Contribution of the High Court of Delhi to the Development of Law in 2012

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Compiled by:

S. Muralidhar and J. R. Midha
Judges, High Court of Delhi

With the Assistance of a Team of Law Researchers

PREFATORY NOTE

This is a compilation of the summaries of selected decisions rendered by the judges of the Delhi High Court in the branch of Constitutional and Administrative Law for the period from 1st January till 31st December 2012.

The summaries were prepared by law researchers, interns and students of the National Law University, Dwarka and the Indian Law Institute, Delhi under the supervision of the judges.

It is possible that in the period subsequent to their pronouncement some of the decisions may have been affirmed, overruled or modified in appeal.

We wish to thank the law researchers, interns and students who have contributed their efforts in bringing about this compilation. We welcome suggestions for its improvement.

LIST OF ABBREVIATIONS

AD	-	Apex Decisions
D.B.	-	Division Bench
DE	-	Delhi
DLT	-	Delhi Law Times
DRJ	-	Delhi Reported Judgments
F.B.	-	Full Bench
MANU	-	Manupatra
S.B.	-	Single Bench

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CONSTITUTIONAL LAW

CONSTITUTIONAL LAW

Supreme Court has the power to lay down the rules about the entitlement of persons not only to act but also to plead before it.

Balraj Singh Malik v. Supreme Court of India

Citation: 2012 (128) DRJ 557

Decided on: 13th February, 2012

Coram: **Acting Chief Justice**, Rajiv Sahai Endlaw, JJ.

Facts: The Petitioner sought a declaration that Rules 2, 4 and 6(b) of Order IV of the Supreme Court Rules, 1966 ('1966 Rules') were null and void as they did not permit filing of cases by the Petitioner and other non-Advocates-on-Record (non-AOR) in the Supreme Court of India. The Petitioner challenged the creation of further classification of advocates into AOR and non-AOR and permitting only AOR to file cases in the Supreme Court. The Petitioner prayed that the category of AOR be dispensed with.

Issue:(1) Whether right to practice under Section 30 of the Advocates Act, 1961 (1961 Act) was being denied by virtue of Rules 6 and 10 of Order IV of the 1966 Rules.

(2) Whether classification between Non-AOR Advocates and AOR created by the 1966 Rules was violative of Articles 14 and 19(1) (g) of the Constitution of India.

Held: Section 30 of the 1961 Act entitled every Advocate, as of right, to practise throughout the territories to which the 1961 Act extended. It specifically mentioned all Courts including the Supreme Court. Section 52, however, stated that nothing in the 1961 Act shall be deemed to affect the power of the Supreme Court to make rules under Article 145 of the Constitution. Reading these two provisions harmoniously, an inescapable conclusion was that the Supreme Court had the power to lay down the rules regarding the entitlement of persons not only to act but also to plead before it. It followed that amendment to Section 30 of the 1961 Act had not altered the earlier position. The 1961 Act did not affect (1) the power of the Supreme Court to frame rules by limiting the category of persons who could act or plead before it, (2) the rules framed in exercise of that power, (3) prescribing the eligibility conditions before an advocate could act or plead and (4) nomenclature of AOR being given to those who fulfilled those conditions. The classification was based on intelligible differentia with the objective of regulating the practice before the Supreme Court by way of prescribing such qualification/eligibility conditions for advocates to become Advocate on Record and to be entitled to act or plead in the interest of the litigating public. Therefore, it could not be treated as discriminatory or violative of Article 14 of the Constitution. The practice of the AOR should be regulated to ensure that AORs play a constructive role in the justice delivery system.

CONSTITUTIONAL LAW

Section 16 of the Consumer Protection Act, 1986- There could be no reservation of posts, in favour of a woman, for being appointed as a member of the 'State Consumer Disputes Redressal Commission'.

Yashbeer Singh v. GNCT of Delhi

Citation: W.P. (C) No. 153 of 2011 & W.P. (C) No. 305 of 2011

Decided on: 13th February, 2012

Coram: **Vipin Sanghi**, J.

Facts: The writ petitions assailed an advertisement issued by Respondent No. 2 inviting applications from candidates for appointment as whole time members of the 'State Consumer Disputes Redressal Commission' in Delhi (State Commission), established under the Consumer Protection Act, 1986 (the Act). The advertisement was in relation to two posts, out of which one post had been reserved for "Member (Female – non-judicial)" and the second post had been reserved for "Member (judicial)", for the purpose of creation of a second bench of the State Commission. The State Commission on the date of the issuance of the advertisement was composed of a President, a judicial member (in this case a female) and a non-judicial member (also a female) who retired.

Issue: Whether the advertisements in question, purporting to reserve seats for "Member (Female – non-judicial)" and "Member (judicial)", when the State Commission already consisted of a Female member and a President with judicial background, was in the contravention of the provisions of the Act.

Held: A perusal of Section 16 of the Act clearly shows that there was no reservation of post, either in favour of a woman or a person having judicial background, for being appointed as a member of the State Commission. All that Section 16(1)(b) provided was that, of the members appointed to a State Commission, at least one shall be a woman which in turn could not be understood to mean that a slot or a post of a member of the State Commission could be labled or classified as that reserved for a Member (Female). Section 16(1)(b) provided that while making appointments of members to the State Commission, if none of the existing members was a woman, the appointing Authority was required to give priority to a candidate who was a female, who otherwise fulfilled the criteria set out in Section 16(1)(b)(i), (ii) & (iii) of the Act. Since, the requirement of having at least one woman member already stood fulfilled in the present case, the advertisement of one of the posts of member being reserved for Female-non-judicial candidate, appeared to be in the teeth of Section 16(1)(b) of the Act. Even though the Respondent No. 2 was not precluded from appointing a woman from amongst the Applicants, but the appointment was required to be based entirely on the Applicant's merit and could not have been swayed by the consideration that she was a woman. Thus, so far as the advertisement of one post for "Member (Female-non-judicial)" was concerned, the same was contrary to the provisions of the Act.

However, the advertisement for the post of "Member (judicial)" was held to be in consonance with the provisions of the Act. The Government was entitled to specifically appoint a person having judicial background so as to facilitate the creation of a bench of the State Commission and, therefore, the Petitioners could not be said to be aggrieved of an advertisement inviting applications from persons having a judicial background, particularly when the percentage of the persons having judicial background would not exceed 50%, even after the filling up of the advertised post.

The petitions were partially allowed and the advertisement in question issued by Respondent No. 2 for filling the post of Member (Female-non-judicial) was contrary to the provisions of the Act. However, the said advertisement to fill the post of a Member (judicial), i.e., to appoint a person having judicial background was in accordance with Section 16 of the Act and was upheld.

CONSTITUTIONAL LAW

Principle of 'forum non conveniens' makes it obligatory on the part of the Court to see the convenience of all the parties before it.

Vinod Kr. Bhora v. HDFC Standard Life Insurance Company Ltd.

Citation: 2012 (130) DRJ 200

Decided on: 17th February, 2012

Coram: **Acting Chief Justice**, Rajiv Sahai Endlaw, JJ.

Facts: The Appellant had taken preliminary objections to the maintainability of the writ petition filed by the Respondent No.1 on the ground that the Court did not have the territorial jurisdiction to entertain the petition. The said objection was however turned down by the Single Judge and the writ petition was decided on merits whereby orders of the Insurance Ombudsman had been set aside. The Appellant challenged the order both on jurisdiction as well as on merits, with the consent of the parties; only the issue of jurisdiction was decided.

