PalArch's Journal of Archaeology of Egypt / Egyptology

JURISDICTION OF COURT Vis. A Vis. EXCLUSION CLAUSE: A BIRDS EYE'S VIEWS

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Dr. Mukti Jaiswal , Jurisdiction Of Court Vis. A Vis. Exclusion Clause: A Birds Eye's Views , Palarch's Journal Of Archaeology Of Egypt/Egyptology 18(8), 4108-4117. ISSN 1567-214x.

Keywords – Administrative Adjudication, Administrative Tribunal, Exclusion Clause and Administrative Adjudication, Arbitrariness of Administration.

ABSTRACT

Today, the bulk of decisions relating to personal or property rights of the people come not from courts but from administrative agencies exercising judicial power. From early times the administrative and judicial functions were inextricably blended in the organs of government. It was a later development that these powers were separated. Today, there is a revivalism of the past when administration has again come to acquire judicial powers. However, in the context of changed circumstances, purpose and need, it may be regarded as a new development. This new development has led to a host of controversies, and therefore, provides a fascinating pursuit for the writers of administrative law. Everything is going just because of concept of welfare state. But on the other hand misuse of these powers by the government is a matter of concern, and the Exclusion Clause of the law is the prominent reason behind this misuse of powers. This research article is an attempt to find out that to what extent the apex court or common civil court can curb the arbitrariness of the administrative authorities despite of this Exclusion Clause?

Introduction

According to the Dicey's principle of Rule of Law, the administration of the ordinary law should be done by the commoncivil courts. He was against the idea of administrative tribunals. In his opinion and also as per the doctrine of separation of powers, the function of resolving the disputes between the parties and of administering the justice should be vested with common courts of the land. But, with the change in the concept of society from police state to a welfare state, the functions of the government have increased which also includes some technical issues too. And the existing system of courts is somehow lacking to meet out such new concerns. It

cannot be expected that the common ordinary courts can deal each and every case. That is why administrative tribunals were established due to some of the following reasons -

1. The traditional judicial system is inadequate to resolve all kinds of problems. The prominent factors for such inadequacy are their slow and expensive procedure, and outdated formalities. All these factors causes delay in providing the justice which is no doubt an injustice in itself.

2. The manner of functioning of an administrative tribunals is more flexiblerather than both theoretical and legal. Judicial decisions can not be given without adopting technical formalities, while administrative tribunals are not bound by evidence and procedural rules, and hence their decisions are quick.

3. Judgments of courts are based on justices on record that have very little concern with pragmatics but, on the other side, the administrative tribunal are not bound with technical constraints so their decisions are based on pragmatics. They have been given wide discretion to reach into the depth of the matter and give a practical judgment

4. Sometimes dispute involves some questions of technical in nature in which expert assistance and opinion is required. However, the courts have the power to seek expert assistance but usually it leads to various controversies and also causes delay in providing justice. While the administrative tribunal can resolve such matters more speedily and efficiently because these tribunals are associated with the concerned departments and so they themselves have expertise knowledge to deal with such matters.

5. In the ordinary courts the party can make his submissions only through his legal representatives and so gets stuck with the advocate. But in the administrative tribunal, the administrative officers closely know the parties, they can talk to them and can easily reach to the root cause of the dispute, and this thing enables them to give the right decision.

6. If we briefly summarize the Robson, we can state that administrative tribunals tend to do their work more intensively than courts, they have more technical knowledge and have less adverse effect against the government. They pay more attention to the interest associated with the social need and object with which the law has been framed. Due to the social policy embodied in the legislation, they decide disputes by being vigilant about it.

Inspite of all these advantages, when we look at the ground reality, we found that the situation is completely different. It has become common practice for administrative tribunals to abuse their discretion. The biggest reason behind this is the exclusion clause of the statutes.

Exclusion clause is a provision provided in a statute which, by some means or measures, either excluded the preliminary jurisdiction of the civil court or excluded the appellate jurisdiction of the civil court, and at the same time also granted immunity from the procedural law to the administrative authority, i.e. procedural methods are also excluded. In this way we can divide the exclusion clause into 3 parts -

A. Exclusion of Jurisdiction of Civil Court

B. Exclusion to follow the Procedural Law

C. Finality Clause

A. Exclusion of Jurisdiction of Civil Court

The matters over which the administrative authorities will have the jurisdiction to adjudicate are generally excluded from the jurisdiction of the civil courts. Such provision is necessary for the speedy resolution of the cases. This is termed as the Exclusion Clause through which, as clearly stated in the statutesthat no court will have any jurisdiction on such matters. But it is also a provision that makes administrative officials so fearless that they keep ignoring the rules while making judgments.

