ADMINISTRATIVE LAW. BY I.P. MASSEY. (3rd Edition). [Lucknow: Eastern Book Company. 1990. Ixxii + 464 pp. (including index). Softcover: INR 80.00.]

MUCH water has flowed through the Ganges in India since the publication of the second edition of this book in 1985. Since then numerous decisions relating to administrative law have been given by the Supreme Court and various High Courts of India. A new edition, therefore, is welcome, and the author deserves to be felicitated for bringing it out. Administrative law is essentially a part of the municipal law of a country. While the development, norms, concepts, and doctrines may be similar, there can be nothing like a universal administrative law. Even though the title of the book under review does not reveal it, the book deals with the administrative law of India, with occasional references to English, American, and continental practices. The target readers of the book, as acknowledged by the author in the preface to the second edition, are law students in India. As such, even though it is not an exhaustive "treatise", it provides a good introduction for lawyers and law students outside India who want to know something about Indian adminstrative law. The author suggests in the preface that he tried to be more "thorough than exhaustive" in updating the earlier edition with new developments. Yet one does not have to be very meticulous in noticing some patent irregularities and omissions.

The author states at page 67 that "[i]n France administrative courts exercise power of judicial review over administrative action if the administrative authority abuses its discretionary powers". The concept of judicial review simply does not exist in France. When private rights are infringed by administrative action, the French and other continental practices exclude judicial review of administrative action on the basis of the doctrine of separation of powers. This has been possible in France by the establishment of special *Tribunaux administratif* (administrative tribunals) for the adjudication of disputes between the administration and the citizens. In France, the reasons for establishing separate administrative tribunals are historical and mainly due to mistrust towards the ordinary courts of law. During the *Ancien Regime* (old regime) and until the French Revolution in 1789, *"Parlements",* which were regional royal courts, impeded the re-organi-

[1] For a review of that edition, see (1986) 28 Mal.L.R. 383.

sation of administration, intermeddled with the executive government and acted in a manner incompatible with the ideals of the revolutions. When the revolutionaries replaced the *"Parlements"* with courts of law the principles that courts of law should not interfere with the administration was adopted. It was incorporated in the Law of August 16-24 1790, which is still in force. According to Article 13 of this law, judicial functions are distinct and separate from administrative functions. Judges of civil courts may not, under pain of forfeiture of their offices, concern themselves with the operation of the administration.[2]

The *Conseil d'Etat* is at the apex of the hierarchy of administrative tribunals. The *Conseil* combines its adjudicatory activities with important administrative functions. Only one division is involved in the judicial function. This section consists largely of career persons who are selected as assistant auditors *auditeurs de seconde classe* on the basis of a competitive examination and promoted on merit. Ordinary disputes between citizens involving private rights are decided by judicial courts at whose apex is the *Cour de Cassation.* Jurisdictional disputes between the *Cour* and the *Conseil* are determined by the *Cour de Conflicts,* which is basically a court for interpreting the constitution. A case of Jurisdictional conflicts may be raised only by an administrative tribunal because the French think that it is a question of protecting matters involving the government from judicial encroachments.[3]

The scope of administrative review on the grounds of abuse of power is more prompt and effective in France. Professors Brown and Garner, in *French Administrative Law,* compare the French rules relating to *detournement de pouvoir* (abuse of power) with the English rules. In France, the *Tribunaux Administratif* may inquire directly into the motives which inspired administrative action. They suggest that the approach is essentially direct and subjective while the English courts arrive at the same solution by the long process of statutory construction.[4]

Public law consists of constitutional law and administrative law. The former is concerned with the structure and functions of the supreme power of the State, and as such describes in detail its organs like the executive, legislature, and judiciary and their correlation *inter se.* On the other hand, administrative law pursues the plan of governmental organisation into minute detail and as such considers the numerous subordinate bodies through which the governmental authority manifests itself. The author, therefore, rightly defines administrative law at page 4 "as that branch of *public law* which deals with the *organisation and powers of administrative and quasi-administrative* agencies and *prescribes principles and rules* by which an *official action* is *reached* and *reviewed* in relation to the *individual (sic.) liberty and freedom".* The distinction between constitutional law and administrative law is very significant in the context of "Delegated Legislation". Issues of constitutionality of a legislation on

[2] See B. Schwartz, *French Administrative Law and the Common Law World* (1954), pp. 6-7; L.N. Brown and J.F. Garner, *French Administrative Law* (1983), p.28.
[3] *Ibid.*
[4] *Ibid.*, at pp. 147-151.

the grounds that the legislature is not competent to delegate essential law-making powers are within the province of constitutional law, whereas the issues of *vires* of subsidiary legislation *vis-à-vis* the constitution and the parent statute fall within administrative law. Yet the author in the chapter on "Rule-Making Power of the Administration" under the heading "Constitutionality of Administrative Rule-Making or Delegated Legislation" deals extensively with issues relating to the constitutionality of parent legislation.

In the same chapter under the heading "Classification of Administrative Rule - Making Power or Delegated Legislation" and the subheading "Authority based classification" the author points out at pages 76 - 77 that "if true authority further delegates its law-making to some other authority and retains a general control of a substantial nature over it, there is no delegation so as to attract the doctrine of '*delegatus non potest delegare'*. The maxim *'delegatus non potest delegare'* indicates that sub-delegation of power is normally not allowable though the legislature can always provide for it. A footnote to the last sentence refers to a judgment of the Supreme Court in *A.K. Ray* v. *State of Punjab*.[5] In the first part of the observation the author refers to delegation of "law-making power" and then in the second part he refers to "sub-delegation of power". The two are entirely different things. Indeed in the case cited in the footnote there was no delegation of law-making power. *A.K. Ray* was a good opportunity to examine the soundness of adopting in public law the *delegatus non potest delegare* doctrine, which is basically a civil law concept in the law of agency. The author missed that opportunity.