The Appellant being a resident of Jodhpur, Rajasthan, had taken the Unit Linked Assurance Plan with the Respondent No.1 by submitting the proposal at its Jodhpur Office. Though the registered office of the Respondent No.1 was at New Delhi, it had its various offices in several parts of the country and one such branch office was situated at Jodhpur. The Appellant suffered heart ailment in Jodhpur and was also treated for this ailment at a hospital situated at Jodhpur. It was the Jodhpur branch with which the Appellant submitted its claim and which cancelled the policy. Thus, every part of action took place in Jodhpur

Issue: Whether mere signing of the orders by the Insurance Ombudsman in Delhi conferred territorial jurisdiction upon this Court to entertain the writ petition, when the complaint was wholly heard and entertained in Rajasthan.

Held: Relying on a Full Bench judgment of this Court in **New India Assurance Company Ltd. v. Union of India [161 (2009) DLT 55]** , merely because the appellate authority which had passed the order, was situated in Delhi, this Court could not be said to automatically enjoy jurisdiction to entertain the writ petition. What was emphasized was that even if part of cause of action had arisen in the aforesaid form, namely, order of the appellate authority located in Delhi, the Court could still refuse to exercise jurisdiction under Articles 226 and 227 of the Constitution of India on the application of the concept of 'forum conveniens' it was found that other Courts would be more convenient.

Further, each and every part of the cause of action had arisen in Rajasthan. Even the Respondent No.2 i.e. Insurance Ombudsman, who decided the matter against the writ petition filed, was appointed as Ombudsman of Rajasthan and Delhi and he was exercising his jurisdiction as Ombudsman of Rajasthan and not of Delhi. Thus, merely because he was an Ombudsman of Delhi as well, could not mean that the cases decided by him in the capacity of Ombudsman in

Rajasthan would be appealable within the jurisdiction in Delhi. Further, even if he signed the Award in question while sitting in the Delhi Office; it could not constitute a cause of action in Delhi nor would it make Delhi Court as more convenient.

Hence, this Court did not have the requisite jurisdiction and on this ground itself, the appeal was allowed and the writ petition dismissed. However, liberty was granted to the Respondent No. 1 to approach the High Court of Rajasthan, being the competent Court of law to entertain a challenge to the Award of the Ombudsman.

CONSTITUTIONAL LAW

A viva-voce examination cannot acquire 100% weightage or be the sole determinative factor for appointment to a course.

Anvita Singh v. Union of India

Citation: 2012 (3) AD (Delhi) 133

Decided on: 28th February, 2012

Coram: **Acting Chief Justice**, Rajiv Sahai Endlaw, JJ.

Facts: The petitioner challenged Sub Rule (3) of Rule 110 of the Patents Rules which mandates securing minimum 50% marks in viva voce examination and an aggregate of 60% in all the three written papers, on the ground that the part of the Rule which mandates securing 50% marks in viva voce was too high a prescription and gives arbitrary power to the interview board to fail a candidate even when he or she has done extraordinarily well in the written examination.

Issue: (1) Whether or not appointment as a patent agent falls in the category of admission in an educational institution or appointment to a post in service.

(2)Whether the aforesaid provision stipulating minimum 50% marks in the viva voce is discriminatory, arbitrary and violative of Articles 14, 16 and 19(1)(g) of the Constitution

Held: A patent agent is neither an admission to educational institution or appointment to a post. It is in the nature of self employment and the status of a 'professional' is attached to such a patent agent. Even though there was no doubt that theoretical knowledge was not sufficient and a patent agent was required to be tested on other parameters as well, such as ability to assist patent authorities in cases of registration of patents, manner of presentation, ability to create a relationship of trust with the clients etc, however, the interview process could not be the sole determinative factor for appointment to the course. The result of doing so, as in the present case, was that even if a particular candidate had done well in his next degree course (educational qualification) or had extra ordinary experience and had also performed well in two written qualifying examination, still even with one mark less than the minimum 50 per cent marks required in interview, he/she would be treated as disqualified. This was bound to result in some arbitrariness.

Prescribing minimum 50 per cent marks in the interview may not be appropriate more so when the rule mandated securing 60 per cent marks in aggregate in all the three papers i.e. two written and one viva voce test. This rule was therefore held arbitrary and violative of Article 14 of the Constitution and was thus liable to be struck down. It was, however, left to the rule making authority to give less weightage to the viva-voce by prescribing lesser minimum marks being not more than 25 per cent.

Restricting itself to the case of the petitioner only, the marks of viva voce were ignored altogether and because the petitioner had secured more than 60% marks, which were the

qualifying marks, she had to be declared pass in the examination entitling her to get registered as a Patent Agent. Mandamus was thus issued to the respondents to register the petitioner as the patent agent and the writ petition was allowed accordingly.

CONSTITUTIONAL LAW

Election- Reservation of Seats- State Election Commission is empowered to carry out the exercise of reservation of seats in municipal elections. The concerted exercise undertaken by it keeping in mind the increasing population cannot be faulted on any ground.

Vikas v. State Election Commission

Citation: 2012 (188) DLT 390

Decided on: 29th February, 2012

Coram: **Sanjay Kishan Kaul**, Rajiv Shakdher, JJ.

Facts: The writ petitions impugned the notification issued by the Government of National Capital Territory of Delhi (GNCTD) prescribing the manner for reservation of seats for SC and women (both general and SC) on the grounds that the method adopted was arbitrary and contrary to the one adopted in 2007 elections. The total percentage of population in the Assembly segment was the criteria adopted to decide in which Assembly segment the wards had to be reserved, which resulted in wards having higher percentage of SC population to be declared as General and vice versa. The other grievance was that the power to reserve seats vested with the Central/State Government and such power could not have been delegated as the State Election Commission (SEC) would not fall in the nomenclature of 'any other authority' in the Delhi Municipal Corporation Act, 1957 (DMC Act).

Issue: (1) Whether the notification was arbitrary and the methodology adopted by SEC illegal.

(2) Whether the power to reserve ought not to have been delegated to the SEC and whether it impinged on its independence.

Held: The manner adopted by the SEC in 2007 had received the imprimatur of the High Court could not have precluded the SEC from adopting any other formula as long as the test of reasonableness was satisfied and the twin criteria i.e., areas where there was greater population of SC should be reserved and each Assembly should not have more than two reserved wards, was achieved. The endeavour with the present method was observed to be gaining the maximum spread in respect of the SC population and remove any hidden distortions in reservation. Even though the constituencies had been arranged in a descending order on the basis of the SC population, this SC population for an Assembly segment was in turn based on the totaling of the SC and the total population for each ward. Therefore, the ward remained the unit and it is not as if the Assembly segment had become a unit.

The words 'superintendence, direction and control' which emphasized the role of SEC were wide enough to include all powers necessary for smooth conduct of elections as it would be a well equipped body to carry out such an exercise. On a reading of Article 243K, 243ZA and 324 of the Constitution it was held to be clear that such power was available with the SEC even de hors the delegation. The DMC Act allowed the Government to sub delegate its power and there was

no provision in the DMC Act which would imply that the SEC was excluded from the purview of the phrase ‘other authority’. The notification did not prescribe the manner or the mode in which the power conferred was to be exercised and therefore, it could not be said to dilute the independence of the SEC. Hence, nothing wrong was found with the action of the SEC qua the mode and manner of reservations of seats for the SC and the women and thus, dismissed the writ petitions.

CONSTITUTIONAL LAW

Article 14 and Article 226 of the Constitution- Equality is the first principle of law and therefore, pensionary benefits cannot be denied to the employees who are in similarly situated conditions.

Union of India v. Federation of All India Central Govt. Canteen Employees Workers Association

Citation: MANU/DE/1898/2012

Decided on: 30th April, 2012

Coram: Acting Chief Justice, **Siddharth Mridul**, JJ.

