International Journal of Research in Social Sciences
Vol. 9, Issue 1, January - 2019,
ISSN: 2249-2496 Impact Factor: 7.081
Journal Homepage: http://www.ijmra.us, Email: editorijmie@gmail.com
Double-Blind Peer Reviewed Refereed Open Access International Journal - Included in the International Serial Directories Indexed & Listed at: Ulrich's Periodicals Directory ©, U.S.A., Open J-Gate as well as in Cabell's Directories of Publishing Opportunities, U.S.A

Administrative function Vs Quasi Judicial Function

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Abstract

Administrative functions are those functions which are neither legislative nor judicial in character. Where as the word quasi means not exactly. Generally, an authority is described as quasi. Judicial when it has some of the attributes or trappings of judicial functions but not all. In the words of the committee on Ministers' powers, the word "Quasi"; when prefixed to legal term; generally means that thing, which is described by the word; has some of the legal attributes denoted by the legal term, but that it has not all of them.[1]

The dividing line between administrative power and quasi judicial power is quite thin and is being gradually obliterated. In recent years the concept of quasi judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-Judicial Power. Acts of an administrative authority may be purely administrative or may be legislative or judicial in nature.[2] Decisions which are purely administrative stand on a wholly different footing from judicial as well as quasi-Judicial delusions and they must be distinguished. This is a very difficult task. Where does the administrative end and the judicial begin? The Problem here is one of demarcation and the courts are still in the process of working it out.[3]

Administrative function used in carrying out an administrative programme and is to broadly construe to include in any aspect of organisation or management. Administrative functions means functions normally associated with routine operation of government, including tax assessment and collection, personnel services, purchasing records management services, data processing, warehousing equipment repairing and printing.

Key Words:-Administration, Adjudication, Enforcement, Associate Management, Assessment, Organisaiton Co-operation, Attributes, discretion, exhaustive, his, quasi: lis, ascertainment, evidence revoke, rusticate, circumstances, tautology, stultify, anomaly; criterion, phraseology, Impugn; Pronouncement, Misconduct, Confiscation, lucid.

Objective: The main objective of the study to draw luciel distinction between administrative function and Quasi judicial function.

Literature Review

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Introduction: Administrative law is the body of law that govern the activities of government. Government agency action can include rule making adjudication or the enforcement of specific regulatory agenda. Administrative law is considered a branch of law.

Administrative function used in carrying out an administrative program and is to broadly construed to include any aspect of organisation procedure or management. Administrative functions means functions normally associated with the routine operation of government. The word Administration derives from latin Administrationem nominative (administratio) means aid, help, co-operation, direction, Management. Administration also refers to the process of running an organisation office, or business. This includes creating rules and regulations making decisions, management of operation, creating organisation of staff/Employees/People to direct activities towards achieving common goal or objective.

Judicial Action Vs Administrative action

"Woodrow Wilson" is considered the father of public administration Thus broadly speaking acts, which are required to be done on the subjective satisfaction of the administrative authority, are called administrative acts, while acts which required to be done on objective satisfaction of the administrative authority can be termed as quasi judicial.

Quasi a combining form meaning "resembling" having some" but not all of the features" "Quasi" means "not exactly' generally an authority is described as quasi-judicial when it has some attributes or trappings of judicial functions but not all.

Important Quasi Judicial Bodies in India

1. National Human right commission
2. State human rights commission
3. Central information commission
4. State information commission
5. National consumers disputes Reddressal commission
6. State Consumer disputes redressal commission
7. District consumers disputes redressal
8. Competition commission of India
9. Appellate tribunal for Electricity.
10. State electricity Regulated commission.
11. Railway claims tribunal
12. Income tax Appellate Tribunal
13. Intellectual property Appellate Tribunal
14. Central Excise and service Tax Appellate Tribunal
15. Banking ombudsman
16. Insurance ombudsman
17. Electricity Ombudsman
18. Income tax ombudsman
19. States Sales tax Appellate Tribunal.

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Administrative functions are those functions which are neither legislative nor judicial in character. Generally, the following ingredients are present in administrative functions:

(1) An administrative order is generally based on governmental policy or expediency.
(2) In administrative decisions, there is no legal obligation to adopt a judicial approach to the questions to be decided, and the decisions are usually subjective rather than objective.
(3) An administrative authority is not bound by the rules of evidence and procedure unless the relevant statute specifically imposes such an obligation.
(4) An administrative authority can take a decision in exercise of a statutory power or even in the absence of a statutory power or even in the absence of a statutory provision provided such decision or act does not contravene provisions of any law.
(5) Administrative functions may be delegated and sub-delegated unless there is a specific bar or prohibition in the statute.
(6) While taking a decision, an administrative authority may not only consider the evidence adduced by the parties to the dispute, but may also use its discretion.
(7) An administrative authority is not always bound by the principles of natural justice unless the statute casts such duty on the authority, either expressly or by necessary implication or if it is required to act judicially or fairly.
(8) An administrative order may be held to be invalid on the ground of unreasonableness.
(9) An Administrative action will not become a quasi-judicial action merely because it has to be performed after forming an opinion as to the existence of any objective fact.
(10) The prerogative writs of certiorari and prohibition are not always available against administrative actions.
(11) Administrative and Quasi-Judicial Functions -Distinctions

