4 ADMINISTRATIVE DISCRETION AND JUDICIAL CONTROL

Under the impact of the contemporary philosophy of ‘welfare State’ as well as that the emergency situations, a phenomenon generally discernible in democratic countries is the vesting of large discretion in the hands of the administrative authorities. The bone of modern administrative process is the conferment of large discretionary powers on the administration, to be exercised according to its subjective satisfaction, without the relevant legislation laying down clearly the conditions and circumstances subject to which, and the norms with reference to which the Executive is to exercise the powers conferred.

The Supreme Court of India has made it clear that there has to be room for discretionary authority within the operation of rule of law, even though it has to be reduced to the minimum extent necessary for proper governance within the area of discretionary authority, the existence of proper guidelines or norms of general application excludes any arbitrary exercise of discretionary authority. There is several methods of control of administrative discretion have been developed, E.g. doctrine of natural justice and fairness, excessive delegation, ultra vires, etc.

4.1 Meaning

Discretion is the power usually given by the statute to make a choice among competitive considerations. Lord Halsbury analyzing the meaning of administrative discretion has observed:

“Discretion means when it is said that something is to be done within the discretion of authorities that something is to be done according to private opinion Rook’s case, according to law and not humor. It was to be not arbitrary vague and fanciful but legal and regular. Prof. Freund has given a very good analysis of administrative discretion. He says: “When we speak of administrative discretion, we mean that a determination may be reached, in part at least, upon the basis of considerations not entirely susceptible of proof or disproof. A statute confers
discretion when it refers an official the use of his power to beliefs, expectations, or
tendencies instead of facts, or to such terms as ‘adequate’ ‘advisable’,
These lack the degree of certainty belonging even to such difficult concepts as
fraud and indiscrimination or monopoly. They involve matter of degree or an
appeal to judgment. The discretion enlarges as the element of future probability
preponderates over that of present conditions; it contracts wherein certain styles of
cases equally tend to become standardize, as in matters of safety; on the other
hand, certain applications to the concept of immorality, fraud, restraint of trade,
discrimination or monopoly are so controversial as to operate practically like
matter of discretion. In other words, there is no sharp line between questions of
discretion on the one hand, and questions of fact on the other; and where an
administrative fact is permitted to be conclusive, it will usually be a case on the
border line between fact and discretion. It may be practically convenient to say
that discretion includes the case in which the ascertainment of fact is legitimately
left to administrative determination.”

4.2 Discretionary powers – a need of modern administrative law

In modern times, the Legislatures were compelled to confer vast discretionary
powers on the administration because it is not always possible to lay down
standards or norms for the exercise of administrative power. Administration is
always asked to solve a problem, whenever it arises, for the Legislature is not sure
how it can be solved. It is only administration which is deemed competent to do
and, therefore, power is left with it in rather broad terms. The conferment power
assumes that the power should be exercised independently by the authority
concerned according to his own assessment. It imposes a duty to do so, subject, of
course, to the limitation provided by law and of being within the ambit of the
power. The administrative authorities vested with such powers should, therefore,
act on their own record; they should not be guided by the direction or instruction
their superiors in the discharge of the power. The Supreme Court in U.P. State
Road Transport Corp. v Mohd. Ismail,¹ rightly observed that the discretion allowed by the statute to the holder of an office is intended to be exercised “according to the rules of reason and justice, not according to private opinion, according to law and not humor, it is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

Discretionary power may be conferred generally or with a duty attached to the exercise of that power, where the power and duty to exercise it go together, the authority empowered is under a statutory liability to exercise its discretionary power and if it refused to do so, the court of law may compel its exercise. In England the refusal to exercise discretionary power, where it imposes a duty to exercise it, entails a liability to damages, no such law has developed in India till now, whereby the Government could be held liable for damages caused to any individual on account of refusal to perform it or performing it negligently.

The court may compel the authority to exercise their discretion where they have been expressly invested with such power; this exercise of discretion by the authority on which such discretion is conferred must not be lightly interfered with. There is an essential distinction between refusal to exercise the discretion and manner of its exercise. If the authority fails to discharge his duty by refusing to exercise his discretion when facts calling for its exercise exist, the court will compel him to do so, if the authority concerned exercises his discretion honestly and in the spirit of the statute, no mandamus will be issued directing him to exercise his discretion in a particular way.

How far statutory authority can be compelled to exercise its statutory discretionary duty has been answered by the Supreme Court in Ratlam Municipality v. Vardhichand². In the present case, the residents of certain localities of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum dwellers moved the Municipality to do its duty towards the members of the public by removing the insanitation. After they failed, they moved the Magistrate under Section 133 of Cr. P.C. to require the

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¹ 1991 AIR SC 1099
² AIR 1980 SC 1622
Municipality to abate the nuisance. Ultimately the case came up before the Supreme Court can compel a statutory question was whether by affirmative action a court can compel a statutory body to carry out its duty to the community by constructing sanitation facilities at great cost and on a time bound sanitation. The court rejecting the plea of financial disability of the Municipality held that the court can compel the statutory body to perform its discretionary duty and thus the Municipality was directed to remove the nuisance with in a period of six months from the date of judgment. The court also directed the Magistrate for prosecuting the Municipal Officers in case they fail to discharge their duty of removing nuisance. It was observed by the court that the law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery try for justice. The dynamics of the judicial process has a new enforcement dimension not merely through some of the provisions of the Criminal Procedure Code but also through tort consciousness. The officers – in – charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow up legislation direct them to do are defied or denied wrongfully.

In U.P. State Road Trnsport Cop. V. Mohd. Ismail, the Court ruled that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion, it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases.

There may, however be case where a statute confers upon any authority a general discretion to take an action ‘if certain conditions as specified in the statute are fulfilled’ in a permissive language, the authority is competent to refuse to exercise the discretionary power even though statutory conditions are fulfilled. In Veerappa v. Raman, the court held that a transport authority under the Motor Vehicle Act 1939 has general discretion to refuse even where an applicant complies with the conditions specified in Section 12 of the Act.

There is a distinction between refusal to exercise the direction and the manner of its exercise. The question for determination sometimes may be, whether the

3 AIR 1991 SC 1097
authority is obligated to exercise its power, but the question as to how the power is to be determined is not open to judicial scrutiny. The courts do not probe into the merits of a case. It is true that where the authority has not acted according to law, the courts would no doubt quash the administrative action but it could not direct the authority to act in a particular manner. Where the transport authority issued a permit for one year while the statute required renewals for the permit for a period between three to five years, but it could not specify the period itself, it is open to the Supreme Court to direct the authority to carry out the duty in accordance with law. It was rightly observed by Mr. Kanpur, J., that:

‘The power of the Supreme Court only extends to quashing and not to substituting an order in place of what an administrative agency has done or to direct what it should do. No order commanding the Regional Transport Authority as to what order it should pass and what period be substituted in place of the order passed by the Supreme Court and all that this court can do is to quash the order and leave it to the Regional Transport Authority to reconsider the matter and exercise its discretion keeping in view the law as laid down by this Court. However, in a case where the area of discretion has been delimited to such an extent that authority concerned could take only one decision under it, the Court may specifically direct the authority to act in that particular way.

4.3 Administrative Discretion and Fundamental Rights

In India the Constitution has guaranteed certain fundamental rights to the people. These rights lay down a limitation on the legislative and executive power of the Government and they provide some wide dimensions of judicial control over administrative discretion. No law can clothe administrative discretion with a complete finality, for the courts always examine the ambit and even the mode of its exercise from the angle of its conformity with fundamental rights. The courts can also insist on certain procedural safeguards in the exercise of the discretionary powers by the administration under the umbrella of the fundamental rights, the court have thus used the fundamental rights to control either bestowal of discretionary powers on the administration or manner of their exercise.
The fundamental rights thus provide a basis to the judiciary in India to control administrative discretion to a large extent. Problems arise mainly in connection with the adjudication of the validity of a law conferring discretion on the administration. For this purpose, the courts look into substantive as well as procedural aspects of the law in question. ‘Thus substantive part is examined to see whether the discretion conferred is within permissible limits, and the procedural part is examined to see whether there are necessary safeguards subject to which the discretion is to be exercised. THE law can be declared unconstitutional if it is defiant in either of the two cases.’

There have been a number of cases in which a law, conferring discretionary powers, has been held violative of fundamental rights. The following discussion will illustrate the cases of judicial restraints and the exercise of discretion in India.

4.4 Under Article 14

Article 14 guarantees to every person equality before law or equal protection of laws. It condemns discrimination; it forbids class legislation, but permits classification founded on intelligible differentia, having a rational relationship with the object sought to be achieved by the Act in question.

In a number of cases, the Statute has been challenged on the ground that it conferred on an administrative authority wide discretionary powers of selecting persons or objects discriminately and therefore, it violated Article 14. The Court in determining the question of validity of such statute will examine whether the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. The courts will struck down the statute if it does not provide any guidance for the exercise of the discretion in the matter of selection or classification. The court will not tolerate the delegation of uncontrolled power in the hands of the Executive to such an extent as to enable it to discriminate.

In State of West Bengal v. Anwar Ali, West Bengal Special Courts Act, 1950 and notification issued there under was held invalid, as it made no reasonable
classification. In this case under section 5(1) of the West Bengal Special Courts Act, 1950, the State Government was empowered to refer, by general or special order, offences for trial to a special court constituted by the Government. The preamble of the Act declared its purpose as the speedier trial of certain offences under this Act and the Criminal Procedure Code. The respondents assailed the statute as unconstitutional on the ground that the executive authorities could arbitrarily select a case for being tried by the special courts. It was held that in so far as the Act empowered the Government to have cases or class of cases or class of offences tried by special courts, it violated Article 14 of the constitution. The court further held the Act invalid as it laid down “no yardstick or measure for the grouping either of persons or of cases or of offences’ so as to distinguish them from others outside the purview of the Act. Moreover, the necessity of “speedier trial” was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

In Kathi Ranning v. State of Saurashtra, a provision similar to the one involved in Anwar Ali’s case was held valid. Here Section 11 of the provided that a special judge “shall try such offences. …As the Government may by general or special order in writing direct”. The Court has upheld the Act because the Court found that the policy was stated in the preamble of the Act, which was to provide for security of the State. Maintenance of public order and maintenance of supplies and services are essential to the community in the State of Saurashtra.

The principle laid down in the above cases has been followed in several other cases pertaining to special courts. Noted among them is the case of Kedar Nath v. State of West Bengal,⁴ in this case the law setting up special courts mentioned the offences triable, but gave discretion to the Government to allot cases for trial by these courts. It was argued that the provision vesting an unfettered discretion in the Government to do so was discriminatory and, therefore, void under Article 14. It was also argued that the law did not disclose any reasonable classification as to the offences mentioned. These arguments were rejected by the Court. The Court stated:

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⁴ AIR 1953 SC 404
“There may be endless variations from cases into the facts and circumstances for the same types of offences, and in many of those cases there may be nothing that justifies or calls for the application of the provisions of the special Act. “

In re the Special Courts Bills, 1978 the Supreme Court upheld the Special Courts Bill which provided for special courts to deal with the offences committed by persons who held high political office during the period or emergency. The Bill gave power to the Government to refer such cases to the special courts. The court upheld the grant of discretionary power as it was controlled by the policy of the Act.

In the opinion of the Court, it was necessary to give power of some competent authority (here the Government) to make a selection of cases being dealt with by the special Act.

In Tika Ramji v. State of U.P., the court took the view that there the statute confers wide powers at the same time provides procedural safeguard against arbitrary exercise of such power, it would uphold such powers, Section 15 of the U. P. sugarcane Act. 1953 conferred upon the Cane Commissioner the power to reserve any area and assign any are for the purposes of supply of cane to a factory, after consulting the factory and cane grower’s co-operative society. The Act also provided for an appeal such an order of the State Government. A rule framed under the Act laid down the factors which the Commissioner had to take in to consideration in passing the order. The power was held not to be bad under Article 14 as it contained safeguards against its exercise in a discriminatory manner.

Similarly, the Supreme Court upheld Section 4 of the Bihar State Universities Act, 1962, Section 4 provided that every appointment, dismissal, removal of any teacher of a college made during a certain period would be subject to such order s the Chancellor “may” on the recommendation of the University Service Commission pass. Although it appears to have given unanalyzed powers to the Chancellor but in effect it does not, as the unanalyzed power to the Chancellor but in effect it does not, as the chancellor would before passing the order receive recommendations from the University Commission which was bound to give a

5 AIR 1956 SC 676
hearing to the person concerned. It was, therefore, held not to be a case of unanalyzed power.

Frequently, the Supreme Court has upheld the statutory provision conferring very wide discretionary powers upon administrative authorities even if they did not provide any procedural safeguards. The court took the view that board statement of policy in the preamble of the statute or laying down the general objectives of the statute for the exercise of its power by the Executive would be sufficient guidelines to statute for the exercise of its power by the Executive would be sufficient guidelines to satisfy the court for upholding it.