Facts: Union of India challenged the order of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi whereby it was directed that the Central Government Canteen Employees be given the benefit of the entire past service prior to the said employees being declared as Government servants for counting towards pensionary benefits.

The Respondents i.e., employees working in the Canteens of the Government of India were allowed to enjoy the full-fledged status of a Government employee pursuant to the decision of the Apex Court declaring the employees of statutory, non-statutory and non-statutory recognised Canteens as Railway employees and consequentially entitled to all the benefits of Railway employees. However, for the purpose of service and GPF benefits to the Canteen employees, past services were to be taken into account as quasi permanent to the extent their actual qualifying service fell short of the minimum service required. Subsequently, pursuant to the orders passed by the Railway Department recognizing entire past service of the Canteen employees for giving pensionary benefits, the employees working in the Canteens of the Government of India were also granted parity of status with the Railway Canteen employees, in the order of CAT.

Issue: Whether the employees belonging to different Government Departments claimed parity in emoluments under the principle of "equal work for equal pay" as envisaged by Article 14, Constitution of India.

Held: Rejecting the Petitioners' contention that the decision of the Railway Department for reckoning the entire past service rendered by their Canteen employees for availing pensionary benefits, was independent and no parity could be claimed by employees of Government Canteens on the basis of the same, fully supported the observations of the CAT recorded in the order to the effect that when a particular benefit was granted to the employees of one Department of the Government of India, the same could not be denied to the other similarly placed employees of other Departments under the Government of India. Equity was the first principle of justice and if parity was denied, it would amount to a violation of Articles 14 and 16 of the Constitution and be against the spirits of justice. Further, the employees of the Canteens of the Central Government

Departments needed to be given the same benefit as had been given to the employees of the Railway Canteens for both being under the Central Government. Hence, the writ petition was consequently dismissed.

There is a complete bar under Article 74 (2) on inquiry by courts advice tendered by the Ministers to the President, no exception can be inserted by alleged interpretation of the Right to Information Act and the CIC cannot look into the advice tendered by the Ministers to the President or vice versa.

The deliberations between the President and Prime Minister, being within the powers of the President or his office would enjoy immunity under Article 361.

Union of India v. Central Information Commission

Citation: MANU/DE/3169/2012

Decided on: 11th July 2012

Coram: **Anil Kumar,** J

Facts: The petitioner sought quashing of the order of the Central Information Commissioner directing production of documents and correspondence between the then President and Prime Minister of the Country relating to the Gujarat riots, on an application under the Right to Information Act, 2005 by Respondent 2. The Central Public Information Officer refused this request and the first appeal was also dismissed. A Full Bench of the Central Information Commission, in the second appeal, called for the correspondence to examine whether disclosure would harm public interest. This order was challenged on the grounds that the advice tendered by the Council of Ministers to the President is beyond judicial inquiry; applicability the bar under Article 74 (2) and immunity under Article 361.

Issue: Whether the Central Information Commission can peruse the correspondence between the former President and then Prime Minister on the Gujarat riots in order to decide whether disclosure of the same would be in public interest and whether or not the bar under Article 74 (2) will applicable to the correspondence which may have advice of the council of Ministers or Prime Minister.

Held: The Court noted that Article 74 (2) clearly bars disclosure of advice tendered by the Council of Ministers to the President.

The Court clarified that the RTI Act cannot have overriding effect over, nor can amend, modify, or abrogate the provisions of the Constitution of India in any manner. The Commission's observation that the bar under Article 74 (2) would not be applicable when the correspondence involved a sensitive matter of public interest was held not legally tenable. Amendment of any of the provisions of the Constitution can be possible only as per the procedure provided in the Constitution, which is Article 368 and the same cannot be deemed to be amended or obliterated merely on passing of subsequent statutes. The bar under Article 74 (2) cannot be diluted or whittled down in any manner because of the class of documents it relates to. It was apparent that

under Article 74(2) of the Constitution of India there was no bar to production of all the material on which the advice rendered by the Council of Ministers or the Prime Minister to the President was based.

It was held that the correspondence between President and Prime Minister will be advice rendered by the President to the Council of Ministers or the Prime Minister or vice versa and it cannot be held to be material on which the advice was based. The respondents' only assume without showing any basis, that the correspondence was material on which the advice was based and the CIC would not be entitled to get the correspondence, peruse the same, and negate the bar under the Constitution on this assumption alone. Article 74 (2) contemplates a complete bar in respect of advice tendered, and no such exception can be inserted on the alleged interpretation of the RTI Act. The Commission under the RTI Act does not have powers of High Courts and Supreme Court under Articles 226 and 32 respectively of the Constitution, and thus its interim order for perusal of the record in respect of which there was a bar under Article 74 (2) of the Constitution was wholly illegal and unconstitutional.

Held that there was a complete bar under Article 74(2) of the Constitution of India as to the advice tendered by the Ministers to the President and, therefore, the respondent No.1 CIC cannot look into the advice tendered by the President to the Prime Minster and consequently by the President to the Prime Minister or council of Ministers.

The right to information cannot have an overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originated from the Constitution of India the same was secondary and was subjected to the provisions of the Constitution. The provisions of the Right to Information Act, 2005 cannot be held to be superior to the provisions of the Constitution of India and it cannot be incorporated so as to negate the bar which flows under Article 74(2) of the Constitution of India.

Further it was observed that the documents in question being deliberations between the President and the Prime Minister were within the powers of the President or his office and would enjoy immunity by virtue of Article 361. The CIC had no authority to call for information barred under Article 74 (2). Disclosure or such material may or may not be within public interest and whether it was in public interest or not, was not to be adjudicated as an appellate authority by respondent No.1. The petition was allowed and impugned order set aside.

CONSTITUTIONAL LAW

Article 265- No tax to be levied without the authority of law. Levy of stamp duty on increase in authorized share capital in the absence of a specific entry in the schedule is possible only when the schedule is amended to that regard.

Collector of Stamps v. SE Investment Ltd.

Citation: 191 (2012) DLT 591

Decided on: 24th July 2012

Coram: **Badar Durrez Ahmed**, Siddharth Mridul, J.

Facts: The Government of Delhi sought to levy stamp duty on the increase in the authorized share capital of the respondent company. A second appeal was filed before the Division Bench of this Court challenging The Indian Stamp Act (Delhi Amendment) Act, 2007 as it had no specific entry in its Schedule IA to enable the Collector of Stamps to collect duty on the increase of authorized share capital.

The Petitioner, a public limited company, was incorporated with an authorized share capital. The Petitioner increased its authorized share capital and paid stamp duty on the increase in the authorized share capital. Respondent No. 4 was requested to clarify whether as per Article 10 of the Schedule IA of the Indian Stamp (Delhi Amendment) Act, 2007 any additional stamp duty on increase in the authorized capital was payable.

Issue: Whether the learned Single Judge was right in holding that the Government of NCT of Delhi cannot collect stamp duty on the increased authorized share capital under the Indian Stamp (Delhi Amendment) Act, 2007, in view of the fact that there was no specific entry in its Schedule IA to collect stamp duty on the increase in the authorized share capital?

Held: There was no provision for charging stamp duty on the increase in the authorized share capital. The statute authorizing the levy of stamp duty was in the nature of a fiscal statute inasmuch as it provided for involuntary exaction of money and this could not be done except by the authority of law as provided in Article 265 of the Constitution. The provisions of a fiscal statute admit of strict construction and in the absence of an express provision in the Act permitting levy of stamp duty on the increase in the authorized share capital, it would not be possible to legally sustain the impugned demand on the increase in the authorized share capital of a company.

