) a cinema** on condition that **no children under 15 were admitted to the cinema on Sundays**. The claimants sought a declaration that such a condition was unacceptable, and outside the power of the Wednesbury Corporation to impose.

# THE WEDNESBURY PRINCIPLE

- A decision will be said to be unreasonable in the Wednesbury sense if
  - 1. it is based on wholly irrelevant material or wholly irrelevant consideration,***
  - 2. it has ignored a very relevant material which it should have taken into consideration, or***
  - 3. it is so absurd that no sensible person could ever have reached to it.*** (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.)

## C) Procedural impropriety

- If a statute lays down any procedure which administrative authority must follow before taking action, it must be faithfully be followed and any violation of the procedural norm would vitiate an administrative action .
- Where statute is silent about the procedure, courts have insisted that the administrative authorities **must follow the principles of natural justice while taking a decision which has civil or evil consequences** ( has impact on any individual)
- Therefore, principles of natural justice need to be followed with respect to an administrative action when the action is likely to have an impact **on any individual**

# DOCTRINE OF PROPORTIONALITY

- In Ranjit Thakur v. Union of India(1987) – an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment. The said order was challenged.
- The said order was set aside on the ground that the *punishment was grossly disproportionate.*

# **DOCTRINE -LEGITIMATE EXPECTATION:**

- Legitimate expectation may arise either from express promise or existence of regular practice which the applicant can reasonably expect to continue.
- For example, *if the Government has made a scheme for providing drinking water in villages in certain area but later on changed it so as to exclude certain villages from the purview of the scheme than in such a case what is violated in the legitimate expectation of the people in the excluded villages.* Thus, the doctrine becomes a part of the principles of natural justice and no one can be *deprived of his legitimate expectations without following the principles of natural justice.*
- ***NOT A FULLY EVOLVED PRINCIPLE (EVOLVING)***



# SC of WS Welfare Association v. State of Karnataka (1991)

- In this case the Government has issued a *notification notifying areas where slum clearance scheme will be introduced.* However, the notification was subsequently amended and *certain areas notified earlier was left out.* The Court held that the earlier notification had raised legitimate expectation in the people living in an area which had been left out in a subsequent notification and hence *legitimate expectations cannot be denied without a fair hearing.*

40. Power to issue license or permit is a quasi-judicial action(True/False)
41. Cancellation, suspension, revocation of license or permit by licensing authority is a purely administrative action(True/False)
42. Imposition of fee is a quasi-judicial action(True/False)
43. Imposition of fine is a quasi-judicial action(True/False)
44. Determination of citizenship is a purely administrative action(True/False)