Thus in the Act, where the State Government was empowered to take over any estate from the Zamindars, in pursuance of the directive principles laid down in the Preamble for securing economic justice to all, was upheld by the Court on the ground that there was a clear enumeration of the policy in the Act impugned and the discretion vested into eh Government had to be exercised in the light of this policy, As against the contention that it was discriminatory exercise of the power the court held that all estates could not be taken over at once owing to financial difficulties and, therefore, from the very nature of the things it was necessary to give “certain amount of discretionary latitude to the State Government” Similarly, the Supreme Court upheld the provisions of the statute, empowering the State of Rajasthan to exempt any person from the operation of the Rajasthan (Protection of Tenants) Ordinance, 1949, which was promulgated to prohibit ejection of tenants from their holdings by the landlords. It was held to be intended to put a check on the growing tendency of the landlords to eject their tenants.

In Chitralekha v. State of Mysore, the mode of selection of candidates for admission to the Sate Medical Colleges by interview and viva voce examination was challenged on the ground that it enabled the interview Board to act arbitrarily and to manipulate the results. It, therefore, contravened Article 14 of the Constitution. The Supreme Court rejected the contention and held that the Government had clearly laid down the policy and definite criteria in the matter of

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6 AIR 1964 SC 1823
laying marks at the interview and it appointed competent men to make the selection on that basis.

Finally in the case of Punna Lal Brinjraj v. Union of India\(^7\) where administrative convenience was regarded as the criterion for the exercise of administrative power. The Income Tax Statute authorized the tax authorities to transfer a case from one place to another. The appellant – assessee, whose case transferred from Calcutta to Delhi contended that the statute vested a naked, arbitrary and unanalyzed power to transfer a case from one place to another, while other persons similarly situate could continue to be assessed at the place of their business or residence. The Court rejected the contention of the appellant and upheld the statute as the provision was held to have been enacted for “administrative convenience” and for “convenient and efficient assessment’ of income-tax. It has been stated by Prof. Jain and Jain that administrative convenience could hardly be regarded as a definite policy to control administrative discretion. The case may be characterized as an extreme example of judicial difference to administrative evidence.

However, the court letter on in two cases, 2 one from the Punjab and the other from Orissa High court has held the exercise of the discretion to be discriminatory and hence violative of Article 14. In the first instance, under the Punjab Premises Eviction Act, 1959, it was provided that if the collector is satisfied that any person is in unauthorized occupation of any public premises and that he should be evicted, he after issuing show – cause notice to him make the order of eviction against him. The Collector has thus two remedies to pursue against those who are in unauthorized occupation of public premises; one is more drastic in which the eviction depends on the more satisfaction of the officer, the other one is an ordinary suit in a Civil was laid down in the Act for the collector to select one procedure of the other the Court, therefore, clearly held that it violated Article 14. By providing two alternative remedies to the collector and leaving it to his unguided discretion to resort to one or other of these, the law is discriminatory and violates Article either the Disciplinary Proceedings Rules or the Subordinate Services Rules. In the former the procedure was more prejudicial and gave less

\(^7\) AIR 1958 SC 163
protection to the civil servant than in the latter. It was solely on the discretion of the Government to proceed under either of the Rules. The Court held such discretion to be discriminatory and bad under Article 14 as no principle was laid down to regulate the discretion of the Government, and the public servants similarly circumstanced could thus be treated in a discriminatory manner.

In R. D. Shetty v. International Airport Authority, Justice Bagwati observed: “It is well settled rule of administrative law that an executive authority must be vigorously held to the standards by which it proposes its actions to be judged and it must scrupulously observe those standards on complaint of invalidation of an act in violation of them”.

He further said: “The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.”

The same point was reiterated in M/s. Kasturilal v. State of J. & K., where the court held that where the Government is dealing with the public, whether in the matter of giving jobs or entering into contract or granting some larges it cannot act arbitrarily at its sweet will. It must give equal opportunities to all to complete for such a contract or largess.

The Supreme Court held that in awarding a contract in favour a private person, the Government is expected to follow certain norms. Normally some rules must exist to regulate the selection of person for awarding contracts. In such matters always a defense cannot be entertained that contract has been awarded without the well settled norms and rules prescribed, on the basis of the doctrine of “executive necessity”. The norms and procedure prescribed by Government and indicated by courts have to be more strictly followed while awarding contracts which along with a commercial element have a public purpose. It was further laid down:

“The executive does not have an absolute discretion, certain peoples and principles have to be followed, the public interest being the paramount consideration. It had also been pointed out that the securing the public interest one

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8 AIR 1999 SC 1628  
9 AIR 1992 SC 1980
of the methods recognized is to invite tenders affording opportunity to submit offers for consideration in an objective manner”.

4.5 Under Article 19

Article 19 guarantees certain freedoms to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed on these freedoms under the authority of law. They cannot be contended merely on executive action. The reasonableness of the restrictions is open to judicial review. These freedoms can also be afflicted by administrative discretion. Such cases can be examined below:

The Dramatic Performance Act which authorized the direct Magistrate to prohibit public dramatic performance of a scandalous or defamatory nature, arousing or likely to excite feelings, disaffections towards the final authorized to determine the question whether a particular play was offensive under the Act. There was no provision to review his decision, or to afford an opportunity, to the aggrieved party to make a representation against the prohibitory order, nor is the executive under an obligation for taking action.

In Babulal Parate v. State of Maharashtra,10 the Supreme Court upheld a statutory provision, giving power to the Executive to impose restrictions on freedom of speech and expression as the statute contained safeguards against such restrictions, Under Section 144 of Cr. P.C. where the Direct Magistrate or any other magistrate specially empowered by the State Government or the Direct Magistrate understood that there is sufficient ground for proceeding under the section and an immediate preventive remedy is necessary, he may, by a written order stating the material facts of the case, direct any person to obtain from a certain act if the magistrate considers that such direction is likely to prevent a disturbance of the public tranquility, or an affray,. The Magistrate may rescind or alter the order on the application for a member of the public after giving him an opportunity of hearing. The order could remain into force only for two months. The Supreme Court upheld the provisions and stated that the power had been intended to be exercised for preventing disorder and to secure public weal only for

10 AIR 1961 SC 884
a temporary period and that too for an emergency. The section does not, therefore, confer an arbitrary power on the magistrate to make an order.

In State of Bihar v. K. K. Misra,11 the court, however, struck down clause 6 of Section 144 of the Cr. P. C. Under it the State Government could extend the life of an order passed by a magistrate beyond two months if it was found necessary for preventing danger to human life, health and safety or for preventing a riot or an affray. The power of the Government was characterized it to be open for being exercised arbitrarily. There we no provision for making a representation against the order.

In State of Madras v. V. G. Row,12 the constitutional validity of Section 15 (2) of Criminal Law (Amendment) Act, 1908 as amended in Madras by the Madras Act of 1950 was involved. Under the Section the State Government was empowered to declare, by notification, an association unlawful if it constituted a danger to public order or the administration of law. The reasons for the issue of notification to the Government had to be mentioned in the notification. The representation was to be considered by the Advisory Board and the Government was required to cancel the notification if the Board so recommended. Certain association was declared unlawful under this Act. The Supreme Court declared the provision unconstitutional under Article 19(1) (e) of the constitution. The Court observed:

“The right to form association or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields that vesting of authority in the executive Government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly rested in a judicial inquiry, is a strong element which in our opinion, must be taken into account in judging the reasonable of the restrictions imposed by Section 15(2) (b) on the exercise of the fundamental right under Article 19(1)(c)”.

A number of cases have come up involving the question of validity of law conferring discretion on the Executive to restrict the right under Article 19(1) (b)

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11 AIR1971 SC 1667
12 AIR 1952 SC 196
and (e.) The State has conferred powers on the Executive to extern a person from a particular area in the interest of peace and safety in a number empowered under East Punjab Safety Act, 1949, to make an order of externment from an area in case he was satisfied that such an order was peace and order, the Supreme Court upheld the law conferring such discretion on the execution of the grounds, inter alia, that the law in the instant case was of temporary nature and it gave a right to the externee to receive the grounds of his externment from the Executive.

In Hari Gawali v. Deputy commissioner of Police, the Supreme Court upheld the validity of Section 57 of the Bombay Police Act authorizing any of the officers specified therein to extern certain convicted persons from the area of his jurisdiction if he had reasons to believe that they are likely to commit any offence similar to that of which they were convicted. This provision of law, which apparently appears to be a violation of the residence, was upheld by court mainly on the considerations that certain safeguards are available to the externee, i.e. the right of hearing and the right to file an appeal to the State Government against the order.

In State of Madhya Pradesh v. Baldeo Prasad, the C. P. Goondas Act, 1946, which provided for the control of goondas and their removal from one place to another in the interest of public peace or tranquility was held by the supreme court to be bad mainly on two grounds; firstly, there was no requirement for the Magistrate, before taking action to come to a formal decision as to whether the person concerned was goonda or not, and secondly, no opportunity was intended to be given to the person to show that he was not a goonda. Similarly, the Supreme Court in State of M.P. v Bharat Singh, declared a provision of the M. P. Public Security Act, 1959 invalid, as it gave power to an executive authority to specify the area where an externed person shall have to say, in the absence of procedural safeguards of hearing.

13 AIR 1956 SC 559
14 AIR 1961 SC 293
15 AIR 1967 SC 1170
In Himmat Lal Shah v. Police commissioner, Ahmedabad,\textsuperscript{16} rule 7 of Section 33 of the Bombay Police Act, 1951 was struck down by the Court. Rule 7 provided that no public meeting shall be held on a public street unless a written permission has been obtained from an officer authorized by the Commissioner of Police. The rule did not provide consideration for the exercise of the power by the authorities nor did it provide the procedural safeguards against the misuse of the power. The court, therefore struck down the Rule as it conferred arbitrary powers on the official concerned.

Thus it is clear that the Court will hardly favour the conferring of absolute discretionary powers on the executive authority in absence of procedural safeguards to the affected parties.

In a welfare State, often, statutory provisions are made conferring discretionary powers on administrative officers to interfere with private property. The courts have not approved the conferment of such powers without any procedural safeguards like right of hearing or making representations against such orders. It also insisted on some substantive norms being incorporated in the concerned statute to regulate the exercise of such discretion. The first interesting case on the point is Raghuvir v. courts of Wards\textsuperscript{17}. In this case the discretionary power of the Deputy Commissioner was challenged. The Deputy Commissioner acting as the Court of Words could in his discretion and on his subjective determination with previous sanction of the Chief Commissioner, assume the power of superintendent over. The property of a landlord who habitually infringed the rights of tenants, it was further provided that eth discretion so conferred could not be called in question in any Civil Court. The Court held the law void for it conferred uncontrolled discretionary powers on an administrative officer. The Court laid down the following principle:

When a law deprived a person of possession of his property for an indefinite period of time merely on the objective determination of an executive officer, such a law can on non-construction of the word reasonable’ be described as coming within that expression, because it completely negatives the fundamental right by

\textsuperscript{16} AIR 1973 SC 87
\textsuperscript{17} (1986) 4 SCC 481
making its enjoyment dependent on the mere pleasure and discretion of the Executive, and citizen affected having no right to have recourse for establishing the contrary in a Civil Court.

The Madras Hindu Religious and Charitable Endowment Act, 1951, provided inter alia for issuing a scheme for a religious institution for its better administration by the executive officer and also for taking over the management of this institution for five years. As to the issuing of the scheme, the matter could be bought before the court, but no such safeguard was available as against taking over the management. The Supreme Court in Commissioner, Hindu Religious Engowment v. Kakhmindra held the former one valid but the latter valid on the ground that no access was allowed to the court to set aside the order in that case.

The court has always insisted on providing for the safeguards in the cases, where discretionary powers have been conferred in an unregulated manner. In State of M. P. v Champa Lal, the question of validity of the Bhopal Reclamation and Development of Land (Eradication Kans) Act, 1954 was raised. The Act authorized the Reclamation Officer to declare any land as bans Kans infested (a species of weeds which sap the fertility of land) and to enter and start eradication operation therein. The eradication cost was to be recovered from land owners. There was no provision in the Act for giving an opportunity to land owner to show that his land was not so infested. The court held that Act was void for its failure to provide any procedural safeguard against infringement of property right by the reclamation officer concerned. The Court stressed on giving an opportunity to the owners of the land to provide to the satisfaction of the officers concerned that their land were not so infested, before any interference is made to their rights of property. The absence of a right of hearing, must, therefore, be characterized as arbitrary.

