

THE BARRISTER

by S.B. Jain and Associates

The latest legal updates, news and views

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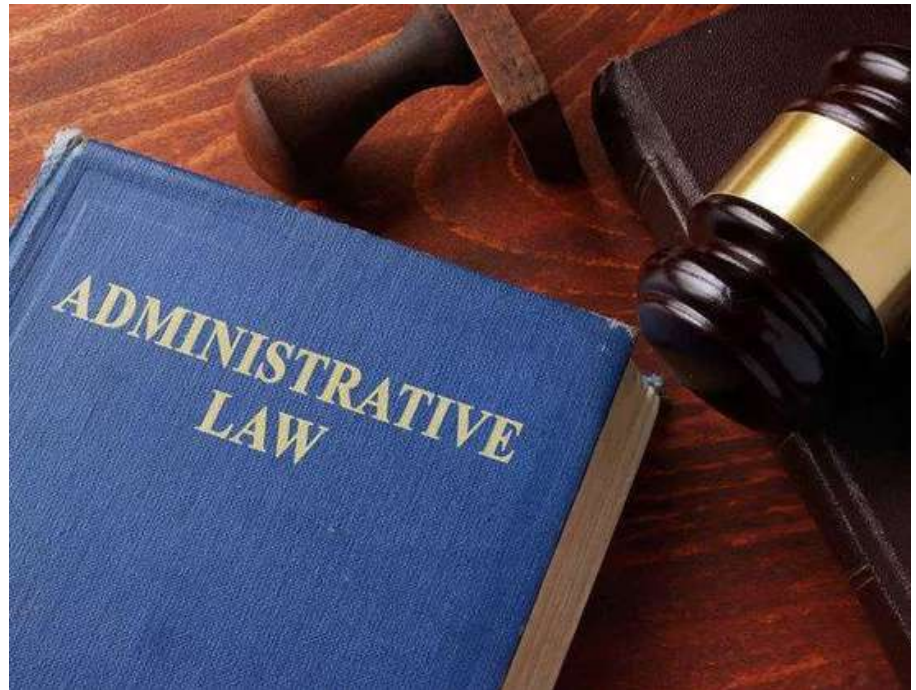
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What is Administrative Law?

Administrative law is part of the branch of law commonly referred to as public law, the law which regulates the relationship between the citizen and the state and which involves the exercise of state power. So, it is a part of the legal framework for public administration. Public administration is the day-to-day implementation of public policy and public programs in areas as diverse as immigration, social welfare, defence, and economic regulation—indeed in all areas of social and economic life in which public programs operate.

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CORPORATE AFFAIRS



Centre revamps rules on valuers

The ministry of corporate affairs has revamped the rules governing entities performing valuation of corporate assets such as plant, machinery, securities and goodwill, for improving their ease of doing business and for greater regulatory oversight. The amendments said that no partnership entity or company shall be eligible to be a registered valuer if it is not a member of a registered valuer organisation. Also, the new rule stipulates that these entities should not be registered with more than one registered valuer organisations at one point in time.

Centre to soon merge social security contributions by small firms

The Centre may soon do away with separate contributions towards provident funds, pensions and insurance for small enterprises, allowing them to make a single payment towards the social security of their employees. This is expected to boost compliance among small firms. Currently, companies have to make separate payments towards the Employees' Provident Fund Organisation (EPFO) and Employees' State Insurance Corporation (ESIC).



TAXATION

Input Tax Credit (ITC)



Extended time for allowing ITC claims and amend invoice

CBIC has amended CGST Rules, 2017 so as to allow ITC claims and amendment in invoices up to 30th November, 2022. Accordingly, effect has been given in GSTR-9 form to extend the date of ITC claims and amendment in invoices till 30th November, 2022. Now, one can amend the details of taxable outward supplies made to the registered person that is already reported in table 4A, 4B, 6B, 6C – B2B invoices. The taxpayers will have to provide the financial year and invoice number and click on 'Amend Record' to search for the invoice.

Extension of due date for furnishing form GSTR-1 for certain districts of Tamil Nadu

The Government vide Notification No.25/2022-Central Tax dated 13th December, 2022 has extended the due date for furnishing of Form GSTR-1 for November, 2022 for registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvarur, Nagapattinam, Mayiladuthurai and Thanjavur in the State of Tamil Nadu.



