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Maintaining Societal Efficiency in the guise of Administrative Directions: An Analysis of Kumari Regina v St. Aloysius Higher Elementary School and Anr

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The Indian Constitution recognises the need to provide the Government with certain executive powers as enshrined under Article 73¹ i.e., the scope of executive powers granted to the Union, and Article 162² i.e., the State Government's executive powers. 'Such powers don't contain a force of law, nor do they confer any rights on the persons affected by such executive powers.'³ Best defined by the judgement given by the Supreme Court in the case of Union of India v Rakesh Sharma, 'if the rules are silent on any point the Government can fill up the gaps and supplement the rules by issuing instructions not inconsistent with the rules.'⁴ Thus, 'directions serve the purpose of filling up the gaps in the administrative arena and to meet the exigencies.'⁵ This article aims to explain the intricacies associated with issuing administrative directions and differentiating them from legislative actions which, unlike the administrative directions, have statutory backing and are binding on its subjects. The significance of issuing

¹ Constitution of India 1950, art 73

² Constitution of India 1950, art 162

³ Susanah Naushad, 'The Binding Nature of Administrative Instructions: An Overview' (2013) 2(2) Christ University Law Journal 79 <<http://dx.doi.org/10.12728/culj.3.5>> accessed 01 June 2024

⁴ Dr Harish Chandra Pandey, 'Administrative Law' (Deen Dayal Upadhyaya Gorakhpur University) <https://ddugu.ac.in/ePathshala_Attachments/E_PS430938@d9658015i.pdf> accessed 01 June 2024

⁵ *Ibid*

administrative directions by the Government and the nuances thus entailed will be explained by centering our discussion on the case of Kumari Regina v St. Aloysius Higher Elementary School and Anr⁶.

Keywords: *administrative directions, principle of non-enforceability, executive powers.*

INTRODUCTION

“A great opera house isn’t run by a director, but by a great administrator.”

The importance of administrators and their functions in society is explained by this simple quote given by Steven Berkoff. In an opera house, even though the director steers the shows performed and is the face of the opera house in society, the administrators take care of the efficiency and maintenance. Using the opera house as a metaphor for the Indian judicial system, wherein the legislators have the final say in making and applying the laws, such adjudication is supported by administrative actions performed by the Union/ State Government ‘to construct better standards as an addition to the existing statutory laws and fill the lacunas in the existing laws.’⁷

The distinction between administrative and legislative actions and the effects on individuals or corporations and remedies for breach of such actions was greatly expanded upon in 1971 in *Kumari Regina v St. Aloysius Higher Elementary School and Anr.*⁸, the central issue of which was whether Part II Rules of the Madras Elementary Education Act, 1920⁹ enacted by the State Government of Madras would be applied as statutory law or as mere executive instructions. The problem in question arose when the appellant was demoted from her post of headmistress to an assistant teacher and the Divisional Inspector of Schools passed an order directing the management to reinstate her original post, however, this order wasn’t abided. The appellant thus, challenged the management’s ignorance of the Rules framed under the Act stating that since the school was recognised and received grant-in-aid from the Government, the Education Department of Madras had supervisory control over the school and its management and thus,

⁶ *Kumari Regina v St. Aloysius Higher Elementary School and Anr* MANU/SC/0673/1971

⁷ Pournavnair, ‘Administrative Direction’ (*Legal Service India*)

www.legalserviceindia.com/legal/article-477-administrative-direction.html#:~:text=However,%20the%20rule%20of%20non,and%20circumstances%20of%20a%20case accessed 02 June 2024

⁸ *Ibid*

⁹ Madras Elementary Education Act 1920

they were bound by the Rules of the Act. This paper will advocate in favour of the present judgement and aims to unravel the numerous arguments given by the management of the School for proving the administrative nature of the Rules which makes them unenforceable and hence not binding on the school.

EXECUTIVE POWERS GRANTED BY THE INDIAN CONSTITUTION

India follows an intensive form of Government such that the interference of the Government is allowed and often considered necessary in the form of administrative directions which are invested in Articles 73¹⁰ and 162¹¹ of the Indian Constitution granting the Union/ State Government executive powers to the extent of the Parliament or the State Legislative bodies' power to make laws. The title of these articles reads 'executive power' which clarifies that such administrative powers delegated to the Government are merely executive and are not statutory. Therefore, any administrative directions issued by the Government under these articles will not have a binding force as statutory provisions do as they're struck by the principle of non-enforceability. In the present case of Kumari Regina¹², the Supreme Court held in favour of the respondent School basing the judgement on the following assertions made by the school-