Like Article 110 of the Constitution of Singapore, Article 311 of the Indian Constitution safeguards the tenure of civil servants of the Union as well as of the States. This Article has been the source of a large number of cases before the High Courts and eventually before the Supreme Court. A radical change was ushered in by the Constitution (Forty-second) Amendment 1976 which introduced Article 323 A to remove the adjudication of service-related disputes from the ordinary civil courts and vest it in an Administrative Tribunal for the Union or of the State as the case may be. Article 323A was to come into force only if it was implemented by a law made by Parliament. Parliament eventually enacted the Administrative Tribunals Act in 1985, which came into force on 2 October 1985 by the establishment of a Central Administrative Tribunal (CAT) with branches in specified cities. The enactment abolished all judicial remedies except those of the Supreme Court under Articles 32 (enforcement of fundamental rights through prerogative writs before the Supreme Court) and 136 (special leave to appeal by the Supreme Court). Article 323A and the 1985 Act open a new chapter in the administrative law of India.

Even prior to the CAT an Administrative Tribunal was established for the State of Andhra Pradesh on 19 May 1975 under Article 371D(3) which was introduced by the Constitution (Thirty-second Amendment) Act 1973. In a 1990 revised "treatise" of a "basic course book" it may

[5] AIR [1986] SC 2160.

be reasonable to expect a study of these newly introduced institutions of administrative law. But there is no reference to these innovative institutions of administrative review.

A very important case *P. Sambamurthy* v. *State of Andhra Pradesh*[6] was decided by the Supreme Court of India on constitutionality of a provision in Article 371D(3) regarding the Andhra Pradesh Administrative Tribunal (APAT). The judgment of Chief Justice Bhagwati gives a lucid exposition of the circumstances leading to the establishment of APAT and the whole gamut of its functioning. Only a passing reference is made to this case and also in the context of indicating "Rule of Law" as a basic feature of the Indian Constitution.

There are also some observations which bear close scrutiny. In the context of *mala fides* the author refers to a case and the only citation that is given is that of a newspaper report of 28 April 1972. Whether the case was reported or not is not stated. Above all what is startling is that the author asserts it at page 118 as "the sole case in India where power of judicial review has been exercised on the ground of bad faith because the power has been exercised with an ulterior motive".

In *Partap Singh* v. *State of Punjab*,[7] the appellant was a civil surgeon who was granted leave preparatory to retirement. The leave was revoked, he was recalled to duty, and simultaneously placed under suspension pending the result of an inquiry into certain charges of corruption against him. The appellant alleged that the disciplinary action was initiated at the instance of the Chief Minister (CM) to wreak vengeance on him because he had refused to yield to unlawful demands of the CM and his family. Taking into account the sequence of events, certain tape recordings which the appellant had made of his conversation with the CM, and in the absence of an affidavit by the CM denying the allegation, the court concluded that *mala fide* was established and the order of the government was set aside.

Other cases on *mala fides* decided by the Supreme Court include *Rowjee* v. *State of Andhra Pradesh*;[8] *G. Sadanandan* v. *State of Kerala*;[9] and *State of Punjab* v. *Gurdial Singh*.[10] There are also decisions from the High Courts.[11] The author deals with *Sadanandan* under the sub-headings of "Notable Instances" and "Control at the stage of the exercise of discretion" in the chapter on "Administrative Discretion", but makes no reference to the *mala fides* aspect of the decision. In footnote 17 at page 62 he says: "see also Rowjee...."

6 AIR [1987] SC 663.
7 AIR [1964] SC 72
8 AIR [1964] SC 962. For a comment on this case, see A. Jacob, "*C.S. Rowjee* v. *State of Andhra Pradesh* - Administrative Law - Bias or Mala fides of Administrative Authorities" (1964) 6 Journal of the Indian Law Institute 489.
9 AIR [1966] SC 1925.
10 AIR [1980] SC 319.
11 For example, see *S.S. Sen* v. *State of Bihar,* AIR [1972] Patna 441; *Vincent Ferrer* v. *District Revenue Officer,* AIR [1974] Andhra Pradesh 313; and B. *Krishna Bhat* v. *Superintendent of Police,* AIR [1980] Karnatak 81.

Cases are referred to in a way which could be confusing. For example, it is stated at page 156 that "in *Gullapalli NageswaraRao* v. *A.P.S.R.T.C.*[12] the Supreme Court quashed the decision of the Andhra Pradesh Government, nationalizing road transport on the ground that the Secretary of the Transport Department who gave hearing was interested in the subject-matter". This creates an impression that the Secretary might have been interested in the nationalised route, which was the subject matter of dispute. But that was not the case. The scheme for nationalisation was prepared by the Transport Department. As the Secretary was deeply involved in departmental matters, it was held that he would not be able to have an open mind in considering the objection of the affected parties.

Some errors of the 1985 edition continue at some places. For example, at page 115 a 1983 case is referred to as "recently" and at pages 151-152 "[t]hree cases" are referred to as illustrations, but actually four cases are given.

The suggested reading continues to be the same as in the 2nd edition. Indeed at some places, *e.g.*, pages 22 and 150, the suggested readings include Wade's 1977 or even the 1967 edition, whereas the current edition of Wade is in 1988.

In spite of such shortcomings the book is quite useful as an introduction to Indian administrative law.

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[12] AIR [1954] SC 308.