This Court observed that the company in question had paid the appropriate stamp duty on its authorized share capital when it had been registered. However, when the authorized share capital had been increased, no stamp duty had been paid. The court held that in the absence of an entry

in the specific Schedule, if the Government wished to impose stamp duty on the increase of share capital, it would have to do so by amending the Schedule IA and introducing a specific entry in that regard. This was in consonance with Article 265 of the Constitution of India which held that no tax could be levied or collected without the authority of law. Hence, the appeal was dismissed.

CONSTITUTIONAL LAW

Articles 25 and 26 of the Constitution; were subject to public order, morality and health that were to say that no religious sect may carry on activities which may disturb morality or order in the State.

Court on its Own Motion v. Government of NCT of Delhi

Citation: 2012(7) AD (Delhi) 377 (FB)

Decided on: 30th July 2012

Coram: Acting Chief Justice; **Sanjay Kishan Kaul**, Rajiv Shakdher, JJ.

Facts: There was an unauthorized construction on Municipal Corporation of Delhi (hereinafter MCD) land which was left unattended. The site in question had been handed over to the Delhi Metro Rail Corporation (DMRC) which subsequently washed its hands off the land in question consequent upon the route being diverted on account of the ground realities. In the interregnum period some digging was carried out and articles of archaeological significance were found. The claim of one community was that these articles were the remains of a mosque and therefore *namaz* should be allowed. The other group claimed that these were the remnants of a temple and consequently *puja* must be allowed. Both the parties agreed that further excavation is required by the ASI.

Issue: Whether there was any mosque at site or not, the significance of what was found at site and whether the remains were of any importance from archaeological point of view, to be determined by ASI.

Held: A bare perusal of Articles 25 and 26 of the Constitution makes it amply clear that they embody the principles of religious tolerance that had been basic features of the Indian Civilization. However, the provisions of both the Articles were subject to public order, morality and health that were to say that no religious sect may carry on activities which may disturb morality or order in the State. Article 25 conferred the right of freedom of conscience and right freely to practice and propagate religion on all individuals, but such a practice and propagation of religion should not be the one which disturbs or endangers public order and lead to a serious situation of disturbed law and order. The court further held that Article 25 did not confer by itself any right to property; it did not deal with the rights of a religious denomination to own or acquire property. Article 26 conferred the right to establish and maintain institutions for religious and charitable purposes. It, however, does not guarantee the right to establish and maintain them at a particular place or to make it immune from the acquisition.

The land in question was undisputedly a property of the MCD (now NDMC) and the persons, who built the structure at the site, are liable of the offence of „trespassing".

The court issued the following directions:-

(i) The ASI should begin its task in a right earnest with all technical assistance to verify the position at site as also qua the items discovered from the site, which they should take possession of. It would be open to the ASI to carry out further digging or any other activity at site as they deemed appropriate for verifying the site position and respective claims.

(ii) The MCD (now NDMC) and the police authorities would render all assistance to ensure that the area was kept cordoned off.

(iii)The police would maintain vigil so that law and order was maintained at site and unnecessary rumour mongering and endeavour to give communal overtone was prevented.

Hence, the court directed the ASI to further examine the site and did not allow either of the parties to perform any prayers.

CONSTITUTIONAL LAW

Article 12 of the Constitution of India; Whether or not an army primary school is a 'State' within the meaning of Article 12

Asha Vij v. The Chief of Army Staff

Citation: 2012 (6) AD (Delhi) 109

Decided on: 9th August, 2012

Coram: Acting Chief Justice, **Rajiv Sahai Endlaw**, J.

Facts: The Appellants were working as teaching/non-teaching staff of Delhi Area Primary School at Noida and had filed the writ petition aggrieved from the notices issued by the Chief of Army Staff intimating them that they would be relieved from their duties with effect from 31.03.1999 and would be paid three months' salary in lieu of three months' notice period. The Respondents raised a preliminary objection regarding the maintainability of the writ petition as the Army Welfare Educational Society was managing the school, was not a State or an Authority under Article12 of the Constitution of India. The school was completely funded by regimental funds.

Issue: Whether the society managing a school using regimental funds was considered as a State or an Authority within the meaning of Article 12 of the Constitution of India.

Held: The Court relied on ***UOI vs. Chotelal*** JT 1998 (8) SC 497 held that the regimental funds were not public funds and a person paid out of such regimental funds could not be said to be the holder of civil post within the Ministry of Defence and the Regulations qua regimental funds, the writ petition against the School was held to be not maintainable. It also held that a venture out of regimental funds, does not acquire the status of a venture from public funds.

The Court also relied on ***Air Vice Marshal J.S. Kumar vs Governing Council of Air Force*** 126 (2006) DLT 330 held that the writ petition to be not maintainable against the Air Force Sports Complex and held that merely because Government had provided some benefits and facilities like land for the golf course or concession in liquor would not make such complex a 'State' under Article 12 of the Constitution of India and the complex remained a private body only, providing recreation to Armed Forces officers and not discharging any public function or public duty.

In this case, the subject School was admittedly a Primary/Preparatory School neither situated in Delhi nor recognized by the Act. It was in these circumstances, that the maintainability of the writ petition had to be adjudged. Thus, the writ petition was not maintainable as the School was not a State or Authority within the meaning of Article 12 of the Constitution of India.

CONSTITUTIONAL LAW

A provision which is for greater social good cannot be held to be arbitrary and violative of Article 14 and 15 just because it was harsh on few.

Vished through legal guardian Sushil Kumar v. Directorate of Higher Education

Citation: 2012 (131) DRJ 604

Decided on: 21st August, 2012

Coram: **Acting Chief Justice**, Rajiv Sahai Endlaw, JJ

Facts: Two writ petitions with different facts but involving a similar legal issue were heard together. Writ Petition (C) No. 4042 of 2012 was filed by a petitioner who belonged to the Scheduled Caste (SC) category. He intended to pursue an engineering course in the respondent University. He contended that he fulfilled the eligibility requirement for claiming reservation in the SC category as he had the requisite SC certificate issued by the Government of NCT of Delhi. However, there was an additional requirement for claiming reservation in 85% seats reserved for candidates of NCT of Delhi region. Since the petitioner had his entire schooling from kindergarten to Class XII from a school in Ghaziabad, he did not fulfil this requirement as per the aforesaid Act and, therefore, was not treated as a "Delhi candidate" within the meaning of Section 2(f) of The Delhi Professional Colleges or Institutions Act,2007 (DPCI). Instead he was covered by the definition of "Outside Delhi candidate" as per Section 2(s) of the DPCI Act. Therefore, the petitioner challenged Section 2(f) and 2(s) read with Section 12 of the DPCI Act as being violative of Articles 14 and 15 of the Constitution of India.

Issue: Whether a person belonging to the SC in relation to a particular State would be entitled to the benefits or concessions allowed to an SC candidate in the matter of employment in any other State? Whether the petitioner was totally excluded from the benefit of reservation?

Held: For getting the benefit under Delhi reserved category, the petitioner had to be "Delhi candidate" as per the provisions of DPCI Act. For this, specific definition of "Delhi candidate" was provided which mandates that such a candidate should have appeared or passed the qualifying examination from a recognized school or institution situated in Delhi. This was, thus, the additional condition which is prescribed for according the status of "Delhi candidate". Therefore, the petitioner was treated as belonging to reserved category even for admission in Delhi on the basis of SC certificate which he possessed. The only difference was that since he was not a "Delhi candidate", the reservation permissible to him was against 15% quota meant for outside Delhi candidates. While examining the definition of "Delhi candidate" the court observed that merely because the provision was harsh to the petitioner as he could not be treated as "Delhi candidate" since he had his entire education outside Delhi, could not be a ground to invalidate the provision either as discriminatory or arbitrary. Thus, the petition was dismissed.