Article 19(1) (g) guarantees the freedom of carrying on any trade, business or occupation or to practice any profession. However, Article 19(6) empowers the State to make any law imposing reasonable restrictions on the exercise of right in the interest of the general public.

AIR 1965 SC 124
In a large number of cases, the question as to how much discretion can be conferred on the Executive to control and regulate trade and business has been raised. The general principle laid down in that the power conferred on the Executive should not be arbitrary, and that “it should not be left entirely to the discretion of any authority to do anything it likes without any check or control by any higher authority.” “Any law or order which confers arbitrary and uncontrolled power upon the executive in the matter of the regulating trade or business is normally available in commodities control cannot but be held to be unreasonable.

“In Dwarka Prasad v. State of U. P.,”¹⁹ Clause 4(2) of the U.P. Coal Control Order 1953, issued under the essential supplies (temporary Powers) Act, 1946 was held invalid because it gave to the licensing authority an absolute power to grant, revoke or suspend licences. There was no rule to guide his discretion and no provisions to ensure a proper execution of the power and to operate as a check against injustice resulting from its improper exercise. The court also struck down clause 3(2) (b) of the Order on the ground that the controller had been an unrestricted power to exempt any person from the licensing provisions.

Next case is Chandrakant v. Jasjit Singh, where the question of validity of the Customs House Agents Licensing Rules, 1960, issued under Section 202 of the Sea Customs Act, 1878, was raised. The section provided for licensing of the clearing agents and the rule empowered the Customs Collector to reject. An application for the grant of licences if ‘the applicant is not otherwise considered suitable’, the court declared the rule invalid and stated:

“In our opinion, if a candidate is found fit under the other rules and has successfully passed the examination, he should only be rejected under a rule which requires the Customs Collector to state his reasons for the rejection and the rules must provide for an appeal against that order….

Again the Supreme Court in Harakhchand Ratanchand Banthi v. Union of India”²⁰ declared a licensing provision invalid as it conferred an uncontrolled and unguided power on the Executive. The gold (Control) Act, 1968, provided for licensing of dealer in gold ornaments. The Administrator was empowered under

¹⁹ AIR 1954 SC 224
²⁰ AIR 1970 SC 1453
the Act to grant or renew license having regard to the matters, inter alia, the number of dealers existing in a region, anticipated demand, suitability of the applicant and public interest. The Supreme Court held that all these factors were vague and unintelligible. The term ‘region’ was nowhere defined in the Act. The expression ‘Anticipated demand’ was vague one, the expression suitability of the applicant, and ‘public interest; did not contain any objective standards or norms.

Where the Act provides some general principles to guide the exercise of the discretion and thus saves it from being arbitrary and unbridled the court will uphold it, but where the executive has been granted ‘unfettered power to interfere with the freedom of property or trade and business. The court will strike down such provision of law. In State of Rajasthan v. Nath Mal\textsuperscript{21}, there were the questions firstly as to the validity of the power to freeze stocks by the Executive under the Rajasthan Foodgrains (Control) Order 1949, so that it could not be disposed of except with its permission and secondly, as to the validity of the provision under the above order empowering the executive to requisition and dispose of the stock frozen at the Government procurement rate. As regards the validity of the former, the court upheld it although no ground for the exercise of the power was mentioned. The Court was satisfied with the general principle laid down in the parent Act, i.e. securing equitable distribution, etc. of the essential commodities. As regards the letter power, it was held to be bad as it was left entirely to the Executive to requisition stocks at a rate fixed by it and dispose of such stocks at any rate in its discretion. This was held to have vested unrestrained authority in the Executive to requisition the stock of food grains at an arbitrary price and hence a bad provision.

4.6 Under Article 31 (2)

Article 31(2) of the constitution provided for acquisition of private property by the Government under the authority of law. It laid down two conditions, subject to which the property could be requisitioned: (1) that the law provided for an amount (after 25\textsuperscript{th} Amendment) to be given to the persons affected, which was

\textsuperscript{21} AIR 1954 SC 307
non-justiciable; and (2) that the property was to be acquired for a public purpose, in an early case,2 where the law vested the administrative officer with the power to acquire estates of food grains at any price, it was held to be void on the grounds, inter alia, that it failed to fix the amount of compensation or specify the principles, on which it could be determined. Since the matter was entirely left to the discretion of the officer concerned to fix any compensation it liked, it violated Article 31(2).

The property under Article 31(2) could be acquired for a public purpose only. The Executive could be made the judge to decide a public purpose. No doubt, the Government is in best position to judge as to whether a public purpose could be achieved by issuing an acquisition order, but it is a justifiable issue and the final decision is with the courts in this matter. In West Bengal Settlement Kanungo Co-operative Credit Society Ltd. V. Bela Bannerjee,22 the provision that a Government’s declaration as to its necessary to acquire certain land for public purpose shall be conclusive evidence thereof was held to be void. The Supreme Court observed that as Article 31(2) made the existence of a public purpose a necessary condition of acquisition, it is therefore, necessary that the existence of such a purpose as a fact must be established objectively and the provision “relating to the conclusiveness of the declaration of the Government as to the nature of the purpose of the acquisition must be held unconstitutional”.

The courts have, however, attempted to construe the term ‘public purpose’ rather broadly; the judicial test adopted for the purpose being that whatever further the general interest of the community as opposed to the particular interest of the individual is a public purpose. The general tendency of the legislature is to confer the power of acquisition on the executive in an undefined way be using vague expressions such as “purposes of the State” or “purposes of the Union” so as to give wider latitude to the courts to uphold it.

We have seen in the above illustrations how the courts have used the mechanism of fundamental rights to control the administrative discretion. In fact fundamental

22 AIR 1954 SC 170
rights are very potential instruments by which the Judiciary in India can go a long way in warding off the dangers of administrative discretion.

4.7 Judicial Control of Administrative discretion

The broad principles, on which the exercise of discretionary powers can be controlled, have now been judicially settled. These principles can be examined under two main heads:

(a) Where the exercise of the discretion is in excess of the authority, i.e. ultra vires;
(b) Where there is abuse of the discretion or improper exercise of the discretion.

These two categories, however, are not mutually exclusive. In one sense the exercise of the discretion may be ultra vires, in other sense the same might have been exercised on irrelevant considerations. As regards the ultra vires exercise of administrative discretion, the following incidents are pre-eminent:

(1) Where an authority to whom discretion is committed does not exercise that discretion himself;
(2) Where the authority concerned acts under the dictation of another body and disables itself from exercising a discretion in each individual case;
(3) Where the authority concerned in exercise of the discretion, does something which it has been forbidden to do, or does an act which it has been authorized to do;
(4) Where the condition precedent to the exercise of its discretion is non-existent, in which case the authority lacks the jurisdiction to act at all.

Under the second category, i.e., abuse of discretionary power, the following instances may be considered:

(1) Where the discretionary power has been exercised arbitrarily or capriciously;
(2) Where the discretionary power is exercised for an improper purpose, i.e., for a purpose other than the purpose of carrying into effect in the best way the provisions of the Act;
(3) Where the discretionary power is exercised inconsistent with the spirit and purpose of the statute;
(4) Where the authority exercising the discretion acts on extraneous considerations, that is to say, takes into account any matters which should not have been taken into account;

(5) Where the authority concerned refuses or neglects to take into account relevant matter or material consideration.

(6) Where the authority imposes a condition patently unrelated to or inconsistent with the propose or policy of the statute;

(7) Where in the exercise of the discretionary power, it acts mala fide;

(8) Where the authority concerned acts unreasonably.

Legitimate expectation as a ground of judicial review, - Business the above grounds on which the exercise of discretionary powers can be examined, a third major basis of judicial review of administrative action is legitimate expectation. Which is developing sharply in recent times? “The concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that the legitimate expectation” is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place besides such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and “in future, perhaps, the principle of proportionality.”

In Union of India v. Hindustan Development Corporation,23 the court held that it only operates in public law field and provides locus standi for judicial review, its denial is a ground for challenging the decision but denial can be justified by showing some overriding public interest. Denial does not by itself confer an absolute right to claim relief. The right to relief should be limited only to cases where denial amounts to denial of any right or where decision/action is arbitrary, unreasonable, not in public interest and inconsistent with principles of natural justice. The court will not interfere merely on the ground of change in government policy. In the instant case, question arose regarding the validity of the dual policy of the government in the matter of contracts with private parties for supply of goods. There was no fixed procedure for fixation of price and allotment of quality

23 AIR 1994 SC 988
to be supplied by the big and small suppliers, The Government adopted a dual price policy, lower price for big suppliers and higher price for small suppliers in public interest and allotment of quantity by suitably adjusting the same so as to break the cartel. The court held that does not involve denial of any legitimate expectation. The court observed: legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of governmental activities. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations.

Legitimate expectation gives the application sufficient locus standi for judicial review. The doctrine of legitimate expectation is to be confined mostly to right of fair hearing before a decision which results in negative a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person’s legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. Legitimate expectances being less than a right operates in the field of public and not private law and to some extent such legitimate expectation ought to be protected, though, not guaranteed. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. A person, who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reason as to why it
should be protected. Such legal principles of different sorts, is stronger than the case against it. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the Legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. If it is a question of policy even by way of change of old policy, the courts cannot interfere with a decision. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or arbitrary, discriminator, unfair or biased, gross power in a particular case. It follows that the concept of legitimate expectation is “not the key which unlocks the treasury of natural justice and it ought not to unlock the gate which shuts, the court out or review on the merits’, particularly when the element of speculation and uncertainly is inherent in that very concept. The courts should restrain themselves and restrict such claims duly to the legal limitations.

In the instant case, there was no legally fixed procedure regarding fixation of price and particularly regarding allotment giving scope to a legitimate expectation of the tenders. Having regard to the rules governing the contracts and followed by Railway as also the notice inviting tender in the present case if is clear that the tenderer cannot expect that his entire tender should be accepted in respect of the quantity. The Railways have rights to accept the tender as a whole or a part of it or portion of the quantity offered. In the past also there were many instances where the Railway as per the procedure followed, arrived at decisions in respect of both price and quantity for good and justifiable.

Further in food corporation of India v. M/s. Kamdhenu Cattle Seed Industries, the court held that “in contractual sphere as in all other state action the state and all its instrumentalities have to conform the Article 14 of the Constitution of which non-
arbitrariness is a significance facet. To satisfy this requirement of no arbitrariness in a State action, it is, therefore necessary to consider and give due weight to the reasonable or legitimate expectations of persons likely to be affected by the decision whether the expectation of the claimant is reasonable for legitimate is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant’s perception but in large public interest wherein other more important consideration may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reacted in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny the doctrine of legitimate expectation of the claimant. A bona fide decision of the public authority reacted in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

In the present case, the last date up to which the offer made in the tender for a stock of damaged rice was to remain open for acceptance was 17.7.92 After opening the tenders 18.58.92, the Food Corporation of India decided to negotiate with all the tenders on 9.6.92 when significantly higher amount was the negotiations did not yield the desirable result of obtaining a significantly higher prices, the operation had an option to accept the highest tender before the last date, viz. 17.7.92 up to which the offered made there was to remain open for acceptance. In this manner, the respondent’s highest tender was superseded only by a significantly higher bid made during the negotiations with all tenders giving them equal opportunity to complete by revising their bids. The fact that it was a significantly higher bid obtained by adopting this course n sufficient in the facts of the present case to demonstrate that the action of the corporation satisfied the requirement of non-arbitrariness, and it was taken for cogent reasons of inadequacy of the price offered in the highest tender, which reason was evident to all tenderers invited to participate in the weight to the legitimate expectations of the highest bidder to have his tender accepted unless out bid by a higher offer. In which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good.” The Court observed:
“The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process”.

In Lala Sachinder Kumar v. Patna Regional Development Authority, the court again applied the doctrine of legitimate expectation and held the order of allotment of residential plots issued by the Patna Regional Development Authority as bad. In the instant case Regional Development Authority issued an advertisement inviting applications for the allotment of residential plots, in this process preference was given to the employees of the Patna Regional Development Authority without considering the case of applicant petitioner, whereas Rules did not provide for any such preferential allotment. The court held that allotment in favour of employees in arbitrary. The applicant petitioner has legitimate expectations to be considered for allotment.