B. Exclusion to follow the Procedural Law

Sometimes the statute excludes the jurisdiction of the Ordinary Civil Court in the administrative matters, and sometimes it also provides that the Administrative Courts or Tribunals are not bound to follow the procedural laws. This is called as the Exclusion of Procedural Law.The Administrative Tribunals are not bound to follow the procedural provisionsi.e. law of Evidence and Civil Procedure and may adopt any procedure for the disposal of the case so as to achieve justice. But this does not mean that the administrative courts will adopt the arbitrary proceedings or act in an arbitrary manner or exercise the arbitrary discretionary power.The Administrative Tribunal must follow the principle of natural justice in its proceedings. For example as per the Administrative Tribunal Act, 1985 the Tribunal is not bound to follow the procedure prescribed by the Code of Civil procedure, 1908. While functioning under the provisions of Administrative Tribunals Act and the rules framed by the Central Government, it power to regulate its own procedure. But it is mandatory for the tribunal procedural rules so made cannot be contrary to natural justice.

3. Finality Clause

Some Acts also provides that the judgments delivered by the administrative tribunal will be final, which means that no further appeal will be made for questioning or challenging that decision. This is also a kind of Exclusion Clause only which ends the appellate authority of the civil courts. It leads to the end of fear and control of the ordinary civil courts over the administrative authoritieswhile exercising their adjudicatory powers. And through this the concept of rule of law is tarnished.

Exclusion Clause&England

In view of the Sovereignty of Parliament, it was accepted in the Nineteenth Century England, that Parliament being supreme, could exclude judicial review of any administrative action and the attitude of the courts was to accept the finality clause as final.

In **institute of Patent Agents v. Lockwood**[1], the majority of the House of lords interpreted the finality clause "as if enacted in this Act" to mean that the jurisdiction of the Court was barred. Their Lordships, preferring literal verbal construction to legal principle, declared that the clause made the regulations as unquestionable by a court of law as if they were actually incorporated in the Act.

However, as the courts jealously guarded their jurisdiction, the Lockwood doctrine[34] was thus overruled in **Minister of Health v. Yaffee[2].** Interpreting the finality clause concluded in similar language, their Lordships said that the Minister empowered to confirm a scheme under the Housing Act, 1925 was empowered to confirm only schemes which confirmed to the Act and if the scheme itself conflicted with the Act, 1925, the order was not an order within the meaning

[1]https://www.casemine.com/judgement/uk/5a8ff81760d03e7f57eb9e0a
[2][1931] AC 494

of the Act, 1925 and was not saved by the clause. Lord Dunedin, speaking for the majority of the House of Lords, said;

It is evident that it is inconceivable that the protection should extend without limit. If the Minister went out of the province altogether….it is repugnant to common sense that the order would be protected, although, if there were an act of Parliament to that effect, it could not be touched.

There has, thus, been a presumption against such restrictions on the supervisory powers of the court and the courts have, usually restrictively constructed such provisiosn.[36] Denning L.J., in **R.v. Medical Appeal Tribunal ex.P. Gilmore**,37 Said:I find it very well settled that the remedy by certiorari is never to be taken away by any statue except by the most clear explicit words.

Position in India

The question of conferring finality on administrative action is to be studied under two heads i.e., (i) judicial review available under the constitution in view of Articles 32, 226, 136 and 227; and (ii) judicial remedies by way of suits, declarations or injunctions.

Exclusion of Judicial Review under the Constitution

In view of the provisions contained in Article 226 of the Constitution of India, "ouster clauses" do not play much significant role. It may be stated that no statutory provision can affect the power of the High courts to issue a writ. An ouster clause may be found in ordinary statutes as also in the provisions of the Constitution.

Many-a-time provisions are made in a statute which administrative action, taken there under by the administrative authority or tribunal, is declared final. Such provisions are known as providing "statutory finality".

No ouster clause contained in any statute, whatever be its phraseology, can bar the judicial review available under Articles 32, 226, 136 of the Constitution.

In Deokinandan Prasad v. State of Bihar,[3] the Supreme court held that Section 23 of the Pension Act, 1871 which provided that suits relating to matters contained therein, could not be entertained in any court, did not bar the constitutional remedy of judicial review.

There are provisions in the constitution which expressly make the action of the administrative authority final. Even in such case, the remedy by way of judicial review is not held to be barred.