Facts: In WP(C) No. 4162 OF 2012, the two petitioners in this writ petition studied class 11th and 12th from Delhi schools and were seeking admission to MBBS course in the medical colleges affiliated to University of Delhi. Therefore, they were treated as "Delhi students" and were considered against seats under 85% Delhi quota in the aforesaid course. The grievance of these petitioners, however, was that the provision of treating all those who have studied class 11th and 12th from Delhi schools as "Delhi students" even when they were not the domiciles of Delhi and they were the permanent residents of other States. The petitioners challenged the validity of Para 2.4 of the bulletin of information for the courses of MBBS issued by Faculty of Medical Sciences, University of Delhi as violative of the Right of Equality guaranteed under Article 14 of the Constitution of India.

Issue: Whether provision of treating students who are not the domiciles of Delhi as "Delhi students" was violative of Article 14 of the Constitution?

Held: The validity of provision prescribing the condition that to be treated as "Delhi candidate", a student should have studied from a recognized school within the NCT of Delhi was upheld. The provision in Para 2.4.2 of the bulletin was also giving benefit to those who were not born in Delhi or were the domicile of this place but also who undertook their studies in class 11 and class 12 in Delhi. In so far as the petitioners were concerned, they studied 11th and 12th from recognised school within the NCT of Delhi and were, therefore, not debarred from getting the benefit of this category. This writ petition was dismissed.

CONSTITUTIONAL LAW

Article 239AA of Constitution of India; Constitutional validity of unit area method of levying taxes introduced by the Delhi Municipal Corporation (Amendment) Act, 2003

Vinod Krishna Kaul v. Lt. Governor NCT of Delhi

Citation: 2012 (131) DRJ 655

Decided on: 23rd August, 2012

Coram: **Badar Durrez Ahmed,** Veena Birbal, JJ.

Facts: The unit area method of levying property taxes in Delhi introduced by the Delhi Municipal Corporation (Amendment) Act, 2003 was challenged. It was prayed that the Delhi Municipal Corporation (Amendment) Act, 2003 and the Delhi Municipal Corporation (Property Tax) Bye-Laws, 2004 must be declared unconstitutional and as being void *ab initio.* The challenge was founded on the following pleas: - (i) The Legislative Assembly for the National Capital Territory lacked the legislative competence to enact the Delhi Municipal Corporation (Amendment) Act, 2003; (ii) the Legislative Assembly of NCT of Delhi did not have the competence to legislate in respect of property taxes because Entry 18 of the State List had been excluded from its domain by virtue of Article 239AA(3)(a), (iii) The Presidential Assent in the manner stipulated in Article 239AA(3)(c) was not there; (iv) Amendments introduced by the Amendment Act of 2003 do not adopt any "recognized method of valuation" and are, therefore, arbitrary and violative of Article 14 of the Constitution

Issue: Whether or not the unit area method of levying property tax was constitutional?

Held:

(1) *Legislative competence*: The court observed that the Legislative Assembly of NCT of Delhi derived power to make laws for NCT of Delhi with respect to matters enumerated in the State List or the Concurrent List insofar as any such matter is applicable to the Union Territories, except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List insofar as they relate to the said Entries 1, 2 and 18 by virtue of Article 239AA(3)(a) of the Constitution of India. This was the specific legislative power given to the Legislative Assembly of NCT of Delhi. The court held that if the Legislative Assembly had competence in the backdrop of Article 239AA, the fact that property tax levied was Union Taxation is of no consequence; the whole issue of Union Taxation and State Taxation was not relevant in determining the competence of the Legislative Assembly of NCT of Delhi in enacting the Amendment Act of 2003.

(2) *Whether property tax was included in Entry 18, State List*: The court held that the power to legislate on property taxes was traceable to Entry 49 of the State List, which had not been excluded from the domain of Legislative Assembly of NCT of Delhi by Article 239AA(3)(a) of the Constitution. Therefore, the said Legislative Assembly had the power

and competence to legislate with regard to "taxes on lands and buildings" And, therefore, it could not be said that the Amendment Act of 2003, was void or ultra vires the Constitution.

(3) *Presidential Assent*:-The harmonized construction of Article 239AA(3)(c) lead to the understanding that a law made by the Legislative Assembly of NCT of Delhi if repugnant to a provision of law earlier made by Parliament would be void to the extent of the repugnancy unless it could be shown that the law made by the Legislative Assembly of NCT of Delhi had been reserved for the consideration of the President and had received the assent of the President. The Amendment Act of 2003 had received the assent of the President and thus, would prevail.

(4) *There are no guidelines for the exercise of power under Section 116A and classification*.- Provisions of Section 116A and other related provisions cannot be regarded as being arbitrary or contrary to Article 14 of the Constitution. Clear guidelines had been prescribed under new regime for classifying colonies, areas, localities in Delhi into different categories depending upon the parameters specified in the provisions.

(5) *A flat rate of taxation under the unit area method is arbitrary and discriminatory and therefore illegal*-there was nothing arbitrary or discriminatory in the flat rate of tax imposed in the context of the unit area regime of property taxation employed under the amended act of 1957.

Hence, the unit area method of levying property taxes in Delhi introduced by the Delhi Municipal Corporation (Amendment) Act, 2003 is a valid method of valuation. Therefore the Delhi Municipal Corporation (Amendment) Act, 2003 and Delhi Municipal Corporation (Property Tax) Bye-Laws, 2004are not unconstitutional and void *ab initio*. The writ petitions were dismissed.

CONSTITUTIONAL LAW

The legislature of a State is empowered to make laws having force only within the State and not outside the State, establishing anybody exercising powers outside the state would be contrary to Article 245(1) of the Constitution.

State of Haryana v. Global Educational & Social Trust

Citation: 2012 (193) DLT 472

Decided on: 27th August, 2012

Coram: **Rajiv Sahai Endlaw**, J.

Facts: The petitioner was aggrieved by the policy of the respondent university to grant affiliation only on the requirement of a NOC from the concerned state and refusal of affiliation by the State to issue the same.

Issue: Whether the requirement (in Clause 3(ii)(b) of Statute 24 of Guru Gobind Singh Inderprastha University (GGSIPU) of a "No-Objection Certificate" (NOC) from the concerned State Government, for affiliation with GGSIPU was valid.

Held: Section 4 of the GGSIPU Act enacted by GNCTD empowering GGSIPU established thereunder, to exercise power outside Delhi in the NCR was undoubtedly contrary to the spirit of Article 245(1) of the Constitution empowered the legislature of a State to make laws for the whole or any part of the State only. Once the legislature of a State was empowered to make laws having force only within the State and not outside the State, it was axiomatic that such laws could not create/establish bodies which would exercise powers outside the State. A University established by the law of one state cannot exercise powers outside the state, but on the same hand, strong nexus required between the University and its affiliate colleges and institutions for better administration was however broken by the two being situated in territories of two different States. To keep alive the said nexus, the co-operation of the State in which the College/Institution was situated was required and to elicit which, the NOC was required.

The solution by the NCR Planning Board, permitting Colleges/Institutions in the NCR a choice of affiliation to the Universities of any of the States of NCR would not only be for the benefit of the students of NCR but would also bring about a healthy competition enabling all such Universities to grow and improve.

The Court was unable to hold that the requirement by GGSIPU of such NOC was bad or to command the States of Haryana or Uttar Pradesh to issue such NOC's.The refusal of states was in consonance with the local laws as the local laws of the respective States did not permit Colleges/Institutions located therein to be affiliated to any University other than the respective State Universities. Thus, the appeal was allowed and writ petitions were dismissed.