4.8 Absolute discretion

It is noteworthy that the Supreme Court has started taking into consideration the plea of excessive delegation as a ground of attack on the validity of discretionary powers. In Accountant General v. S. Dorai Swamy, the discretionary power conferred on the Accountant General regarding the fixation of seniority among the staff was challenged as arbitrary on the ground of its being a case of board discretion. But the Court rejected the contention saying that the Controller and Auditor General is a ‘high ranking’ constitutional authority. He can be expected to act according to the needs of the service and without arbitrariness. But the Court took a strict view on the question of excessive the age of retirement is open to serious scrutiny. The Court held the regulation invalid because it seemed to arm the managing director with unanalyzed and unguided discretion to extend the age of air hostess at his option which appears to suffer from the vice of excessive
delegation of powers. The Regulation does not provide any guidelines, rules or principles which may govern the exercise of the discretion by the Managing director. The Court added: “It is time that a discretionary power may not necessarily be a discriminatory power but where a statute confers a power on the authority to decide matters of moment without laying down any guidelines or principles as norms the power has to be struck down as being violative of Article 14”.

4.9 Ultra vires exercise of power

Where the administrative authority who is vested with the discretionary power does not himself exercise the power but sub-delegates it to subordinate authority, it would amount to ultra vires exercise of power. Similarly, where the authority, designate acts under the dictations of a superior authority and does not consider the matter itself, the court has held the exercise of the power to be bad. In Commissioner of Police v. Gordhandas Bhanji, the Commissioner of Police granted licences for the construction of Cinema theatre to the respondent on the recommendation of an advisory committee but later on cancelled it at the direction of the State Government. The Court held the cancellation order bad as the Commissioner acted on the direction of the State Government and not at his own instance, further, in State of Punjab v. Suraj Prakash, the Court held that the State Government could not give any instruction to the consolidation officer under the East Punjab Holdings (consolidation and Prevention of Fragmentation) Act, 1948, where he was required to act at his own instance, as there was no provision in the Act empowering the State Government to give any such instruction to the Consolidation Officer.

The case of Pratappore Company Ltd. v. Cane Commissioner of Bihar,25 provides an illustration of ultra vires exercise of discretion. Here the Supreme Court quashed the orders of the cane Commissioner, Bihar by which he had excluded 99 villages from the area reserved by him in favour of the appellant sugar company under the Sugarcane Control Order. The cane Commissioner had

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25 AIR 1970 SC 1896
been dictated by the Chief Minister in this regard. The court pointed out that under clause 6 of the Order, the power is exercisable by the Cane Commissioner alone; He could not abdicate his responsibility in favour of the State Government or the Chief Minister. The interference by the Chief Minister in the matter, made the order bad.

In State of Uttar Pradesh v. Lalai Singh, the supreme court quashed the order of the State Government passed under Section 99-A of the Criminal Procedure Code, 1898 on the ground that the Government failed to state the grounds forfeiting the disputed publication. Under Section 99-A of the Code the Government could pass an order of forfeiture of a publication where it contains any matter which promotes or is intended to promote feeling of enmity or hatred between different classes of citizens in India. It requires a impugned order of forfeiture was without declaration of grounds. The order was quashed because the conditions precedent to the exercise of the power was not fulfilled. The court rejected the contention of the Government that the grounds on which its opinion was formed could be implied from the order.

In State of Rajasthan v. A. K. Datt, AIR26, sanctions to prosecute an employee of the Zoological Survey of India for an offence investigated by the special police establishment were granted by the Ministry of Home Affairs. According to the Government of India (Allocation of Business) Rules this was not proper. This sanction ought to be accorded by the concerned administrative ministry which was the Ministry of Education and Social Welfare in this particular case since sanction was not granted by the competent authority, the conviction and the sentence passed against the respondent was set aside. In this way the court upheld the principle of ultra vires as a basic of challenge of administrative action.

4.10 Sub-delegation

Sub-delegation means transfer or transmission of power from a superior to a subordinate authority. When administrative power is vested in an authority who on account of certain exigencies delegates the power to be exercised by any of his

26 1980 SC 1981
subordinates, it is known as sub-delegation. The technique of sub-delegation is followed very widely in modern administration. For example, under Section 3 of the Essential commodities Act, 1956 power under Section 5 of the Act to its own officers, or to State Governments or to any other officers. The State Government may itself further sub-delegate these powers to its officers or authorities. Sometimes it becomes difficult as to what degree below the power could be sub-deleted.

In the matter of sub-delegation there are two conflicting values, one is, delegates non-protest delegate which means which means a delegate cannot further delegate the power and the other is, exigencies of modern administration. Which demand sub-delegation of power by a higher to lower authorities keeping in view the complexities of the present day administration, a balance has to be struck between these two views. The generally accepted view is that sub-delegation takes place either expressly or impliedly and is taken for granted unless it is either prohibited or specifically conferred on a determinate authority.

At time an authority delegates its power to some other authority and some times it employees’ assistants to help him in discharging its functions. In the letter case the decision making remains vested in the authority itself. But in actual practice it may be difficult to draw between sub-delegation and taking assistance. Where the control and supervision of the authority, in whom power has been originally vested, is substantial over the subordinate and such authority issues detailed instructions as to how the routine cases should be disposed of by the subordinate, then it should be treated as a case of employing assistants to help the authority in discharge of its statutory power but not the case of sub-delegation. The Supreme Court in Union of India v. P.K. Roy, 27 laid down:

“If the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of substantial degree, there is in the eyes of law no ‘delegation’ at all

27 1966 AIR 850
and the maxim ‘delegates non-protest delegare’ does not apply…. In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken the decision would be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority’s own”.

In the present case, the Central Government has the exclusive power to deal with the problem of integration of services arisen out of the State Government entrusted the important task of preparing the initial gradation list with State Government although it laid down the guidelines for the same. The initial and final lists were to be preferred by the State Governments. But the Central Government retained the control and supervision over it. In view of close supervision exercised by the Central Government it was held that it was a case of taking assistance and not be sub-delegation.

Where power is given to specific functionary of the Government, it could not be delegated to another authority further. The law in appointing an authority (delegate) to exercise power fully considers the fitness of the delegate before conferring power on him. When wide discretionary powers are given to the executive which are likely to affect the personal liberty of individuals, it is essential that such power is exercised by the proper authority and persons of due status. In Oberai Motors v. Union Territory of Chandigarh,\(^\text{28}\) where the power to fix the price of automobile tyres and tubes was delegated to the Chief Commissioner and the delegation of the powers was expressly prohibited by Section 5 of the Essential commodities Act, 1955, the court ruled that it could not be sub-delegated. In Laxmamma v. State of Karnataka,\(^\text{29}\) the Assistant commissioner was given the power to resume lands granted to persons belonging to Scheduled Castes and Tribes on the application of the interested party or suo motu under Section 5 (1) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. In certain cases the orders

\(^{28}\) AIR1977SC178
\(^{29}\) AIR 1983 KR 237
passed by the Assistant Commissioner directed their subordinates like the Tehsildars to execute the orders and the Tehsildars issued eviction orders against many persons. This delegation of power was challenged as illegal. The court held that since the Act conferred exclusive powers on the Assistant Commissioners to decide the matter of resumption and take possession of the lands it was not open to them to delegate their powers either to Tehsilders or other officers to execute their orders. The court, however, made it clear that this did not mean that they could not take the assistance of their subordinates to execute their orders. Sub-delegation of powers by the Commissioner to local tax authorities under Section 464 of the Delhi Municipal Corporation Act, 1957 was held to be valid in Prakash Road Lines (P) Ltd. V. India, 4 where there was failure to pay Municipal tax fine could be imposed by the Magistrate without any trial, the Commissioner was held competent to delegate the power to impose fine on local authorities.

There may be several instances where the statute expressly permits sub-delegation. For example, the U.P. (Temporary) Control of Rent and Eviction Act, 1947 provides that no suit shall be filed for the eviction of a tenant without the permission of the District Magistrate of any officer authorized by him to perform any of his functions under the Act. The Essential Commodities Act, 1955 abounds the cases of such sub-delegation. In Central Talkies V. Dwarka Prasad, 30 where the ADM granted, the permission to file the suit for the eviction of a tenant, it was held to be validly made because the District Magistrate had delegated his power in this respect under the Act.

Sometimes, statutory provisions permit sub-delegation to officers or authorities but not below a certain rank. In Ajaib Singh V. Gurbachan Singh, 31 the court held that sub-delegation could not go down below the rank of a stipulated authority. Under Section 3 of the Defence of India Act, 1962, the Central Government and power to make rules authorizing detention of persons by an authority not below the rank of District Magistrate. Further, Section 40 provides that the State Government could delegate its powers to any officer or authority subordinate to it. But the court held that the power of preventive detention could be sub-delegated

30 AIR1961SC606
31 AIR 1965 P&H1964
by the State Government only to the authorities up to the level of District Magistrate and therefore the exercise of such power by A.D.M. is not in accordance with law. At times the government may sub-delegate to subordinate authorities its statutory powers even though the statute in question may not expressly authorize it to do so. Where the power has been given to the Electricity Board to make regulations for any matters arising out of the Board’s functions under the statute, it was held by the court that under the circumstances the power of sub-delegation could be read by implication.

When the power is sub-delegated, still it does not denude the authority, on whom power is conferred by the statute, to exercise the same if it wants so, thus where the power of passing an order of detention was conferred on the State Government under the Defense of India Rule and it was sub-delegated to District Magistrate, it was held that the power could still be exercised by the State Government or by the District Magistrate as the State Government was not denuded of its power by sub-delegation.

Once the power has been delegated an order passed by the delegate becomes final and is treated as the order of the principal authority, such an order can not be reviews or varied or rescinded by the principal authority in absence of an express provision to that effect in the statute.

4.11 Arbitrary exercise of power

Where the discretionary power has arbitrary exercised, the Court will generally interfere and set aside the order passed by the administrative authority. Where the order smacks of arbitrariness and seems to be motivated by extraneous considerations it shall be quashed by the Court in S.R.Venkaturaman v. Union of India, the appellant public servant was compulsorily retired from service under clause (1)(i) of rule 56 of the Fundamental Rules in “Public interest”. He challenged the order on several grounds. The Government produced the relevant service record of the appellant and frankly admitted that there was nothing on the record which could justify the order of the appellant’s premature retirement. The

32AIR1979 SC49
Court quashed the order on the ground of abuse of power by the authority concerned.

In P. Ram Chandra v. Government of India, the court quashed the entire proceeding relating to entry, search and seizure under the Andra Oradesh Foodgrains Dealer’s Licensing Order issued under the Essential Commodities Act, 1955, Under clause II (1) of the above Order, the licensing authority of any officer authorized for the purpose is empowered to enter and search any premises in which he has reason to believe that any contravention of the provision of this Order or of conditions of any license issued there under has been or is being or is about to be committed. Thus “reasons to believe” is condition precedent to vesting any jurisdiction in any officer to enter any premises or make a search. In the instant case the court did not find any premises or make a search. In the instant case the court did not find any material to show a reasonable belief before entering the premises. Therefore there was no justification for the search and seizure or even the entry into the there was no justification for the search and seizure or even the entry into the premises. The court quashed the whole proceeding taken by the Government.

In M.K. Santhamma v. Kerala,\(^{33}\) Public Service Commission, the petitioner was a candidate for selection of the post of staff nurse, she ranked 467\(^{th}\) in the merit-list. She belonged to a backward community but the relevant column of her secondary school leaving certificate meant for indicating community was left blank by the authorities due to their omission. The petitioner herself filled in that column. On verification the entry was found truthful but her name was removed from the list of selected candidates on the ground that she was guilty of misconduct of tempering her certificate. The Court held that this action was arbitrary as the Commission did not exercise its discretion reasonably on the basis of relevant facts. The petitioner was entitled to preference as a member of backward class.

One of the important grounds of attack on administrative order is the non-application of mind by the administrative authority passing the order. A discretionary decision made mechanically without application of mind on the part

\(^{33}\) AIR 1984 Ker 84
of the concerned decision-making authority is a bad decision. Where an administrative authority does not perform its duty to grant license though legally bond to do so, after the dealer, to whom license was granted the license, he prosecutes the dealer for technical offence of carrying the business without obtaining license. The court held the act of the authority as arbitrary and unjust. In the circumstances prosecution was set aside and the direction was given to grant license to dealer.