(i) General

Acts of an administrative authority may be purely administrative or may be legislative or judicial in nature. Decisions which are purely administrative stand on a wholly different footing from judicial as well as quasi-judicial decisions and they must be distinguished. This is a very difficult task. 'Where does the administrative end and the judicial begin? The problem here is one of demarcation and the courts are still in the process of working it out.' In the farmous case of A.K. Kraipak v. Union of India[4], speaking for the Supreme Court, Hegde, J.observed:

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated....In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.[5]

But as observed in Nagendra Nath Bora v. Commr., Hills Division[6] 'whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity must be determined in each case, on an examination of the relevant statute and the rules framed therereunder', and the decision depends upon the facts and circumstances of the case.

To appreciate the distinction between administrative and quasi-judicial function, we have to understand two expressions: (i) 'lis' and (ii) 'quasi-lis'.

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(ii) Lis

In Province of Bombay v. Khushaldas Advant[7], Das, J. observed:

"[I]f a statute empowers an authority....to decide disputes arising out of a claim made by one party under the statute, which claim is opposed by another party and to determine the respective rights of the contesting parties, who are opposed to each other, there is a lis..."[8]

One of the major grounds on which a function can be called 'quasi-judicial' as distinguished from pure 'administrative' is when there is a lis inter partes and an administrative authority is required to decide the dispute between the parties and to adjudicate upon the lis. Prima facie, in such cases the authority will be regarded as acting in a quasi-judicial manner.

Certain administrative authorities have been held to be quasi-judicial authorities and their decisions regarded as quasi-judicial decisions, wherein such lis was present, e.g. a Rent Tribunal determining 'fair rent' between a landlord and his tenant,[9] an Election Tribunal deciding an election dispute between rival candidates, and Industrial Tribunal deciding an industrial dispute,[10] a Licensing Tribunal granting a licence or permit to one of the applicants.[11]

(iii) Quasi-lis

As discussed above, it is not in all cases that the administrative authority is to decide a lis inter partes. There may be cases in which an administrative authority decides a lis not between two or more contesting parties but between itself and another party. But there also, if the authority is empowered to take any decision which will prejudicially affect any person, such decision would be a quasi-judicial decision provided the authority is required to act judicially.

Thus, where an authority makes an order granting legal aid, dismissing an employee,[12] refusing to grant, revoking, suspending or cancelling a licence,[13] cancelling an examination result of a student for using unfair means[14] rusticating of a student,[15] etc. such decisions are quasijudicial in character.

In all these there are no two parties before the administrative authority, 'and the other party to the dispute, if any, is the authority' itself. Yet, as the decision given by such authority adversely affects the rights of a person there is a situation resembling a lis. In such cases, the administrative authority has to decide the matter objectively after taking into account the objections of the party before it, and if such authority has exceeded or abused its powers, a writ of certiorari can be issued against it. Therefore, Lord Greene, M.R.[16] rightly calls it a 'quasi-lis'.

(iv) Duty to act judicially

The real test which distinguishes a quasi-judicial act from an administrative act is the duty to act judicially, and therefore, in considering whether a particular statutory authority is a quasi-judicial body or merely an administrative body, what has to be ascertained is whether the statutory authority has the duty to act judicially.

The question which may arise for our consideration is as to when this duty to act judicially arises. As observed by Parker, J., 'the duty to act judicially may arise in widely different circumstances which it would be impossible, and indeed, inadvisable, to attempt to define exhaustively'.[17]

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Whenever there is an express provision in the statute itself which requires the administrative authority to act judicially, the action of such authority would necessarily be a quasi-judicial function. But this proposition does not say much, for it is to some extent a tautology to say that the function is quasi-judicial (or judicial)if it is to be done judicially.18 Therefore, the real question is: Is it necessary that for an action to be quasi-judicial, the relevant statute must expressly require the administrative authority to act judicially?