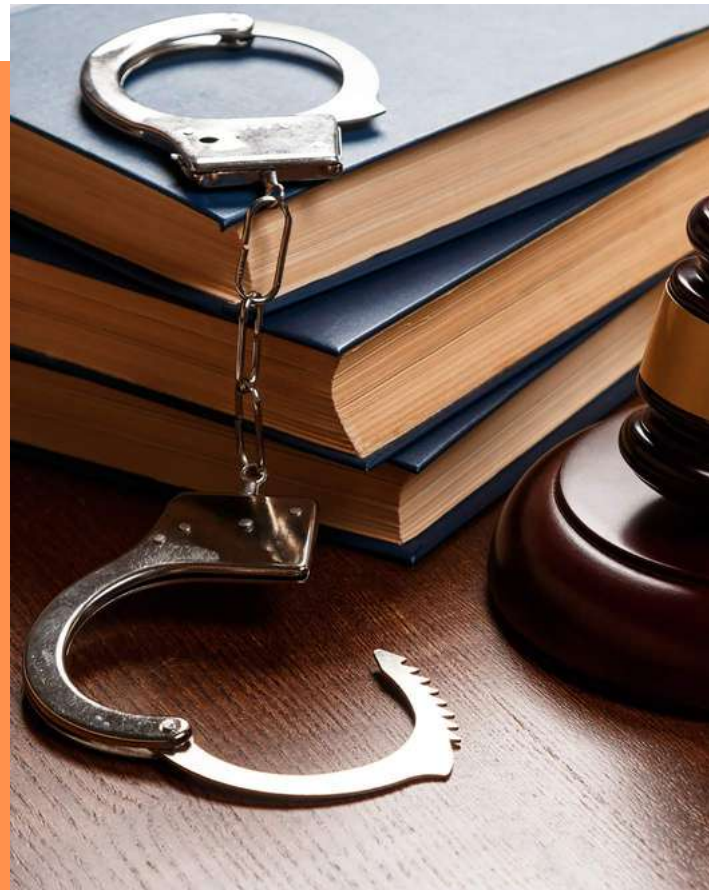


Principle Of 'Changing Rules Of Game' : Supreme Court

The Supreme Court has reiterated that a candidate who has participated in the selection process adopted under a specific set of rules is estopped and has acquiesced himself from questioning it thereafter. However, the court has further pointed out a distinction between rules in the context of qualification/eligibility versus rules regarding the change in the selection process. The bench comprising Justices MR Shah and MM Sundresh also stated that a change in the selection process will not amount to changing 'rules of the game'. The principle that the 'rules of game cannot be changed after the game has started' will apply only when the basic qualification is sought to be changed after the notification.

Section 313 CrPC Not Empty Formality : SC

The Supreme Court observed that while questioning an accused under Section 313 CrPC, he must be explained the circumstances appearing in the evidence against him. "If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.", the bench of Justices Sanjay Kishan Kaul and Abhay S. Oka said.





INTRODUCTION

Administrative law deals with the legal control of government and related administrative powers. In other words, we can define administrative law as the body of rules and regulations and orders and decisions created by administrative agencies of government. Administrative law consists of complaints respecting government action that adversely affects an individual. Thus, administrative law involves determining the legality of government actions. There is a two-fold analysis: the legality of the specific law itself and the legality of particular acts purportedly authorized by the specific law.

SCOPE OF ADMINISTRATIVE LAW

Administrative Law as a law is limited to concerning powers and procedures of administrative agencies. It is limited to the powers of adjudication or rule-making power of the authorities. Thus, it is limited to:

- Establishment, organization and powers of various administrative bodies
- Delegated legislation - the Rule-making power of the authorities
- Judicial functions of administrative agencies such as tribunals
- Remedies available such as Writs, Injunction etc.
- Procedural guarantees such as the application of principles of Natural Justice
- Government liability in tort
- Public corporations



The Administrative Law is a recent branch of the science of law. In the political science there are few Administrative organs. Certain functions have been allotted to these organs in the Administrative Machinery. The Administrative law deals with the structure, functions and powers of the Administrative organs. It also lays down the methods and procedures which are to be followed by them during the course of remedies which are available to the persons whose rights and other privileges are damaged by their operations. From the few lines above explaining the meaning of the Administrative law, we can notice the exact scope of this new branch of Law.

The scope of Administrative law can be narrated as under: -

- The methods and procedures of these Administrative organs are also studied by this new branch of law.
- It covers the nature of structure, powers and functions of all these administrative organs.
- It also makes available all the relevant remedies to the persons whose rights are infringed by the operations of these organs during the course of Administration.
- Why and How the Administrative Organs are to be controlled is also viewed by the Administrative law.

ADMINISTRATIVE LAW IN INDIA

Administrative law in India is an important facet of the Indian government. It ensures that, according to the Indian Constitution, officers of the government do not violate the rights of their citizens. The administrative law of the Indian government controls the administration of specific legislation. It is also meant to govern the decisions of administrators when exercising their responsibilities related to administrative discretion. In the government of India, the judicial branch is responsible for creating administrative law. Judicial review, or the practice of the judicial branch reviewing the actions of the bureaucracy, is the only tool used by the government to create administrative law. The practice of judicial review has two main domains. Rulings can decide the legitimacy of bureaucratic actions in accordance with legislation. They can also decide whether or not an administrative decision of an agency was the most correct one. Outside of these domains, the judicial branch has no authority to review administrative decisions.

FROM THE ARCHIVES

***Behl Construction
versus
Commissioner of Trade & Taxes, New Delhi***

Present for the respondent: Mr. S.B. Jain

Date of order: 24.04.2008

LIMITATION-SECTION 74, DVAT ACT, 2004 – DEALER FILED OBJECTION BEFORE OBJECTION HEARING AUTHORITY ON 21-09-2005-OBJECTION DISPOSED OFF ON 20-03-2006, i.e. IN SIX MONTHS – WHETHER TIME BARRED ?