Where there was Government scheme to reimburse the engineering exporter of difference between domestic price and international price of steel and the petitioner exporter made a claim for reimbursement, which was rejected by the Government without giving reasons, the court held the Government action as arbitrary and offending Article 14.1

In Ram and Shyam Co. v State of Haryana, a public auction was held for granting lease for minerals by the Government the highest bid of the appellant was accepted by the prescribed authority but the bid of the appellant was not confirmed by the Government. Instead, the Government granted the lease to a person who had written a letter to the Chief Minister making allegations against the appellant was not given any opportunity to refute the allegations nor was any opportunity to offer higher bid given to him Desai J. held the unilateral offer of the lease, made secretly by the Chief Minister, as arbitrary.

The case of Biru Mahto v. D. M. Dhanbad provides another illustration of non-application of mind by the concerned authority in passing a detention order, which was set aside by the Court.

In this case the District Magistrate passed an order of detention under Section 3 of the National Security Act, 1980 against the petitioner on Feb. 8, 1982. Before the Detention order of the District Magistrate, the petitioner was allegedly involved in two series of offences committed by him, on January 12, 1982. Regarding the second series of offences allegedly committed by him he was arrested and bail was refused. Consequently the petitioner remained in jail even on the day that is Feb. 8, when the detention order was passed. The petitioner contended the

34 AIR 1985 SC 1147
detention order on two grounds i.e. (i) the date on which detention order came to
be made the detenue was already deprived of his liberty as he was arrested and
confined in jail and, therefore, he was already prevented from pursuing any
activity which may prove prejudicial to maintenance of public order; (ii) the
detaining authority was not even aware that the detenue was already in jail. The
Court accepted both the contentions and held that the detention order suffers from
the vice of non-application of mind. Hence the detention order was held to be
vitiating.

In Anant v. State of Maharashtra, the petitioner was an under trial prisoner facing
trial for certain offences under the Indian Penal Code. An order of preventive
detention was passed against him under Section 3(2) of the National Security Act,
1980 for his activities were considered to be prejudicial to the maintenance of
public order. The Court found that the petitioner had been released on bail when
he was being tried for the above offences before the detention order was passed
against him but that fact was not brought to the notice of the detaining authority.
That indicated the total absence of application of mind on the part of the detaining
authority while passing the impugned order. Therefore the order was quashed by
the court.

In Homesh Kumar v. V. C. Aligarh Muslim University, the petitioner was
admitted to the B.Sc. Engineering course. He was given seat from the reserved
quota for Sportsmen after athletic test. Subsequently he could not play on medical
grounds and his admission was sought to be canceled on the ground he was
impersonated at the trial. During the course there were a number of letters written
by the University authorities to the petitioner but there was no mention of
impersonation. The order was held illegal and arbitrary. The Academic Ordinance
– Clause 3-B confers power on the University to cancel admission for any reason.
The expression ‘for any reason’ according to the court has to be understood
reasonably and considered in a manner which may impart rationality to it. It can
not be construed as conferring arbitrary and whimsical power on the authority
which is entrusted under the Ordinance.
Where any instrumentality or department of the Government invites tender for the supply of certain article, as a matter of principle the tender of the lowest bidder must be accepted. The Government in such cases may be having absolute power to accept or reject the tender, but the power should not be exercised arbitrarily or capriciously, in Harminder Singh v. Union of India, tenders were invited for the supply of fresh buffalo and cow milk to a Military department. The appellant was eligible and was also on approved list. His tender was lowest. But the tender of the General Manager, Govt. Milk Scheme was accepted although it was higher. There was no question of any policy decision in the instant case. The contract of the supply of the milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder he should have been granted the contract to supply. The court quashed the order of acceptance of tender by the authorities and held it to be arbitrary and illegal.

In H.C. Gargi v. State of Haryana, the appellant, an assistant excise ad taxation officer in Haryana with 35 years of service, was compulsorily retired from service in public interest. The ground of retirement was that he was “a person of doubtful integrity of the basis of two adverse entries”. The Court found that the adverse entries pertained to the appellant’s performance and not to his integrity. It was therefore held that the opinion of the Government was not based on any material and the impugned order was quashed on the ground of arbitrariness.

In its latest pronouncement, namely in Km. Srilekha Vidyuarthi v. State of U.P., the Supreme Court struck down a Government order, concerning the removal in block of all District Government Counsels in the State of Uttar Pradesh. Reversing the judgment of Allahabad High Court, the Supreme Court observed that the Government did not apply its mind to the individual cases before issuing a general order. No common reason applicable to all of them justifying their termination in one stroke on a reasonable ground was shown. The plea of the Government that many of them were likely to be reappointed is by itself an ample proof of the fact that there was total non-application of mind to the individual cases before issuing the general order. This was held to be arbitrary and hence quashed. If the Legal

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35 AIR 1987 SC 65
36 AIR 1991 SC 537
Remembrance Manual provides that their services could be terminated without assigning any cause, the court said that “without assigning any cause” is not to be equated with “without existence of any cause”. It merely means that the reasons for which termination is made and not be communicated to the appointee.

In Mahesh Chandra v. Regional Manager,37 U.P., Financial Corporation, the court rules that “conferment of wide powers has inherent limitations on it. It demands purposeful approach. The exercise of discretion should be objective. In such case the test reasonableness is stricter. The public functionaries should be duly conscious rather than power charged, its action and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just or unreasonable. And what is unreasonable in arbitrary? An arbitrary action is ultra vires. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason”.

In the above case, the Regional Manager of the U.P. Financial Corporation has been empowered under Section 29 of the State Financial Corporation Act, 1951 to take possession of a defaulting unit and to transfer it by sale. Such absolute power has been given to him to ensure prompt realization of arrears of loan disbursed by him to the units.

The entire loan was not disbursed by the corporation. The release of the last installment of the loan was refused at a time when the unit was nearing completion and was ready to start functioning. The unit on account of absence of capital and pressure of the recovery proceeding could not start business. It was held by the court that since the corporation was that the proceedings for the recovery under Section 29 of the Act were not justified. It is true that very wide powers were given to the Regional Manager of the Corporation under the Section, yet it must be exercised to effectuate purpose of the Act. The exercise of the discretion should be objective. The power under Section 29 of the Act to take possession of a defaulting unit and transfer it by sale requires the authority to act courteously, honestly, fairly and reasonable.

37 AIR 1993 SC 935
Improper purpose – Where a power granted for one purpose is exercised for a different purpose. The power is said to have not been validly exercised. The cases of exercise of discretionary power from improper purposes have increased in modern times because conferment of board discretionary power has become usual tendency. The orders based on improper purpose were quashed first in the cases concerning the exercise of powers of compulsory acquisition in England. Lord Crainworth in Gallaway v. London Corp. 2 observed:

“Where persons embarking in great undertaking, for the accomplishment of which those engaged in them have received authority from the legislature to take compulsorily the land of others, the persons so authorized cannot be allowed to exercise the power conferred on them for any collateral object, that is for any purposes except those for which the legislature has invested them with extraordinary power……. It has become a well settled head of enquiry that any company authorized by the legislation to take compulsorily the land of another for definite object will, if attempting to take it for any other object, be restrained by the injunction of the Court of Chancery from doing so.”

So where the power is exercised for a purpose different from the specified in the statute, the court will declare the exercise of the power as ultra vires. Where the land is acquired by Municipal Corporation ostensibly for a public purpose but in fact to enable another body to acquire it through the medium of corporation for some other purpose, the acquisition order would be quashed by the court. Similarly, where Municipal Corporation refused to approve the construction of building with a view to pressurizing the petitioner to provide drainage for the adjoining building, and where the construction scheme of the petitioner does not contravene.

In a few cases on preventive detention the Supreme Court has held that the power of preventive detention cannot be used a as convenient substitute for prosecuting a person in a Criminal Court. In Srilal Shav v. State of West Bengal, a preventive detention order was issued against a person mainly on the ground that he had stolen railway property. He had documents in his possession to prove his bona fide and to prove that he had purchased the goods in the open market. A criminal case filed against him was dropped and the mentioned preventive
detention was passed in its place. The order was held to be bad by the court. Again in L. K. Dass v. State of West Bengal, the incident of theft of railway property and the proper course to prosecute the person was in a criminal court.

In Hukum Chand v. Union of India, the General Manager, Telephone, Delhi, disconnected the petitioner’s telephone under Rule 422 of the Telephone Rules. The ground for disconnecting the telephone was that it was being used for illegal satta purpose. The power of disconnecting the phone could be exercised only in the event of emergency. The Court held that existence of emergency was a prerequisite for the exercise of the power and the satisfaction should be that of the Divisional Engineer. He had to arrive at such satisfaction rationally on relevant material. The order of disconnection was quashed because it was made on a ground which was not relevant to Rule 422.

Where Bangalore Developed Authority could acquire a land for providing amenity or for considering an improvement, but instead of doing the above converts a Public Ark in to private nursing home, it was held by the court that the exercise of the power was contrary to the purpose for which. It is conferred under the statute. The court ruled that the authority exercising in this case fell below even the minimum requirement of taking action on relevant considerations.

Irrelevant Considerations – “Irrelevant consideration” provides an additional ground to the court to declare the exercise of the discretion as invalid. A power conferred by a statute must be exercised on the considerations mentioned therein. Where the authority concerned attends to or takes into account circumstance, Events, or matter wholly irrelevant or extraneous to those mentioned in the statute, the administrative action will be quashed by the court. Thus were an administrative order is issued on formal grounds or considerations which are irrelevant, it will be quashed. In Ram Manohar Lohia v. Bihar, the petitioner was detained under D.I.R. 1962 to prevent him from acting in a manner prejudicial to the maintenance of law and order, whereas detention was provided under the Rules to prevent subversion of public order. The Court quashed the order as,

38 AIR 1959 SC 536
39 AIR 1966 S C 1740
according to it. The two terms were not the same, the term “Law and order” being wider than “public under”.

In detention case the courts have insisted at times that the grounds of detention must be pertinent and relevant, proximate and not stale, precise and not vague. The Supreme Court in S. P. Bhatnagar v. M. P. has pointed out that irrelevance; staleness and vagueness were vices, each of them was sufficient to vitiate an order of preventive detention. Where incidents of seven years ago were relied by the detaining authority for detaining a person, the order of detention was held to be bad, where the detainee was involved in certain criminal cases although he got acquittal yet they constituted grounds of detention, the court held that reliance on such grounds was not permissible. In Dhannanjay v. District Magistrate, \(^{40}\), the court held that where irrelevant ground are included in the grounds are included in the grounds of detention communicated to the detenue, the entire detention order is vitiated for two reasons (i) it violates the right of the detenue to be informed of the grounds of detention, and; (ii) it violates the detainee’s right to be afforded an opportunity to make a representation against the proposed detention. Where there is specific provision in Section 5-A of the COFEPOSA Act that where there are a number of grounds of detention covering various activities is a separate ground by itself for detention and if one of the grounds is irrelevant, vague or unspecific, then that would not vitiate the order of detention. The Supreme Court observed in K. L. trading Co. Pvt. Ktd. V State of Meghalaya, \(^{41}\) that the Court can interfere in administrative action if the decision made by administrative authority is based on irrelevant consideration i.e., (i) Mala fide or bad faith, or (ii) Unreasonable.

In Ajai dixit v. State of U.P., \(^{42}\) the petitioner was detained under the NSA, 1980 on several grounds, one of which was that he along with his companions had surrounded a person in 1981 and committed the offence of attempt to murder under Section 307 I.P.C. The detenue was, however, irrelevant and stale, other grounds of detention were like wise unfortunate. The Court quashed the detention.

\(^{40}\) 1994(2) SCC220
\(^{41}\) AIR 1996 Guj. 17
\(^{42}\) AIR1985 SC 18
In R. L. Arora v. State of Uttar Pradesh,⁴³ the court found that the purpose for which consent to acquire the land was given by the Government was not the one authorized by the Act and therefore bad. Here a piece of land was acquired by the Government for a private company for the construction of a textile machinery parts factory under the Land Acquisition Act, 1894. Before acquiring the land, the consent of the Government has to be obtained. Before acquiring the land, the consent of the Government has to be obtained. The consent of the Government has to be given on satisfaction that the work is likely to prove useful to the public under Section 40. The court observed:

“What that provisions of Sections 40 and 41 required is that the work should be directly useful to the public and the agreement shall contain a term how the public shall have the right to use the work directly for themselves. It works like a hospital, a public reading room or a library and an educational institution open to public or such other work as the public may directly use that one contemplated and it is only for works, which are useful to the public in this way and can be directly used by it, that land can be acquired for a company under the Act.”