Before we discuss this question, it will be necessary to quote the following observations of *Atkin, L.J. in R.*v. *Electricity Commissioners*[19], as subsequent development of law on this aspect is based on varying interpretations placed by subsequent cases thereon:

"Whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.[20]

In 1928, Lord Hewart, C.J.[21] read the aforesaid observaitons of Atkin, L.J. to mean that the duty to act judicially should be an additional requirement existing independently of the "authority to determine questions affecting the rights of the subjects"-something superaded to it. The gloss placed by Lord Hewart, C.J. on the dictum of Lord Atkin, L.J. was improper and it stultified the growth of the principles of natural justice. it has led to many anomalies and inequitable situations. In every case that came before tit ehcourt had to make a search for duty to act judicially in interpreting the provisions of the statute which resulted in confusion and uncertainty in law. But as Wade[22] rightly says, in the correct analysis it was simply a corollary, the automatic consequence of the power to determine questions affecting the rights of subjects'. Where there is any such power, there must be the duty to act judicially.

The law was finally settled in the historic case of Ridge v. Baldwin[23], wherein lord Reid pointed out how Hewart, C.J. misunderstood the observations of Atkin, L.J. and observed: "If Lord Hewart meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice, then that appears to me impossible to reconcile with the earlier authorities[24].

Generally, statutes do not expressly provide for the duty to act judicially and therefore, even in the absence of express provision in the statutes the duty to act judicially should be inferred from 'the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, of the duty imposed on the authority and the other indicia afforded by the statute[25].

(v) Leading cases

Let us consider some leading cases to illustrate this proposition:

In *Nakkuda Ali* v. *Jayaratne*[26], the Controller of Textiles cancelled a licence of a textile dealer on the ground that the holder was unfit to continue as a dealer. Before passing the impugned order, he was not heard by the Controller. In an action against the Controller, the Privy

Council held that the action by the Controller of cancellation of a licence was an executive action of withdrawal of privilege and the dealer had no right to hold the licence and the Controller was not under a duty to act judicially.

Similarly, in *R.*v. *Metropolitan Police Commissioner, ex p Parker*[27], a cab-driver's licence was revoked on the ground of alleged misconduct without giving reasonable opportunity to him to rebut the allegations made against him. The court upheld the order on the ground that the licence was merely a permission which could be revoked at any time by the grantor and in doing so, he was not required to act judicially.

But as Schwart[28] says, for an individual to lose his licence is to suffer an 'economic death sentence' and is wholly contrary to the spirit of Anglo-American Administrative Law and this is an unwarranted restriction upon the application of the rules of natural justice. de Smith[29] also states: "Demolition of a property-owner's uninhabitable house might be for him a supportable misfortune; deprivation of a licence to trade might mean a calamitous loss of livelihood; but the judicial flavour detected in the former function was held to be absent from the latter".

Province of Bombay v. *Khushaldas Advani*[30] was the first leading Indian decision on the point. Under Section 3 of the Bombay Land Requisition Ordinance, 1947, the Provincial Government was empowered to requisition any land for any public purpose 'if in the opinion of the Government' it was necessary or expedient to do so. It was contended that the Government while deciding whether requisition was for a public purpose, had to act judicially. The High Court of Bombay upheld, the said contention. Reversing the decision of the High Court, the Supreme Court held by a majority that the governmental function of requisitioning property was not quasi-judicial, for the decision was based on the subjective satisfaction of the Government and it was not required to act judicially.

In *Radheshyam* v. *State of M.P.*[31], the Supreme Court was called upon to consider the C.P. and Berar Municipalities Act, 1922, which contained two provisions. Section 53-a empowered the Government to supersede a municipality for a temporary period not exceeding 18 monhts for securing 'a general improvement in the administration of the municipality', while Section 57 empowered the Government to suspend the municipality for an indefinite period for an incompetent or ultra vires action. Section 57 expressly provided for a reasonable opportunity to be given to the municipality before making an order, while Section 53-a did not contain such provision. The majority held that the order under Section 53-A was also quasi--judicial in nature.

However, after the historic pronouncement of the House of Lords in *Ridge* v.*Baldwin*[32], our Supreme Court has followed the ratio laid down therein. In State of *Orissa* v. *Binapani Der*, speaking for the Court, Shah, J. (as he then was) observed:

"Duty to act judicially would, therefore, arise from the very nature of the function intendd to be performed: it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power.[34]

Again, in *Maneka Gandhi* v. *Union of India*[35], the Court reiterated the said view and held that the duty to act judicially need not be superadded and it may be spelt out from the nature of

the power conferred, the manner of exercising it and its impact on the rights of the person affected.

(vi) Quasi-judicial functions: Illustrations

The following functions are held to be quasi-judicial functions:

(a) Disciplinary proceedings against students.
(b) Dismissal of an employee on the ground of misconduct.
(c) Confiscation of goods under the Sea Customs Act, 1878.

Conclusion: Administrative Law is considered as one of the Most outstanding developments of the twentieth century. The reasons for its development may be

(1) Change in the Government's Philosophy,
(2) demand for the protection of rights,
(3) opportunity to adopt and enforce preventive measures.
(4) Opportunity of experiment

Administrative function, judicial function and quasi-judicial functions are effective means to strongthen the trans porent acmocraly.

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