Article 217(3) of the Constitution provides: that "if any question arises as to the age of a judge of a High Court, the question shall be decided by the President after consultation with the Chief justice of India and the decision of the president shall be final.

Interpreting the "finality clause" the Supreme court in **Union of India v. J.P. Mitter**,[4] observed:

[3]**AIR 1971 SC 1409.**

[4]**AIR 1971 SC 396. See also State of Rajasthan v. Union of India, AIR 1977 SC 1361.**

Notwithstanding the declared finality of the order of the president, it appears that it was passed on collateral consideration or the rules of natural justice were not observed or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence.

In the case of **DurgaSgankar vs. Ragluraj**, in respect to Article 329 which bars the jurisdiction of the Courts in election disputes, it has been said that while the courts were barred from dealing with any matter which might arise while the elections were in progress and till an election petition was disposed of by an election tribunal, the jurisdiction of the Supreme court and the High courts would not be barred thereafter[5]

In Indira Nehru Gandhi v. Raj. Narain,[6]the Apex court had held, clause (4) of Article 329-A inserted by the constitution (39th Amendment) Act, 1975, which had excluded the disputed election of the prime minister from the restraints of all election laws, did not bar the remedy by way of judicial review.

Para 7 of the Tenth Schedule,[7] had provided that no court shall have jurisdiction in respect of any mater conceited with the disqualification of any member of a House under the Tenth Schedule, notwithstanding anything in the constitution. Striking down this para 7 in **KihotoHollohan v. Zachillhu**,[8] the Supreme court ruled that the impugned para could not take away the writ jurisdiction of the High court and the Supreme court.

It has been firmly ruled by the supreme court of India that it is the solemn duty of the courts to uphold the civil rights and liberties of the citizens against executive or legislative invasion and that the court cannot sit quiet in this situation, but must play an activist role in upholding civil liberties and the fundamental rights in Part III.[9] This power of judicial review has been held to be an integral and essential feature, constituting part of the basic structure of the constitution.[10]

It thus follows that any ouster clause, whatever its phraseology may be, excluding the courts intervention under Articles 32, 226, 136, 227 would be invalid and would not have the effect of barring the jurisdiction of the High courts and the Apex court over the administrative actions.

Exclusion Clause and Sub-ordinate Court

As regards the right of a person to seek an ordinary remedy by way of a suit for injection declaration or any other appropriate relief, section 9 of the code of civil procedure, (1908), provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred either expressly or by necessary implication. It, thus, itself envisages that the jurisdiction of the civil courts may be excluded expressly or implicitly.

Express Exclusion of Judicial Review

[5]**AIR 1954 SC 520.**

[6]**63. AIR 1975 SC 2299.**

[7]**Inserted by the 52nd Amendment, 1985, (Anti-Defection, 2000)**

[8]**AIR 1993 SC 412**

[9]**I.R. Coelho v. State of T.N. AIR 2007 SC 816; L. Chandra Kumar v. Union of India, AIR 1997 SC 1125; Maneka Gandhi v. Union of Inida, AIR 1978 SC 597.**

[10]**Ibid.**

In cases of express exclusion of the jurisdiction of the civil courts, the approach of the Courts has been to strictly interpret the "ouster clause". If the words are clear and the statue is a self-contained code, the courts would refrain from exercising jurisdiction.

In **Firm of IlluriSubbayyachetty v. State of Andhra Pradesh,**[11] Section 18-A of the Madras General Sales Tax Act, 1939 provided that "on suit can be instituted in any civil court to set aside or modify the assessment made under the Act. The petitioner filed a suit on the ground that the administrative authority instead of taking sale had taxed purchase also. In view of the express provision contained in section 18-A of the Act, 1939, its jurisdiction of the civil court was held to be barred.

It has further been emphasized that when the jurisdiction of the civil courts is expressly excluded, the plaintiff cannot be allowed to circumvent that provisions by means of clever drafting of pleading.[12]

Implied Exclusion of Judicial Review

Exclusion of jurisdiction of the civil courts may be inferred-if the statute containing finality clause is a self- contained code or when the action is left the subjective satisfaction of the administrative authority i.e. where the words such as "if satisfied" or "if in the opinion of the authority it is just and proper", the jurisdiction of the civil courts shall be deemed to have been barred by necessary implication, when the statute creates a new right and also provides a machinery for the vindication of such right.[13]

In Premier Automobiles Ltd. V. K.S. Wadke,[14] there two unions in the plaintiff's concern, the sabha union and the Association union. On December 31, 1996 under incentive scheme an agreement was others between the company and the sabha union to cover its members and others who opted for it. Later on, due to increase in the membership of the Association Union, the Company entered into a fresh agreement with it replacing the Sabha agreement and hence in a suit filed by the Sabha Union, the court below and the High court granted injunction restraining the company from giving effect to the later agreement on the ground that it was a dispute which had arisen under the common law and the law of contract as it related to the conditions of service. In appeal, the Supreme Court ruled that the jurisdiction of the civil court, was impliedly barred as the industrial Disputes Act, 1947, being a self contained code, the subject matter could from an industrial dispute where the remedy lay under the Act, 1947.