An interesting case was decided by the Supreme Court in which it held the exercise of the discretionary power to be vitiated because of, (i) non–observance of mandatory procedural requirements and (ii) taking into account irrelevant considerations by the decision-making authority. In this case the permit of the petitioner was due to expire and he made an application Authority rejected the application on the ground that the India Tourist Development Corporation had expended its activities and put many tourist buses in services but these were not being fully utilized. So it concluded that as public sector was providing adequate facilities, renewal of the applicant’s permit would result in unhealthy competition. The court quashed the order on the ground that natural justice was denied to the applicant and the order on the ground that natural justice was denied to the applicant and that there was no evidence on record to show that the I.T.D.C. buses were under – utilized, considerations of private or pubic sector do not enter the picture in considering applications for permits for renewal. The Court emphasized that the transport tribunals function quasi-judicially and “This imports some

⁴³ AIR 1964 SC1230
imperative”. You must tell the man whose fundamental right you propose to negative the materials you may use in your decision. You must act on relevant considerations, properly before you, not on humor or hearsay, assertion on inscrutable hunch.”

In State of Bombay v. K.P. Krishna, an industrial dispute regarding the payment of bonus for a certain year was refused to be referred by the Government to a tribunal for adjudication on the ground that the “workmen by the Government were extraneous and not germane to the dispute. The Government acted in punitive manner and this was inconsistent with the objective of the statute. A claim for bonus is based on the consideration that by their contribution to the profits of the employer, the employees are entitled to claim a share in the said profits, and so any punitive action taken by the government by refusing to refer for adjudication an industrial dispute for settlement would in our opinion be wholly inconsistent with the object of the Act. Where an administrative authority leaves out relevant consideration in the exercise of its power, such action becomes invalid, In Rampur distillery Co. v. Company Law Board, the company Law Board acting under Section 326 of the Companies Act, 1956 refused to give its approval for renewing the managing agents of the Rampur Distillery since 1943. The above disapproval was based on the Enquiry Commission headed by Vivian Bose, according to which the director was guilty of grossly improper conduct in relation to those companies in the years 1946-47. It was conceded by the Court that the past conduct of the directors was a relevant circumstance in considering the question of fitness of the managing agent for the purpose of giving approval for renewing the same, but the court insisted on taking into account the present acts and activities of the directors of the managing agency. Since it did not do so, it was held to have left out the relevant consideration and the action of the Board was therefore bad.

In the matter of nomination of candidates to seats reserved in the medical colleges of other States, the Government is required to act reasonably and to consider the point relevant to the objective of national integration which prompted the policy

44 AIR1970SC1789.
of such reservation. The Supreme Court in Suman Gupta v. State of J. & K., held:

“The exercise of all administrative powers vested in public authority must be structured within a system of controls informed by both relevance and reason – relevance in relation to the object which it seeks to secure, and reason in regard to manner in which it attempts to do so. Whenever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests.”

In this case, the nomination made by the State Government of J. & K. to medical colleges of other States was made without any policy and guidelines. The court pointed out that it was incumbent on the State Government to adopt criteria or norms for the exercise of its discretionary power. The selection of norms and procedure was, however, left to the choice of the Government for the purpose of achieving the objective of national integration.

The Government did not follow any norms of policy in nominating the candidates for admission to medical college of other States. Hence the nomination was quashed.

In another case, the Supreme Court quashed an order of the State Government terminating the services of a Government School teacher on the basis of the police report indicating that he had taken part in Rashtriya Swayam Sevak Sang (RSS) and Jansangh activities prior to his joining service. The court rightly concluded that such affirmatives could not be considered as likely to affect the integrity and efficiency of the individual’s service. The police report also did not relate to his involvement in any criminal or subversive activities. The termination was thus based on considerations not related to achieving any of the desired objectivities.

If it appears upon an examination of the totality of facts in the case that the power conferred has been exercised for an extraneous purpose or that the mind has not been applied at all to the real object or purpose of a power, so that the

45 AIR 1983 SC 1235
result is that the exercise of power could only serve some other or collateral object, the court will interfere.

Premature retirement of a civil servant in public interest even on basis of one single entry in the service record casting doubts on his integrity has been upheld but the Court has rejected Stale entries s irrelevant considerations. If a civil servant has been given promotion after having been awarded adverse entries, such entries lose their significance and could not be relied upon for exercising power of compulsory retired from service on the basis of service entries of about 20 years through during that period he had been promoted many times. The Court held that entries of only last ten years were relevant for compulsory retirement. During this period only two entries were adverse to the appellant. The Court held that reliance on those two entries was also not proper and quashed the impugned order as the same was based on irrelevant considerations.

In State of Sikkam v. SonamLamS & others⁴⁶ the officials were not retired on the ground of public interest but on the ground that there are better talented persons available in the Department and the work performed by the officials could be better done by more qualified persons. The court held that this is wholly extraneous consideration for compulsorily retiring any officials.

(1) Leaving out relevant considerations. – There may also be the cases where the relevant factors might not have been taken into consideration in passing an order. In such cases the action of the administrative authority becomes invalid. An authority must take into account the considerations which the concerned statute prescribes expressly or impliedly. Where the statute is silent and there is general conferment of power, the court may still imply some relevant considerations for the exercise of the power and quash an order if the concerned authority has ignored to take into account the relevant factors. The Supreme Court in Birj Bhihari Lal v. High court of M.P.,⁴⁷ considered the above question and quashed the recommendation of the High Court consequent order of the Government based on this recommendation. In this case the High Court of Madhya Pradesh recommended compulsory retirement of a Session Judge and consequently the

⁴⁶ AIR 1991 SC 534
⁴⁷ AIR 1987 SC 594
State Government passed the necessary order. When that matter came before the Supreme Court it transpired that there were two confidential reports made by two successive Chief Justices in respect of appellant for overlapping periods. These two reports ex facie did not agree with each other. While one report was favorable to him, the other was unfavorable. This fact appears to have escaped the attention of the High Court when it considered the question whether the appellant should be compulsorily retired. This means that the High court did not take into account relevant materials in coming to its decision to retire the petitioner. Consequently the recommendation of the High court and consequent order of the Government based on this recommendation was quashed.

In Ranjit Singh v. Union of India, the production quota of a licensed manufacturer of guns was reduced from 30 to 10 guns a month. The order was challenged on the ground that the order was not based on relevant considerations but on extraneous consideration. The Court held the order bad as the Govern had not taken into account relevant considerations in making the order viz. production capacity of the factory, the quality of guns produced, economic viability of the unit, administrative policy pertaining to maintenance of law and order. “Any curtailment of quota must necessarily proceed on the basis of reason and relevance” observed the court. The principle was stated as “if all relevant factors are not considered, or irrelevant considerations allowed to find place, the decision is vitiated by arbitrary judgment.”

An important pronouncement came in the case of State of Rajasthan v. Union of India, where the court examined the needs for the norms in exercise of administrative discretion. The Union Home Minister had written to the Chief Minister of nine States including that of the petitioner that in view of the result of Union Parliamentary Elections in which the Congress party led by Mrs. Indira Gandhi had lost majority in Lok Sabha they should tender resignation and face the electorate. If they did not do so the Government may advise the President of India to get the legislative assemblies dissolved under Article 356 of the constitution. The Chief Minister of those States comes to Supreme Court under Article 131 of the Constitution. Clause (5) of Article 356 of the Constitution precluded any

48 AIR 1981 SC 461
challenge “on any ground” against the proclamation under Article 356 whereby the Presidential rule was sought to be imposed.

Bhagwati and Gupta, JJ. However, observed that although the Court could not go into the correctness of the decision of the Presidential order, if the satisfaction for the President was based on mala fide or wholly extraneous or irrelevant grounds, the court would have jurisdiction to examine it because in that, that would be no satisfaction of the President. Thus even an ouster clause in a law could not stop the court from enquiring into the exercise of administrative discretion. This case has thus widened the scope of judicial review of administrative discretion in India.

(2) Mixed Considerations. – Sometimes, it so happens that the order is not wholly based on irrelevant or extraneous considerations. It is founded partly on relevant and existent considerations and partly or irrelevant or non-existent considerations. The judicial pronouncements do not depict a uniform approach on this point. In Shibbanlal v. State of U.P.\textsuperscript{49}, a person was detained on the two grounds: (a) that his activities were prejudicial to the maintenance of supplies necessary to the community; (b) that his activities were injurious the maintenance of law and order.

The order of detention was revoked on the first ground as it was non-existent or irrelevant but it was continued on the second ground. The court quashed the detention order as it was based on irrelevant along with relevant ground (i.e. based on mixed considerations). In Dwarka Das v. State of J. and K.,\textsuperscript{50} the Supreme Court has observed that if the power is conferred on a statutory authority to deprive the liberty of a person on its subjective satisfaction with reference to specified matters and the satisfaction is state to be based on a number of grounds or for a variety of reasons, all take together, the exercise of the power will be bad if some of the grounds are found to be bon-existent or irrelevant. In the opinion of the court if some of the grounds are found to be non-existent or irrelevant, the court can't predict what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. However, the court has made it

\textsuperscript{49} AIR 1954 SC 179
\textsuperscript{50} AIR 1957 SC 164
clear that in applying this principle the court must be satisfied that the vague or irrelevant grounds are such if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. However in the case of preventive detention generally the courts have quashed the orders of detention based on relevant as well as irrelevant grounds. But the cases may be found where the courts have upheld the order of detention valid even where it was based on mixed considerations. (i.e. based on relevant as well as irrelevant grounds).

(5) Mala fide or Bad Faith.- An action is mala fide if it is contrary to the purpose for which it was authorized to be exercised.’ Where an authority vested with discretionary powers exercises it with an intention to achieve an object, other than that for which he believes the power to have been conferred, it would amount to fraudulent exercise of power, which broadly speaking is all incident of mala fide use of power. Similarly it also covers the cases where the authority concerned is motivated by personal spite, vengeance and animosity towards those who are directly affected by its exercise. In Pratap Singh v. State of Punja, the court quashed the Governmental order on the ground that it was passed for satisfying a private or personal grudge of the authority against the petitioner. In this case the petitioner was a civil surgeon in the employment of the State Government, who had been granted leave preparatory to retirement and subsequently leave was revoked and he was placed under suspension pending the result of inquiry into certain charges of misconduct against him. A disciplinary action was started against him on the charge that he accepted bribe from some patient prior to going on leave. The legality of the order was challenged, inter alia, on the ground that the order was mala fide as it was passed by or at the instance of the Chief Minister of Punjab. He was personally hostile to him by reasons of certain incidents and circumstances which he set out in the petitions. It was alleged that the impugned order was prompted by the desire on the part of the Chief Minister to wreak personally his vengeance on the appellant. Ayyanger, J., held that he, who seeks to invalidate an act or order, must establish the charge of bad faith, an, abuse or a misuse by Government of its power. While the indirect ill-will is not to be held established except on clear proof thereof, it is obviously

51 AIR 1964 SC 72
difficult to establish, the state of a man's mind, for that is what the appellant has to establish within case though this may sometimes be done. Every power vested in a public authority or body has to be used honestly, bona fide and reasonably.

In State of Bihar v. P.P. Sharma,52 Ramaswami, J., observed "mala fide" means want of good faith, personal bias, grudge, or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the, basis of the circumstances, contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely, (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power."

State of Punjab v. Gurdial Singh,' is another important case, where acquisition of the land of the respondent was held to be mala fide and the acquisition order was held to be bad. In this case the land of the respondent was acquired under Sections 4-6 of the Land Acquisition Act, 1894 for establishing a grain market. It was obviously for a public purpose. Prior to acquisition of his land the site belonging to some other person was chosen for acquisition but later on it was given up and the land of the respondent was acquired. The acquisition was later on declared by the court to be mala fide. Seven years later the Government again sought to acquire the same land under emergency powers under Section 17 of the Act. It was found that the real intention was to take away land of particular persons to vent the hostility of a local politician and Ex-Minister. It was held that the acquisition must be held to be mala fide. The Court observed

"Bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and often overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation

52 AIR 1961 SC 1260
or pretension of gaining a legitimate goal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous consideration, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the court calls it a colourable exercise and is undeceived by illusion."