CONSTITUTIONAL LAW

Articles 341 and 342 read with Article 16 of the Constitution of India; Reservation benefits of Scheduled Castes and Scheduled Tribes migrating from one State to Union Territory

Deepak Kumar v. District and Sessions Judge, Delhi

Citation: 2012(132) DRJ 169 **(**FB)

Decided on: 12th September, 2012

Coram: Acting Chief Justice, **S. Ravindra Bhat**, Rajiv Sahai Endlaw, JJ.

Facts: This case related to the interpretation of Articles 341 and 342 read with Article 16 of the Constitution in the context of differing standards of what was the permissible reservation standard applicable on one hand to residents of states who took up residence in one state, as opposed to residents of states who took up residence in Union Territories. The full bench was constituted for the purpose of deciding the appropriate course which this court should adopt in regard to the interpretation of Articles 341 and 342 of the Constitution of India, in the light of conflicting decisions of the Supreme Court.

Issue: Whether castes or tribes which did not find mention in the relevant Scheduled Castes or Scheduled Tribes orders issued by the President or the Amendment Acts in relation to the Union Territory of Delhi, but were so described in relation to the other states or Union Territories or such castes which were separately notified as scheduled castes in relation to other states, could claim the benefit of reservation for the purpose of employment in the service of the Union Territory of Delhi or for the purpose of admission to educational institutions.

Held: The Court relied on various Supreme Court decisions and summarized the conclusions as follows:-

(1) The decisions in *Marri Chandrasekhara Rao vs. The Dean, Seth GS Medical College,* (1990) 3 SCC 130 and *Action Committee vs. Union of India,* (1994) 5 SCC 244,*State of Maharashtra vs. Milind,* (2001) 1 SCC 4 and *E. V. Chinnaiah v. State of A.P.,* (2005) 1 SCC 394 had ruled that scheduled caste and tribe citizens moving from one State to another could not claim reservation benefits, whether or not their caste was notified in the state where they migrated to, since the exercise of notifying scheduled castes or tribes was region (state) specific, i.e. "in relation" to the state of their origin.

(2) The considerations which applied to Scheduled Caste and Tribe citizens who migrated from state to state, applied equally in respect of those who migrated from a state to a union territory, in view of the text of Articles 341 (1) and 342 (1), i.e. only those castes and tribes who were notified in relation to the concerned Union Territory, were entitled to such benefits. This was reinforced by the Presidential Notification in relation to Union Territories, of 1951. Only Parliament could add to such notification, and include other castes, or tribes, in view of Articles 341 (2), Article 342 (2) which was also reinforced by

Article 16 (3). States could not legislate on this aspect; nor could the executive – Union or state, add to or alter the castes, or tribes in any notification in relation to a state or Union Territory, either through state legislation or through policies or circulars.

(3) Differentiation between residents of states, who migrated to states, and residents of states who migrated to Union Territories would result in invidious discrimination and over-classification thus, denied equal access to reservation benefits, to those who were residents of Union Territories, and whose castes or tribes were included in the Presidential Order in respect of such Union Territories. The interpretation in *S. Pushpa v. Sivachanmugavelu* 2005 (3) SCC 1 led to peculiar consequences, whereby:

(a) The resident of a state, belonging to a scheduled caste, notified in that state, could not claim reservation benefit, if he took up residence in another state, whether or not his caste was included in the latter State's list of scheduled castes;

(b) The resident of a state who moved to a Union Territory would be entitled to carry his reservation benefit, and status as a member of scheduled caste, even if his caste was not included as a scheduled caste, for that Union Territory;

(c) The resident of a Union Territory would however, be denied the benefit of reservation, if he moved to a State, because he was not a resident scheduled caste of that State.

(d) The resident of a Union Territory which later became a State, however, could insist that after such event, residents of other states, whose castes may or may not be notified, as scheduled castes, could not be treated as such members in such newly formed states;

(e) The scheduled caste resident of a state which was converted into a Union Territory, could not protest against the treatment of scheduled caste residents of other states as members of scheduled caste of the Union Territory, even though their castes were not included in the list of such castes, for the Union Territory.

Hence, the ruling in the *Pushpa case* was binding as it was rendered by a bench of three judges of the Supreme Court.

Reporting news and current events is a part of fundamental right of Freedom of Speech and Expression, under Article 19(1)(a). But, reasonable restrictions can be placed on such a right under Article 19(2) of the Constitution, to protect the copyright and broadcast rights.

ICC Development (International) Ltd. v. New Delhi Television Ltd.

Citation: 2012 (193) DLT 279

Decided on: 18th September, 2012

Coram: **V.K. Jain**, J.

Facts: In accordance with the agreement between the plaintiff no.1 and 2, plaintiff no.2 had assigned all rights in the footage of ICC CWC 2011 to plaintiff no.1, who now owned the copyright in the said footage. After ICC CWC 2011 commenced, the defendant violated the News Access Guidelines framed by plaintiff no.1 on multiple occasions and infringed the copyright and other rights of the plaintiff no.1. ICC CWC 2011 logos, trademarks, word marks trophy were also alleged to have been commercially associated by the defendant with third parties during broadcast of special shows relating to the said events. The plea taken by the defendant was that the injunction sought by the plaintiffs would infringe on its constitutional and statutory rights and would also be against public policy and interests of the general public. It was also alleged that usage of footage in the news amounted to fair dealing with the same and was covered by the exceptions provided under Section 39(b) and 52(1)(a)(iii) of the Copyright Act 1957.

Issue: 1.What should be the maximum length of the fresh and archival footage which could be said to be consistent with the concept of fair dealing with the work of the plaintiffs;

2. Whether advertisements could be carried by the defendant immediately before, during or immediately after special programme which it telecasted on the news channels;

3. Whether advertisements could be shown on the ticker(s) below the footage at the time live/archival footage was being shown during such special programmes

4. Whether the defendant could give such title(s) to its special programmes as would indicate an association of the sponsor/advertiser of such programme with the event subject matter of discussion in such programmes.

5. Whether advertisements could be shown on the ticker(s) below the footage at the time live/archival footage was being shown during news bulletins and if so, subject to what conditions and limitations.

Held: The court observed that reporting news and current events was a part of fundamental right of Freedom of Speech and Expression, guaranteed under Article 19(1)(a) of the Constitution. But, since reasonable restrictions could always be placed on such a right in terms of Article 19(2) of the Constitution, and the validity of the Copyright Act, 1957, to the extent it protected the

copyright and broadcast rights subjected to the exceptions and exemptions stipulated therein, had not been challenged. The court decided that the defendant could not use the footage of the plaintiff to give an unfair advantage to its advertisers, at the cost of official advertisers of the plaintiff, by carrying out advertisements in case the footage was used during the special/ sponsored programmes.