When we talk about the provisions where administrative authorities are excluded from following the procedural laws while adjudicating the matters, many a times we found that there is a lot of irregularities in such proceedings. Sometimes the parties did not provided an opportunity to be heard, and sometimes they were not given the opportunity to present substantive evidence on their part. There is no doubt thatthe tribunal has all the powers of a Civil court in respect of calling a person, administering oath, compelling discovery and production of documents, issuing commissions, or reviewing its decision etc.[15]As regards contempt, the Tribunal has the same jurisdiction as has the High Court. It can exercise its

[11]**AIR 164 SC 322.**

[12]**See Ram Singh v. Gram Panchayat, Mehal Kalan, AIR 1986 SC 2197.**

[13]**Raja Ram Kumar Bhargaua v. Union of India, (1988) 1 SCC 681.**

[14]**AIR 1975 SC 2238.**

[15]**Administrative Tribunals Act, Section 22 (3).**

powers in this respect as the High court exercises.[16]All the proceedings before the tribunal shall be deemed to be judicial proceedings. [17]

In such cases, where exemption has been granted for not following the procedural laws, does not mean that any arbitrary procedure can be adopted. The Apex Court, in its precedents, has made it mandatory to follow the principles of natural justice.

The third type of exclusion clause is known as Finality Clause, which makes the decision of an adjudicating authority final. This means no appeal can be filed against such decision. In such a case, no remedy is left for the aggrieved party.

But the Apex court has startedconsidering such exclusion. We can conclude so, as in various judicial pronouncements the apex court has provided the relief to the aggrieved party through the constitutional remedies under Articles 32, 136, 226 and 227. For seeking such relief, what all is needed is to claim the relief on the reasonable grounds within the purview of these provisions.

We know that under Article 32 we can approach the Supreme Court only when our fundamental rights are violated. Under Article 226, we can approach to the High Court when our fundamental rights or any legal rights have been violated. Apart from this, a provision of Special Leave Petition has been provided under Article 136, where a person can go against any decision, order, etc. with the permission of the Supreme Court. Article 227 gives even more extensive powers to the High Courts of the States. This provision empowers the High Court of the State to supervise all the courts and tribunals within the territory of that state. Under this, the High Court has the power to revise the decision or order of any tribunal established in a State and it is the most effective way to rein in all the administrative officers who have the power to adjudicate. Thus, no doubt that the administrative officers are exempted from following the procedural laws and also empowered to exercise the discretionary powers, the High Court has also been given a wide powers under Article 227 to supervise their functions.

In **Munni Devi v. Gohal Chand**,[18]the U.P. (Temporary Control of Rent and Eviction) Act, 1947 I empowered the District Magistrate to allot a vacant shop. The decisions of the Magistrate in the matter was declared final. The jurisdiction of the court was held not barred since the authority had committed a jurisdictional error and allotted a shop which was not vacant.

In **Pabbojan Tea Co. Ltd.v.Dy. Commissioner, Lakhimpur,[19]** the Supreme court held that the finality clause contained in section 24 of the Minimum wages Act, 1941, did not bar the jurisdiction of the civil courts, if the authority, fixing the minimum wages for the tea plant workers, had violated he mandatory procedure of affording hearing before the wages were fixed.

[16]**lbid, Section 17.**

[17]**Administrative Tribunals Act, Section 30**

[18]**AIR 1970 SC 1727**

[19]**AIR 1968 SC 271 See also shiv kumar Chadha v. Municipal Corpn. Of Delhi, (1993) 3 SSC 162**

The Supreme court in **Sayed Mohd. Baquir EI-Edroos v. State of Gujarat**,[20] held that the finality clause would not bar the jurisdiction of the Civil court if the Act did not lay down the detailed procedure to be followed by the State Government in the matter and there was no detailed procedure for appeal and revisions also.

In the instant case, Explanation 2(1)(e) to the Bombay Personal Inams Abolition Act, 1952 provided that if any questions arose whether any grant was an inam, such question would be referred to the state Government and the decisions of the Government was declared final.