BRIEF FACTS OF THE CASE:

THE THRUST OF THE ARGUMENTS ON BEHALF OF THE REVENUE HAS ALL ALONG BEEN THAT IF THE OBJECTOR DOES NOT GIVE NOTICE OF 15 DAYS U/S 74 (8) OF THE ACT, THERE IS NO LIMITATION TO DECIDE THE OBJECTIONS U/S 74. IF THIS CONTENTION IS ACCEPTED, THEN IT WOULD IMPLY THAT THE PERIODS AS MENTIONED IN SECTION 74 (7) ARE REDUNDANT AND THE OBJECTION HEARING AUTHORITY COULD DECIDE THE OBJECTION AT ANY TIME. HERE COMES THE ISSUE THEN THAT THE OBJECTION MUST BE DECIDED WITHIN A REASONABLE PERIOD. THE REASONABLE PERIOD WITHIN WHICH THE OBJECTION MUST BE DECIDED HAS BEEN EXPLICITLY MENTIONED IN SECTION 74 (7).

THE LEGISLATIVE INTENT IS ABUNDANTLY CLEAR FROM THE HARMONIOUS READING OF SUB-SECTIONS (7), (8) & (9) OF SECTION 74 OF THE ACT, THAT THE OBJECTION MUST BE DECIDED WITHIN A MAXIMUM PERIOD OF EIGHT MONTHS. WE ARE, THEREFORE, OF THE CONSIDERED VIEW THAT THE OBJECTION, IN ANY CASE, IN ALL CIRCUMSTANCES MUST BE DECIDED WITHIN A PERIOD OF EIGHT MONTHS WHICH IS THE MAXIMUM PERIOD THAT HAS BEEN PROVIDED IN SUB-SECTION (7) OF SECTION 74 OF THE ACT. THE LEGAL PROPOSITION SO DECIDED, THE CASES SHALL NOW BE DECIDED ON THEIR MERITS. A COPY OF THIS ORDER BE PLACED ON EACH OF THE APPEAL FILES AS MENTIONED IN PARA (8) AND ALL THOSE CASES BE LISTED FOR ARGUMENTS ON MERITS, THE PRELIMINARY OBJECTION HAVING BEEN DECIDED IN THE MANNER AS ABOVE. IN SOME OF THESE CASES, ORDERS U/S 76 (4) OF THE ACT ARE TO BE PASSED ON THE STAY APPLICATION, AND SOME OF THE CASES ARE FIXED FOR DECISION ON MERITS. THE CASES WILL BE SO LISTED AND NOTICES ISSUED ACCORDINGLY. IN SO FAR AS THE CASE IN HAND IS CONCERNED, IT IS REITERATED THAT FIVE MONTHS HAVING BEEN ELAPSED UNDER SUB-SECTION (7), IT WAS INCUMBENT ON THE PART OF THE APPELLANT TO HAVE GIVEN 15 DAYS NOTICE UNDER SUB-SECTION (8) AND IF THE OBJECTION HEARING AUTHORITY HAD NOT DECIDED HIS OBJECTION WITHIN THAT PERIOD OF 15 DAYS, ONLY THEN AT THE END OF THE 15 DAYS, THE COMMISSIONER SHALL BE DEEMED TO HAVE ALLOWED THE OBJECTION AS PROVIDED UNDER SUB-SECTION (9) OF SECTION 74 OF THE ACT. THE RESULT, THEREFORE, IS THAT THE PLEA OF THE APPELLANT THAT SINCE THE OBJECTION HEARING AUTHORITY DECIDED THE OBJECTION AFTER THE PERIOD OF FIVE MONTHS, THE OBJECTION IS TIME- BARRED, IS NOT ACCEPTED.

HELD:

WE WOULD LIKE TO RECORD HERE THAT WE HAVE NOT TOUCHED THE MERITS OF THE CASE IN SO FAR AS THE ELIGIBILITY OF THE APPELLANT FOR OPTING THE COMPOSITE SCHEME U/S 16 OF THE ACT IS CONCERNED, NOR HAVE WE TOUCHED OTHER GROUNDS ON WHICH THE APPELLANT FILED THE APPEAL BEFORE US AS THE LD. COUNSEL FOR THE APPELLANT SPECIFICALLY ASSERTED AT BAR THAT HE WOULD NOT LIKE TO ARGUE ON OTHER GROUNDS AND HE WOULD RESTRICT HIS ARGUMENTS AND SEEK RELIEF ONLY ON THE QUESTION OF THE IMPUGNED ORDER HAVING BEEN TIME-BARRED. ON THAT GROUND ALONE HE ARGUED THE CASE. IN ALL FAIRNESS, IN THE INTEREST OF NATURAL JUSTICE, THE APPELLANT IS GIVEN THE LIBERTY TO ARGUE HIS CASE ON MERITS ON OTHER GROUNDS ALSO, IF HE SO DESIRES.

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