While disposing the petition the following directions were issued to be followed by both parties:

1. The duration of the footage of the plaintiffs, whether fresh or archival, by the defendant would be limited to the extent permitted under the, ICC Twenty 20 World Cup, Sri Lanka, 2012 "News Access Regulations" in India.
2. The fresh footage of the plaintiff would be delayed by at least 30 minutes, in terms of the regulations of the plaintiffs.
3. The defendant should not air any advertisement immediately before, during or immediately after the footage of the plaintiffs, during the news bulletins, except to the extent indicated in (4) below.
4. If the footage of the plaintiff was shown in the news bulletins, the defendant should be subjected to the condition and limitations stipulated herein below, be at liberty to carry advertisements on the tickers, even when the footage, whether fresh or archival, was shown during regular news bulletin provided that such advertisement(s) had not been booked by the defendant to be shown only during reporting of ICC Twenty 20 World Sri Lanka, 2012.
5. If advertisements were carried by the defendant immediately before, during or immediately after the special /sponsored programmes on ICC Twenty 20 World Cup 2012 telecasted on its news channel, the footage of the plaintiff would not be shown in the programme(s).
6. If the advertisements were carried even on tickers, immediately before, during or immediately after such special/sponsored programmes, the footage of the plaintiff would not be shown in the programme.
7. The defendant would not use the footage of the plaintiff if it gave any such title to its special/ sponsored programmes as would indicate an association between the advertiser(s) and the event subject matter of the programme.
8. The defendant, while showing the footage whether fresh or archival would paste "courtesy bug" acknowledging the plaintiffs.
9. The defendant would use the name and the event logo while using the footage of the plaintiff, whether during the special programme or during news bulletin.
10. In case the official logo of the plaintiff was covered by the logo of the defendant when the footage was shown, it would include a courtesy line extended at the bottom or elsewhere on the screen.

11. No advertisement would be carried on the footage of the plaintiff.

Hence, the application was disposed of.

CONSTITUTIONAL LAW

Broadcast of cricket match footage by news channel- permitted provided the footage of the activity is not misused, and not in a manner whereby the consumer would be misled or enticed into believing that the sponsor of the program is a sponsor of the activity or is intimately associated with the event

New Delhi Television Ltd. v. ICC Development (International) Ltd.

Citation: MANU/DE/4995/2012

Decided on: 11th October, 2012

Coram: **Pradeep Nandrajog**, Manmohan Singh, JJ.

Facts: The Single Judge of this court had passed an injunction against the petitioner restraining it from broadcasting and reproducing the cricket matches organized by the respondent. In an appeal against this injunction, the petitioner claimed that the sports broadcast provided by it constituted a fair use, in consonance with their freedom of expression and hence did not constitute an infringement of the copyright of the respondent.

Issue: Whether the broadcast by the petitioner of the cricket matches organized by the respondent constituted a fair usage and was within the limits of freedom of expression.

Held: Section 39 (b) of the Copyright Act, while reporting current events use, consistent with fair dealing, of excerpts of a performance or of a broadcast did not constitute infringement of the broadcast reproduction right or the performer's right. Section 52(1)(a)(iii) of the Copyright Act 1957, the reporting of current events and current affairs but as fair dealing did not constitute an infringement of the copyright held by the broadcaster or a performer. Inorder to determine whether the offending activity was by way of reporting, two objective facts would determine firstly, was it result oriented and secondly, was it primarily an analysis or review of the sporting event. If the offending activity failed to qualify as 'reporting', then injunction should follow. Therefore, news, including sports news, would qualify to be a case of reporting if the broadcast was result oriented and not an analysis by way of review or comments.

The Court held that the freedom guaranteed to speech and expression by the Constitution would confer the right to disseminate any kind of information and would be non-actionable, provided the footage of the activity was not misused, and not in a manner whereby the consumer would be misled or enticed into believing that the sponsor of the program was a sponsor of the activity or was intimately associated with the event. Thus, footage could be used while reporting sports events but only if the programs were pre-existing news format programs and were not designed for a particular sports event and specific advertisements were not solicited from third parties to be put on the air in the program or the third party had not specifically approached the TV channel and paid special premium for its advertisements to be put on air.

Inorder to decide whether the use of the footage was consistent with the principles of fair dealing, firstly, proximity of time of the sports news being put on the air to the sports event, The more proximate the time : the more the weightage to the use being unfair. Secondly, the offending programme competed with exploitation of the copyright by the copyright owner could be stated as; (i) competition (ii) extent of use (which would include both the duration of the footage used and its repetition) (iii) the body of viewers and the effect of the use on the potential market i.e. the viewers.

It was held that if in case of reporting hard news or a case of reporting sports news programme, if during a cricket match an event occurs, footage relating thereto could be shown within seconds of the said kind of event taking place. But, where TV channels had specially designed the news programmes and had earned advertisement revenue to advertise products of third parties, it would constitute an act of infringement if footages were used of the sports event and simultaneously, sitting within the special programme, advertisements were put on the air.

It also held that the TV channels would have two options, only one of which could be opted for in relation to special sports news programmes. Firstly, opted to put on the air, an advertisement specifically targeted during special programmes, and not to use the footages. Secondly, opted to use the footages but not put on the air any advertisements.

Thus, the appeal was disposed.

CONSTITUTIONAL LAW

Validity of legislations prohibiting the wholesale of cigarettes and other tobacco products within a radius of 100 yards around the educational institutions

Naya Bans Sarv Vyapar Association (Regd.) v. Union of India.

Citation: 2012 (132) DRJ 169 **(**FB)

Decided on: 9th November, 2012

Coram: Chief Justice, **Rajiv Sahai Endlaw,** JJ.

Facts: The Petitioners challenged the validity of the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and of Delhi Prohibition of Smoking and Non-Smokers Health Protection Act, 1996 which prohibited even the wholesale of cigarettes and any other tobacco products with the radius of 100 yards around the educational institution.

Issue: Whether or not the provisions of the COTPA and the Delhi Prohibition of Smoking and Non-Smokers Health Protection Act, 1996 prohibited wholesale of cigarettes and other tobacco restrictions violated the provisions of the Constitution of India.

Held: The prohibition on sale of cigarette or tobacco products in close vicinity of educational institutions was found to have larger objective of reducing the exposure of the students of the said educational institutions to cigarette or tobacco products.The court held that the sale of cigarettes and other tobacco products, whether in wholesale or retail, near an educational institution had the potential of attracting students thereof. The court stated that the benefits of the said prohibition far outweighed the harm or the loss caused to the wholesalers. Furthermore, the equal treatment of retailers and wholesalers had a rational relation to the object of the two legislations as well as other legislations on the subject i.e. as far as possible prevented the exposure of vulnerable group to cigarettes and other tobacco products. The prohibition did not violate Articles 14 or 19(1) (g). Hence, the petition was dismissed.

CONSTITUTIONAL LAW

Articles 19 and 21 of the Constitution of India; Right to form associations

Delhi Dayalbagh Cooperative House Building Society Ltd. v. Registrar, Cooperative Societies

Citation: MANU/DE/5767/2012

Decided on: 5th December, 2012

Coram: **Sanjay Kishan Kaul**, Vipin Sanghi, JJ.

Facts: The Petitioner was a registered house building society to acquire land either through outright purchase or on lease for construction of houses for giving it to the members of society, either on rent or on hire purchase system or by outright sale. The membership was restricted to the followers of the Radha Soami faith. The petitioner society made an application to the Government of Delhi to acquire land for construction of dwelling units for its members under the provisions of Land Acquisition Act, 1894.

One of the member was allotted a plot and sale deed was executed. The plot was treated as a freehold property and was transferred to non-member of the society. A letter was sent to him which notified him about the legal position for sale/transfer of properties but no reply was received. Hence, a claim petition was filed by the petitioner for declaring the property as illegal and void and an award was passed in favour of the petitioner. In pursuance to this award of the arbitrator, an execution petition was filed and warrants for possession/ attachments were issued. Thereafter, five appeals filed by the respondents and the appeal filed by the petitioner against the award before the Delhi Co-operative Tribunal was disposed of by common order. The award passed by the Arbitrator was set aside. But, the appeal of the petitioner society was allowed.

Issue: Whether the property of the member of the society being transferred to any non-member without permission was illegal and void as being in violation of Agreement, Bye-Laws and terms of the Sale Deed?