In connection with the acquisition of land under the Land Acquisition Act, 1894 the court in Somati v. State of Punjab, laid down the following principle:

"Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about, subject to one exception. The exception is that if there is colourable exercise of the power the declaration would be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not public but private purpose or no purpose at all, the action of the Government would be colourable as not be relatable to the power conferred upon it by the Act and it would be a nullity."1

In Collector, Allahabad v. Raja Ram,53 a plot of land was sought to be acquired in 1975 for the extension of Hindi Sangrahalya of the Hindi Sahitya Sammelan, Prayag. It was pointed out that a piece of land allotted for the above purpose in 1953 was lying vacant and no Sangrahalya was established. The land in question was purchased by the respondent for the construction of theatre which was objected by the Sammelan. Since the respondent got the certificate of approval for construction of the theatre the acquisition proceeding were initiated at the instance of the Sammelan. The court held that the need for the land of Sangrahalya was a "figment of imagination conjured up to provide an ostensible purpose for acquisition." Since a land already allotted remained unused by the Sammelan, the court was not convinced about the need of the land by the Sammelan. The purpose was actuated by a desire not to have cinema theatre in the vicinity of Sammelan. It was, therefore, held that the Collector did not

53 AIR 1985 SC 1622
exercise the power for the purpose for which it was given and the order suffered from the vice of mala fides.

Rowjee v. State of Andhra Pradesh,' provides another illustration of mala fide. Certain schemes for nationalizing motor routes were published by the Andhra Pradesh State Road Transport Corporation under the Motor Vehicles Act, 1938, as a result of which certain routes were nationalized. The scheme owed their origin to the directions by the Chief Minister, who acted mala fide in directing the corporation to frame the schemes. The schemes were challenged on the ground that the Chief Minister acted mala fide in directing the schemes. The details of mala fide were that particular routes were selected for nationalization on account of the Chief Minister wreaking vengeance on his political opponents who were private operators on these routes. In absence of an affidavit from the Chief Minister denying the charges against him that he was motivated by bias and personal ill-will, the court concluded mala fide on the part of the Chief Minister and quashed the nationalization.

In detention cases also the court has quashed the detention order on the ground of mala fide exercise of power. In Sadanandam v. State of Kerala, the petitioner, a businessman, dealing in wholesale kerosene oil was detained under Rule 30(l)(b) of the Defence of India Rules, 1962 with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the life of the community. The petitioner challenged the validity of the impugned order of detention mainly on the ground that it is mala fide and has been passed as a result of malicious and false reports, prepared at the instance of Deputy Superintendent of Police. The whole object of Deputy Superintendent in securing the preparation of these false reports was to eliminate the petitioner from the field of wholesale business in kerosene oil in Trivendrum so that his relatives may benefit and obtain the dealership.

The Deputy Superintendent did not file the affidavit to controvert the allegations made against him and the affidavits filed by the Home Secretary were very defective in many respects. After considering all the materials the Supreme Court declared the order of detention to be clearly and plainly mala fide.
Amongst the pronouncements on mala fide, Express Newspapers Pvt. Ltd. v. Union of India,\textsuperscript{54} stands foremost. The petitioner is a registered company engaged in the business of printing and publishing national Newspaper the Indian Express (Delhi Edition). It is situated on 9-10 Bahadur Shah Zafar Road, held on perpetual lease from the Union of India in 1958. A notice of re-entry upon forfeiture of lease was served by the Land and Development Office, New Delhi on behalf of the lessor, Govt. of India. Earlier a notice was also served for the demolition of the buildings for being unauthorized constructions under the Delhi Municipal Corporation Act, 1957. The petitioner challenged the validity of the notices contending that they are wholly mala fide and politically motivated. It is further alleged that the impugned notices constitute an act of personal vendetta against the Express Group of Newspapers and are violative of Articles 14, 19(l) (a) and 19(l) (g) of the Constitution.

The Central Government was not entitled to get evicted the Express Newspaper Pvt. Ltd. under Section 5(l) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as the land over which the Express Buildings were constructed, was by no means a public premises. The material available on the case was sufficient to prove that the impugned notices of re-entry upon forfeiture of lease and of the threatened demolition of the Buildings, are intended to silence the voice of the Indian Express against the Government, its policies and working. These notices thus suffer from mala fide, arbitrariness and non-application of mind. They are directly and immediately violative of Article 19(l) (a) i.e., freedom of press and Article 14 of the Constitution. Hence they are liable to be quashed, Justice Sen observed:

"Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse, in bad faith

\textsuperscript{54} AIR 1986 SC 872
arises when the power is exercised for an improper motive, say to satisfy a private or personal grudge or for wreaking vengeance of a Minister.

A power is exercised maliciously of its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power."

In famous Machchu Dam case,' the petitioners asked for a writ of mandamus to restrain the State from winding up the proceedings of the Commission of Inquiry which was appointed under Section 3 of the Commission of Inquiry Act, 1952. On August, 11, 1979 Machchu Dam near Morvi in Rajkot District of the State of Gujarat collapsed resulting in flooding away a big chunk of land causing huge loss of human life and property. The Chief Minister announced the appointment of a Commission on Aug. 14, 1979 to enquire into the causes of the failure of Machchu Dam and circumstances in which such failure occurred, the adequacy of the action taken by the various authorities to mitigate the consequences thereof. This Commission was sought to be scrapped by the Government by a notification dated March 17, 1981, under Section 7 of the above Act, which empowers the Government to discontinue a Commission "if it is of the opinion that the continued existence of the Commission is unnecessary." The Gujarat High Court held that the conclusion of the Government that the Commission was unnecessary was based on erroneous finding of facts and law. Moreover, the decision was for a collateral purpose, namely, for the purpose of escaping of the assurance given by the Advocate General that the term of the Commission would be extended as and when required. The exercise of the discretion by the State Government was held to be mala fide in law. The Notification of March 17, 1981 was therefore quashed and set aside. The State Government was directed to extend the life of the Commission.
Similarly, in P.B. Samant v. State of Maharashtra, the court held the distribution of cement against the law and the circulars or guidelines issued by the Government on that behalf as bad. The distribution of cement was in favour of certain builders in return for the donations given by them to certain foundations of which the Chief Minister was a trustee. It was a clear case of niafa fide exercise of power. The power to control the distribution of an essential commodity like cement is given to the Government with a view to ensuring its equitable distribution. V-Then this power is used for obtaining donations for a trust; it is a clear case of abuse of power.

The mala fide should be proved only by direct evidence and that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can be deduced as a reasonable and inescapable inference from the proved facts. It is true that a person does not have an access to Government records to collect adequate evidence for a case of mala fide yet from the events of the case, public statements of the authority concerned or from failure to deny the allegation on affidavit, an inference of mala fide can be drawn.

Mere allegations of mala fide cannot be basis for quashing proceedings. were allegations of mala fide are made out against Investigating Officer under the Criminal Procedure Code on the ground that he ruled out certain documents produced to him during investigation as irrelevant, it was not held to be a ground to assume that he acted mala fide.' In the instant case there was no material to show that the prosecution against the accused was initiated as a result of any malice on the part of the investigating officer. Hence it cannot be said that the investigation was vitiating because of the mala fide on the part of the investigating officer. It was rightly pointed out by the court that the power to act in discretion is not a power to act at arbitration. It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionaty power in excess of the statutory ground disregarding the prescribed conditions for ulterior motive. If done it brings the authority concerned in conflict with law. When the power is exercised mala fide it undoubtedly gets vitiating by colourable exercise of power."

55 1982 Bom.C.R 367,
Where the allegations of mala fides are wild in nature, bereft of details and unsupported by acceptable evidence, the Court will not consider them even if they remain uncontroversial by the person against whom they were made. In such a case, it was not necessary always to call upon the persons placed in high positions to controvert the allegations unless they were specific, pointed and necessary to be controverted.

(6) Unreasonableness.-Another important ground of quashing an administrative order passed in the course of exercise of administrative discretion is unreasonableness. Discretion", says Lord Wrenbury, does not empower a man to do what he likes merely because he minded to do so; he must not in the exercise of his discretion do what he likes but what he ought. In other words, he must by use of his reason, ascertain and follow the cause which reason directs. He must act reason.

The Indian courts, at times have reviewed the exercise of the administrative discretion and have emphasized the need of exercising it fairly and reasonably. The term unreasonableness may be viewed quite comprehensively where the discretion is exercised on irrelevant or extraneous consideration or for an improper purpose or mala fide. The term may include even those cases where the authority has acted according to law but in wrong manner and where it has acted according to law and in a right manner but on wrong grounds. Sometimes statutes itself provide for reasonable exercise of the discretionary power. Under such conditions the authority concerned bad to act reasonably. And, the court will interfere with the order were it has not been passed under reasonable belief.

In some Indian cases where the statutory language used was, "If he- is satisfied" has been held to signify "if he is reasonably satisfied". In Chahdeshwari Prasad v. State of Bihar, the administrative authority had cancelled certain grants of property made to the petitioner by the previous owner on the ground that the transfer was made with a view to defeating the provisions of Bihar Land Reforms Act, 1950, and to obtain higher compensation. The court found that there was no evidence to support the findings of the authority. The court observed : "the word

56 AIR 1987 Pat 208
'satisfied' in Section 4(4) must be construed to mean 'reasonably satisfied' and therefore the finding of the Collector under Section 4(4) cannot be subjective or arbitrary finding but must be based upon adequate materials."

The court does not infer the requirement of reasonableness from a statute by implication. The Supreme Court refused to accept the plea in KD. Co. v. KN. Singh, that the court should judge whether the administrative action was reasonable or not where the statute was silent as to reasonableness. Although the above Chandeshwari Prasad's case is only an exception to this proposition. In Rohtas Industries Ltd. v. S.D. Agarwal, 57 the Supreme Court quashed an administrative action taken by the Government. Under Section 237 of the Companies Act, 1956 on the ground that no reasonable body would have reached impugned conclusions. Here the court considered the question as to whether any reasonable body much less expert body like Central Government would have reasonably made the impugned order on the basis of the material before it. In such cases the test of judicial intervention is not what the court considers as unreasonable but a decision which it considers that no reasonable body could have come to i.e., whet the action is "Oppressive" or "falsely absurd."

In Sheonath v. Appellate Assistant Commissioner, the Supreme Court has remarked that the words "reason to believe" (for initiating reassessment proceedings) used in the Income-tax Act suggest that "the belief must be that of an honest and reasonable person based upon reasonable grounds but not on mere suspicion."

In Mahabir Auto Stores v. Indian Oil Corporation, 58 the appellant partnership firm had approached the court for mandamus against the respondent directing it to desist from denying or discontinuing the supply of all kinds of lubricants to it which it had been supplying from 1965 to 1983. The court reversing the decision of Delhi High Court held that every action of the State or its instrumentalities must be informed by reason. Every State action must be subject to rule of law. If a Governmental action even in the matter of entering into contracts fails to satisfy

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57 AIR 1969 SC 707
58 AIR 1990 SC 1030,
the test of reasonableness, the same would be violative of Articles 14 and 19. The Court holding the respondent to be instrumentality of the state, observed:

"It appears to us that the rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice, are parts of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of citizens are in the nature of contractual rights, the manner, the method and the motive of a decision of entering or not entering into a contract subject to judicial review on the touchstone of relevance and reasonableness...........

There may be cases where the administrative authority might have exercised his power without any reason. In such cases the court would quash the order. For example, in Ramaswami v. State of Tamil Nadu, the petitioner was promoted and appointed to a very responsible post in May, but was compulsorily retired in September. There was absolutely no material on which such an order could be passed. There was an adverse entry in the confidential file of petitioner made six years before his promotion. The effect of this adverse entry was wiped out by his promotion. After his promotion there was no entry in his service book to his discredit. The court quashing the order of compulsory retirement observed:

"In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of inaptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service."

In Maharashtra State Board of Secondary and Higher Secondary Education vs K. S. Gandhi, the Supreme Court while holding that where the facts are admitted the need for giving reasons to reach a conclusion is obviated, observed:

"The reasons are harbinger between the minds of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assume an in-built support to the conclusion/decision.

59 AIR 1991 SC 187
reached. When an order affects the right of a citizen or a person irrespective of the fact whether it is quasi-judicial or administrative order, and the rule expressly or by necessary implication exclude recording of reasons, it is implicit that principles of natural justice or fair play require recording of germane relevant reasons as a part of fair procedure."

But where order does not adversely affect any vested right or involve civil consequences, administrative authority is not required to record his reasons in absence of any statutory provision requiring communication of reasons. However, reasons must exist with the authority which can be shown to the court in case of judicial review." The court further observed that under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen. It is, therefore, desirable that reasons should be stated. If any challenge is made to the validity of an order on the ground of its being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass orders such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained - in the records.

"Unreasonableness has thus become a generalized rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly, described as 'irrelevant considerations' and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to wrong question............

The Supreme Court observed in KL. Trading Co. Ltd. vs State of Meghalaya,60 that to attract judicial review of administrative action, - the applicant must show that the administrative action suffers from vice of arbitrariness, unreasonableness and unfairness. Merely because the Court may feel that the administrative action is not justified on merit, can be no ground for interference. The Court can only interfere when the process of making such decision is wrong or suffers from the vice of arbitrariness, unfairness and unreasonableness.