Since the Act, 1952 did not give any detail about the reference and to enquiry by the Government and no appeal had been provided there from, it could not be said that the case of the plaintiff had been considered by the Government in the same way as it would have been considered if the case had been filed before a civil court, the finality clause in section 2(1) (e) did not bar the jurisdiction of the civil court.

Finality Clause and Policy Matters

In addition to political questions, the Supreme Court or the High Courts will not exercise their extraordinary jurisdiction in the matters of Government policy. Thus, in **Bennett Coleman & Co. v. Union of India**.[21] the question which arose before the Supreme court of India was regarding the constitutional validity and legality of the import policy for the news print adopted by the Government and legality of the import policy for the news prang adopted by the Government. The Court refused to adjudicate upon the policy matters unless it is arbitrary, capricious or mala fide.[22]

In **State of Maharastra v. LokShikshanSansthan**[23] the petitioners made applications for opening schools which were rejected by the authorities. The petitioners challenged the said action by Writ petitions. The Supreme Court held that the question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of particular locality and other categories of persons for whom it is essential to provide facilities for reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.

In **Nagraj v. State of A.P**.,[24] under the proviso of Article 309 of the Constitution of India, the Government of Andhra Pradesh issued a notification reducing the age of superannuatiran of all government servants from 58 to 55 years. The said action was challenged in the Supreme court under Article 32 of the Constitution. Dismissing the petitions filed under Article 32, the court held the affair to be as policy matter.

However, the requirement is that when the Government lays down a particular policy, it must be followed and applied uniformly to all the person who are similarly situated.[25] There is no jurisdiction whatsoever to depart from the principle of policy. The Government must act fairly and rationally. It cannot at its sweet will depart from a policy. The Government must act fairly

[20]**AIR 1981 SC 2017**

[21]AIR 1973 SC 106

[22]lbid, Per Ray, J., at p. 117.

[23]AIR 1973 Sc 588

[24]AIR 1985 SC 551: Asif Hamid v. State of J. and K., AIR 1989 SC 1899

[25]State of Mysore v. Srinivas Murthy, AIR 1976 SC 1104

and rationally. It cannot at its sweet will depart from a policy adopted by it without rational justification. That would be clearly violative of Article 14 of the Constitution.[26]

Finality Clause and Conclusive Evidence

Another device excluding judicial control is by way of extending special probative forces to certain administrative actions. Under this mode of exclusion, the decisions of an administrative authority on particular issues are given finality by making it 'conclusive evidence' that the statutory provisions have been complied with. Thus, section 35 of the Indian Companies Act, 1958, makes a certificate of incorporation given by the Registrar of Joint Stock companies to be conclusive evidence that all the requirements of the Act have been complied with. In such a case, no adverse private interest is involved and the conclusiveness is but fair in the public interest.

The other instance of conclusive evidence is found in the provisions of the Land Acquisition Laws Section 6 (3) of the land Acquisition Act, 1894, stipulates that the declaration of the State Government is conclusive evidence that the land is required for a public purpose.[27] The Supreme court has held that unless it is shown that there was colorable exercise of power, the court cannot go behind the declaration of public purpose under section 6(3) of the Act.[28]

Conclusion and suggestion

Access to justice in our Constitution is placed on a higher pedestal of fundamental rights. Access to Justice issynonymous with Access to Courts. It isinbuilt under Article 14 of the Constitution which guarantees equality before law and equal protection of laws.170 With a view to increase the access to justice for an individual at grassroots level, Tribunals have emerged to adjudicate in a time bound manner.171 The right to justice is an integral and inherent part of the basic structure of the Constitution. According to Cappelletti, "Effective access to justice can thus be seen as the most basic requirement - the most basic human right of a system purports to guarantee legal rights."[29]

But we can see that the administrative officers were kept beyond the direct control and the result of which has to be beared by the general public in the form of their arbitrariness. No doubt there are constitutional measures to control them and many more barrier has been laid down by the apex court through their decision, but it is such an expensive process that it is beyond the approach of the common people of society. To put a real check and control over the arbitrary attitude of the administrative officers and provide cheap justice to last people of society, it is needed that the District Judge will be empowered to exercise revision power against them, only then the justice can be reached upto the last section of the society. In every district, if the District Judge will have the right to review the decisions of the administrative officers, then not only will the administrative officers be afraid of giving arbitrary decisions, but the government's goal of providing quick and cheap justice will also be fulfilled.

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[28]Jage Ram v. State of Haryana, AIR 1971 SC 1033

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