Held: The condition in the Sale Deed and the Agreement was in violation of Section 10 of the Transfer of Property Act, 1882 and Section 73 of the Indian Contract Act, 1872 as the object was to discriminate between the citizens of India *qua* the entitlement to own any property in the land of the petitioner's society. The object of restricting it to only a religious sect was held as unlawful and not permissible as it stands contrary to the constitutional scheme. The right to have housing and to reside in any part of the country has been recognized as part of Article 21 of the Constitution.

The association formed in the form of the cooperative society was only with the objective of providing housing to its members. The various members become absolute owners of their properties in question with the right to transfer them. Therefore, the primary object was house building, which was not a religious activity.

The right to form association(s) under Article 19(1)(c) of the Constitution is subject to reasonable restrictions under Article 19(4) of the Constitution. The right to form association(s) under Article 19(1)(c) of the Constitution did not include within its ambit the right construed as a Fundamental Right to form association(s) for achieving the particular object or running a particular institution as a concomitant of the Fundamental Right. If the right to transfer is restricted to only such persons or people with such belief, it would, thus, be an unreasonable restraint.

Thus, it was held that the impugned order did not suffer from any infirmity in setting aside the Arbitrator award and hence, the Petition was dismissed in favour of respondents.

ADMINISTRATIVE LAW

ADMINISTRATIVE LAW

While exercising the power of Judicial Review a court does not sit as a technical evaluation committee but only to examine the decision making process.

Bal Pharma Limited v. Union of India

Citation: 2012 (193) DLT 364

Decided on: 17th September, 2012

Coram: Sanjay Kishan Kaul, **Vipin Sanghi**, JJ.

Facts: The petitioner was engaged in the business of manufacturing and marketing of pharmaceuticals. It had been supplying pharmaceuticals to the respondent for more than a decade. The petitioner stated that there had been no complaint in respect of the supplies made by it in the past. In this writ petition, the petitioner seeks the quashing of the communication issued by respondent containing the grounds on which the technical bid of the petitioner was rejected and also seeks a direction to the respondents to open their commercial bid and in case the same is found to be the lowest, the contract be awarded to the petitioner.

Issue: Whether while exercising the power of judicial review a court can examine the technical specifications.

Held: They observed that while examining the matter in writ jurisdiction, this Court does not sit as a technical evaluation committee or an appellate authority, and the scope of judicial review in such matter is only to see whether the decision making process is fair, transparent and non-discriminatory. This Court cannot go into the issue whether the U.S. Specification are prevalent or not. These are technical matters which have to be left to the competent experts in the field.

While examining the petition the court found no merit in this petition as the petitioner was unable to prove the non application of mind by the respondents on the grounds on which the bid was rejected. The tender enquiry in question lays down specific conditions for eligibility/technical qualification. The petitioner is required to meet those technical qualifications to become eligible for being considered further and as the technical qualification was not fulfilled by the petitioner in this case, the petition was dismissed.

The test of reasonableness for exercise of discretion is that the criteria of discretion must have a reasonable nexus with the object of the discretion.

Sumitomo Chemical India Pvt. India v. HLL Lifecare Ltd.

Citation: MANU/DE/4795/2012

Decided on: 24th September, 2012

Coram: **Pradeep Nandrajog,** Manmohan Singh.JJ

Facts: The respondent was nominated by the erstwhile Municipal Corporation of Delhi for production of biolarvicide as either an aqueous solution or in whetable powder form, to be used for eradication of mosquitoes. The Notice Inviting Tender in this regard contained certain qualifying criteria, non-compliance with which would result in bids being rejected. One such criteria as per the Notice Inviting Tender was that the manufacturer should have received and successfully executed in any year within the last three years, supply order to the extent of minimum 25 % of the quantity of biolarvicide detailed in the schedule. In this regard, it was stated that supplies made to wholesale stockists, distributors, own agents, sister company will not be considered in counting the said 25 %.

Issue: Whether the condition in the Qualifying Criteria wholly excluded supplies made to wholesale stockists, distributors, own agents, sister company in the computation of 25% quantity of biolarvicde for assessment of manufacturing/supplying capacity was arbitrary and unreasonable.

Held: To cull out with precision the issue of executive reasonableness, in view of today's environment of scams and scandals, the Court took note of basic principles of administrative law: (i) Administrative law may be loosely stated as the 'law relating to the control of governmental power' or 'body of general principles which govern the exercise of power and duty by public authorities'. (ii)The quest for administrative justice gives unity to its various facets and the thread running through it is that the public may be able to rely on it as ensuring that administrative power is exercised in a manner conformable to the public idea of fair dealing and good administration. (iii) While the power of judicial review in administrative law is concerned not with the rightness or wrongness of the decision but the lawfulness or unlawfulness of the decision-making process, in practice, the distinction between merits and legality is not so rigid. (iv) The ultra vires doctrine is not confined to cases of excess of power but embraces abuse of power such as where something is done unjustifiably, for a wrong reason or by unlawful procedure. (v) Every power, however wide the language, has a legal limit, and when vested, is intended to be used fairly and with due consideration of rights and interests adversely affected. (vi) Discretion is an element of every power and must find in its exercise, reasonableness with the duty. It necessarily implies good faith in discharging the duty and there is always a

perspective within which it is to operate, any clear departure from which would be as objectionable as fraud or corruption.

The Court highlighted the need for caution on its part in defining the standards of reasonableness as well as the need for judges to not draw bounds too tightly but apply objective criteria.

The Court pointed out that the principles in the *locus classicus* decision in this regard ***Associated Provincial Picture Houses Ltd.*** v. ***Wednesbury Corporation*** [(1948) 1 KB 223] were often misunderstood. It clarified on a reading of Wednesbury that the word unreasonable is used in a comprehensive sense encompassing, (i) a general description of things that must not be done; (ii) the requirement to direct oneself properly in law while exercising discretion by directing one's attention to matters one is bound to consider; and (iii) to exclude from consideration, matters which are irrelevant to what is to be considered. This part of the observation has often been ignored and what is quoted is the latter part that something done so absurdly that no reasonable person would consider it as being within authority would also be unreasonable. This decision brings out that unreasonableness embraces many species one of which is gross absurdity of the kind that no reasonable person would dream that it laid within the power of the decision maker.

From the principles in various decisions considered by it, the Court set out the following test for unreasonableness: If a fact or circumstance does not ***fairly*** and ***reasonably*** relate to the subject of the decision and is being factored in the decision, or vice versa, the decision and exercise of discretion resulting in the decision would be unreasonable. The test of reasonableness was that the criteria of discretion must have a reasonable nexus with the object of the discretion; and if the nexus between the two snaps, the exercise of discretion would be unreasonable.

In the case at hand, the Court observed that one of the facts that should be borne in mind when issuing a Notice Inviting Tender is that so far as possible, the conditions should not be so stringent that only a single bidder is left to compete. Where the criteria of past performance is adopted to assess the manufacturing or supplying capacity of the tenderer, all relevant factors pertaining to the same must be kept in view, accounted for and reflected in the Qualifying Criteria else it would fall foul of the dictum in Wednesbury Corporation's case. Wholly excluding sales in the past by wholesale stockists, distributors, own agents, sister company is clearly arbitrary, negates fair dealing and good administration as the whole object is to test the ability of the bidder to effect supplies as per the tender. While sales to wholesale stockists, distributors, own agents, sister company may be excluded due to the possibility of manipulation, but wholly excluding the same by excluding even end use sales would defeat the object. The Court, however, cautioned that the conclusions reached by it were in the peculiar facts of this case. The offending criterion was quashed and the respondents directed to suitably amend the tender.