60 AIR 1996 Gau. 17,
It may be mentioned here that in France the reasonableness of the administrative acts or decisions is examined on a much broader scale than in common law countries. In France any act can be brought to the test of reason. Every administrative act or decision is thought to be proper and lawful only if it is reasonable.

4.12 Non-compliance with Procedural Requirements

Another important head under which the exercise of discretionary power can be challenged is where the administrative authority has not complied with the procedural requirements laid down in the statute. In Narayan v. State of Kerala, the State Government was authorized to revoke the licence of a licensee for supply of electric energy in public interest but this power could be exercised only after consulting the State Electricity Board. The Court held that the power of revocation could be exercised only after consultation with the Board. The consultation was a condition precedent for the exercise of the power and it was mandatory. Although the opinion of the Board was not binding on the Government, nevertheless consultation with it was held to be a mandatory condition for the revocation of the licence.

In another case, Naraindas v. State of Madhya Pradesh, the Government was empowered to prescribe texts books of various courses in schools in consultation with the Board of Higher Education. The Government consulted only the Chairman of the Board but not the entire Board. The Government notification prescribing the text books was held to be void because the procedure laid down in the statute was not followed, whereas it was obligatory for the Government to consult the entire Board.

The Indian Police Service (Appointment by Promotion) Regulations, 1955 provide for procedure for the selection of members of the State police force for promotion to the Indian Police Service. Regulation 5(5) provides that if in the process of selection, it is proposed to supersede any member of the State police service; the Selection Committee "shall record its reasons for proposed suppression."

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61 AIR 1963 SC1116
62 AIR 1974 SC 1232
Vidyacharan v. State of Madhya Pradesh, the petitioner challenged his suppression on the ground that the mandatory procedural requirement was not fulfilled as the Selection Committee has not given reasons for the suppression order. The Supreme Court ruled that the Selection Committee was bound to give reasons for the suppression of a member of the police service. If the mandatory provisions of regulation 5(5) are not complied with, then the selection list prepared by the Committee must be quashed.

4.13 Colourable exercise of Power

Where the discretionary power is exercised by the authority on which it has been confirmed ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.

4.14 Exceeding jurisdiction

The authority is required to exercise the power within the limits or the status. Consequently, if the authority exceeds this limit, its action will be held to be ultra vires. For example, if the administrative authority is empowered to control the price of bread it will be in excess of its jurisdiction to control the price of butter. The entire order will be ultra vires and void for exceeding jurisdiction an other example, if an authority has been given power to award a claim for the medical aid of the employees, granting the said benefit to the family members of the employees will amount to exceeding the power.' If the authority has been empowered to dismiss a teacher, the dismissing a principal will amount to exceeding the power.

4.15 Administrative discrimination

New dimensions of judicial control are developing in India. Any act of discrimination by the administration will invalidate the action. Although such instances are covered under Article 14 of the Constitution, yet they can be
declared void on account of some other infirmities. The Supreme Court in E.P. Ropayya v. State of T.N.,\textsuperscript{63} stated that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment for arbitrariness necessarily involves negation of equality. When an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 which requires that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations. The fast growing new attitude of Indian judiciary has given a highly activist expansion to Article 14 in the realm of administrative process. In Keshrilal v. State of J. & K., the Supreme Court through justice Bhagwati mentioned two limitations imposed by law which structure and control the discretion of the Government in conferring largess on individuals, (i) in regard to the terms on which largess may be granted, (ii) in regard to the persons who may be recipients of such largess. In the words of Bhagwati, J.:

'Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided 'by public interest'. The Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated." When the Government awards a contract, leases out or otherwise, deals with its property or grants any other largess, its action would be liable to be tested for its validity on the touchstone of reasonableness and 'public interest' and if it fails to satisfy either test, it would be unconstitutional. As regards, second restriction, the court points out that the State is not free, as an ordinary individual is, to select the recipient for its largess in its absolute and unfettered discretion. It may not deal with any one, but if it does so it should be fairly without discrimination and without unfair procedure.

The Supreme Court in Tata Cellular v. Union of India,\textsuperscript{64} observed that judicial quest in administrative matters have been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy. They are not essentially justicable

\textsuperscript{63} AIR 1974 SC 555
\textsuperscript{64} AIR 1996 SC 11
and the need to remedy any unfairness. As far as judicial review in administrative discretion is concerned with reviewing not the merits of the decision in support of which the application of judicial review is made, but the decision making process itself. The Court is only concerned -with the manner in which those decisions have been taken. Administrative action is subject to judicial control on the grounds:

a. Illegality.
b. Irrationality widens bury unreasonableness.
c. Procedural impropriety.

In the instant case the order passed by the Government of Jammu and Kashmir granting the right to extract resin from certain areas to the respondent was challenged but the Supreme Court on review did not find the order suffering from any infirmity. No benefit was conferred on the respondent at the cost of the State, nor was the action of the State found to be arbitrary or unreasonable. But the court in Omprakash v. State of J. & K,' found that the allotment of quotas of resin by the Government to various industrial units was discriminatory in nature and hence it was held to be invalid being in violation of Article 14. The court observed that the State had followed no reasonable basis in making allotments in favour of new allottees and denying allotment to the petitioners.

Following the opinion of the Supreme Court in the above case the Allahabad High Court held in Mls. Yadav Medical Store v. State of U.P., 65 that where the notice inviting tenders for supplying medicines to the Government hospitals set out certain conditions, acceptance of a tender of a person not fulfilling requisite conditions would be invalid as it would be arbitrary and violative of Article 14 from conservative point of view the conditions in the tender are merely administrative directions of a non-statutory character and is not binding on the Government. But the recent judicial thinking has adopted a radically different approach because there is grave danger involved in a situation where the same rules govern the rights of persons placed in the same category and yet the State is permitted to apply one condition to one individual at its sweet will, waive it in the

65 AIR 1961All 139
case of another belonging to the same class. This would be flagrantly discriminatory.

In J.P. Rukmani v. Govt. of Tamil Nadu, the Supreme Court struck down the Tamil Nadu Government Notification of 1982 issued under the New Family Pension Rules, 1964, whereby the benefit of family pension was confined to the members of the family of only those Government servants who last served at a place falling within the territories of the successor State of Tamil Nadu. There was already a Notification of 1979 which extended benefit of family pension to the members of the family of Government servant. It did not draw any distinction between the widows of one class of government servants and widows of another class merely on the basis of the place of last service of the Government servant. But the Notification of 1982 made discrimination in this respect between the two categories of retiring Government servants, on the basis of their place of last service. Further the court struck down Regulation 34 of the West Bengal Electricity Boards Regulations which empowered the Board to terminate the services of its permanent employees by serving three month's notice or on payment of salary for corresponding period in lieu thereof. The Court ruled that on the face of it the Regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is 'naked hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. In Workmen Hindustan Steel Ltd. v. State of Orissa, 66 the court has similarly held that a Standing Order, which conferred an arbitrary, unanalyzed and drastic power to enable the employer to dispense with an enquiry and to dismiss an employee, without assigning any reasons by merely stating that it was expedient and against the interest of the security to continue to employ the workmen, is bad.

The Supreme Court in Ajai Hasia v. Khalid Mujib, 67 considered the question of discriminatory behavior in the process of selecting candidates for admission to educational institutions through viva voce examination. In the instant case it appeared that some candidates who had secured high marks at the written

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66 AIR 1970 SC 253
67 AIR 1981 SC487,
examination had got very low marks at the viva voce. On the other hand some candidates who had got low marks at the written test had got high marks at the viva voce and thus succeeded in getting admission to the engineering college. The fact was cited as proof of discrimination. It was also argued that the viva voce test was not properly conducted as only 2 to 3 minutes were spent on each candidate. In this case the candidates had to take a written test as well as a viva voce test which carried 33 1/3 percent of total marks.

The Court was convinced of the possibility of the misuse of viva voce test as it was subjective. The Court has frowned upon attaching high relative value to the viva voce in the overall evaluation of a candidate. The Court has thus held that allocation of 33 1/3 per cent of the total marks to oral interview is plainly 'arbitrary' and unreasonable as there are many deficiencies in such a test and leads to deterioration in moral values. The Court's thinking is that not more than 15 per cent of the total marks ought to be allotted to the viva voce test and more than that would be arbitrary and unreasonable. On this point the court has observed:

"Now there can be no doubt that, having regard to the drawbacks, and deficiencies in the oral interview test and the conditions prevailing in the country particularly when there is deterioration in moral value and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the Court as free from the vice of 'arbitrariness'.

The Court has also suggested that the viva voce test be conducted fairly and properly. To take 2 to 3 minutes on each candidate and to ask questions having no bearing on the factors required to be taken into account for selection, is to make viva voce process vitiated and to make the selections on the basis of such a test as arbitrary.

The Supreme Court has differentiated between selection for admission to an educational institution and selection for jobs for the purpose of giving relative importance to the viva voce test.
At a selection for the tests of Munsifs, 25 per cent of the total marks were allotted to the viva voce test under the rules. The Court in Lila Dhar v. State of Rajasthan,\(^6^8\) ruled that the scheme of selection for the posts of Munsifs could riot be struca--down on the ground that more than due weightage was given to interview test. The court accepted that both written examination and interview test are essential features of proper selection, but the weight to be attached to both of these tests may vary from selection to selection. For example, in the case of admission to colleges, importance attached, to interview test may be minimum, greater weight being attached to the written examination. The reason for this is that the candidate's personality is yet to develop. On the other hand, in the case of service to which recruitment has to be made from persons of mature personality, interview test may be the only way to judge the suitability of the candidate subject to the basic and essential academic and professional requirements being satisfied.

But the Supreme Court in Ashok Kumar Yadav v. State of Haryana\(^6^9\) reconsidered the issue of allocation of marks for the viva voce examination in the service advertised by the State Government. In the instant case Haryana Public Service Commission held a competitive examination for recruitment to 61 posts in Haryana Civil Service (Executive). There was a composite test consisting of a written examination followed by a viva voce test. The marks allotted for viva voce were 33.3% for ex-service officers and 22.2% for the general category. The selections made by the Government of Haryana on the recommendations of the Public Service Commission were challenged inter alia on the ground that the allocation of marks for viva voce was unduly high and therefore suffered from the infirmity of arbitrariness. Justice Bhagwati held that the allocation of as high a percentage of marks as 33.3% in case of Ex-service Officers and 22.2% in case of other candidates, for the viva voce test renders the selection process arbitrary. The spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination, the viva voce test tended to become a determining factor in the selection process because even if a candidate secured highest marks in the written test, he could be easily knocked out of the race by awarding him the lowest marks in viva voce test. Correspondingly a candidate

\(^{6^8}\) AIR 1981 SC 1777

\(^{6^9}\) AIR 1987 SC 454
who obtained lowest marks in the written test could be raised to the top-most position in the merit list by an inordinately high marking in the viva voce test. It is therefore obvious that the allocation of such high percentage of marks as 33.3% open the door wide for arbitrariness. Similarly the allocation of marks for the viva voce test in case of persons belonging to the general category, to the tune of 22.2% has also been held unreasonable. It has infected selection process with the vice of arbitrariness.

However the selections were not set aside as, according to the court, the same would disturb the administrative machinery. But the court issued a general direction for the selections to be made in future by the Public Service Commission that the marks allocated for the viva'voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in case of ex-service officers.

These cases have given a new dimension to equality clause of Article 14. It now embodies a guarantee against arbitrariness. An arbitrary action necessarily involves negation of equality.

Thus we find that the above modes of judicial control of administrative discretion have proved quite efficacious in keeping the administration within reasonable bounds and also restraining it from ultra vires exercise of power as well as from misuse of powers. But an aggrieved person often feels difficulty in establishing a case of misuse of power by the administration because of the conventionalist attitude of the court in not summoning the relevant records from the administration to verify the misuse and also because of the privileges available with the Government under Section 123 of the Evidence Act. Whenever the court directs the Government to produce the relevant record for verifying the contentions of misuse of power the Government claims privileges in the matter and thus avoid the production. Consequently, any allegations involving misuse or abuse of power become difficult to be proved. With the changing attitude of the court in laying down new magnitudes of judicial intervention recently we may expect the court to insist upon the administration to explain reasons for the non-production of records through an affidavit and thus to enable itself to probe into
the exercise of the discretion more deeply. But it is time that the general reluctance on the part of the courts to look into the departmental records has been a major hindrance to establish the vitiation of administrative actions.