Nature of the Part II Rules: Administrative actions undertaken by the Government are tricky to identify and can be easily confused with legislative or judicial acts. They're the residuary powers of the Government which are based on its discretion and are laid down for the 'subjective satisfaction'¹³ of the administrative authority to further the existing laws. To determine the administrative nature of an action, '*A.K. Kraipak v Union of India*¹⁴ laid down 3 general principles' -

Nature of the power conferred: The Part II Rules of the Madras Elementary Education Act, of 1920¹⁵ dealt with recognising and aiding elementary schools about which there were no corresponding provisions in the Act. Before the several amendments of the Act, the Rules were statutory as they provided for the procedure of recognition and aid of the schools

¹⁰ Constitution of India 1950, art 73

¹¹ Constitution of India 1950, art 162

¹² *Kumari Regina v St. Aloysius Higher Elementary School and Anr* MANU/SC/0673/1971

¹³ 'Classification of Administrative Action' (*Law, University of Kashmir*)

<<https://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/A2.pdf>> accessed 03 June 2024

¹⁴ *A.K. Kraipak and Ors v Union of India (UOI) and Ors.* MANU/SC/0427/1969

¹⁵ Classification of Administrative Action (n 13)

corresponding to the provisions of the Act, however, these sections were later repealed via the amendment and the reframed Rules were republished such that they didn't refer to any other provision in the Act. Therefore, the management of the school contended that since Section 56(1)¹⁶ of the Act required the Government to draft rules 'to carry out all or any of the purpose of the Act', Part II Rules not in conferment with any Section in the Act was outside this scope and hence are not of statutory force.

Any delegated power to the Government that has legislative backing can be considered statutory and have a binding force. In the present case, the appellant based her arguments on the use of 'elementary school' stating that the Rules are formulated to recognise and aid elementary schools which is defined under the Act, and for this reason, they should be considered to further to purpose of the Act. This argument was of weak stance since the mere definition clause of a term and its use in a rule would not provide sufficient cause to relate both in the same transaction. Further, Section 56(1) requires new provisions be to pre-published before they're issued in the official Gazette. Part II Rules were in breach of this procedural requirement which provides further reason to consider the Rules as non-statutory. Moreover, the distinction drawn between Part I and Part II Rules such that Part I are given a defined title whereas Part II does not, has to be factored into considering the non-statutory nature of the latter. Several cases decided on the true nature of the Part II Rules for aid and recognition, such as *Moss v Management*¹⁷ which declared the Rules as executive instructions and hence, not enforceable in the court of law. Many sections were repealed via amendments however, Section 56(2)(h)¹⁸ of the Act was retained which allowed the Government to state conditions for the recognition and aid of elementary schools and hence they could claim that such Rules were formulated under this statutory provision. 'The learned Single Judge of the Andhra High Court in *Govindaswami v Andhra*¹⁹ stated that these Rules were quasi-judicial and hence statutory. However, this precedent doesn't hold any legal value since the statutory nature of the Rules was determined assuming that they were formed under Section 56(2)(h)²⁰ and the Courts failed to consider the amendments which deleted numerous provisions and after which the Part II Rules were republished.

¹⁶ Madras Elementary Education Act 1920, s 56(1)

¹⁷ *Moss v Management of St. Patricks High School* [1970] 2 AnWR 157

¹⁸ Madras Elementary Education Act 1920, s 56(2)(h)

¹⁹ *Govindaswamy Srinivasaiah Venkatachalapathi v The State of Andhra Pradesh*, MANU/AP/1864/2022

²⁰ Madras Elementary Education Act 1920, s 56(1)

To whom is the power given: Administrative Powers are delegated to the Union or State Governments under Articles 73²¹ and 162²², and the power to lay down conditions for recognising an elementary school and granting aid to it in the Act was given to the State Government. Thus, Article 73 confers executive powers to the State Government to the extent of the matters on which the State Legislature can make laws.

Even though such administrative directions by the Government aren't legally enforceable, the institution or the authorities must follow them in good faith and abide by them fully to not breach any individual's rights and prevent themselves from any disciplinary action against them.

Imposition of obligations and rights on the individuals or administration: Also termed as administrative quasi-legislation, administrative directions are struck by the principle of non-enforceability such that the directions issued by a Governmental body for improving the efficiency of the existing laws are not considered to be binding on the administration. 'A direction such as the ones provided under Part II Rules does not impose any duty or obligation on the administration i.e. the school management, nor does it grant any person any legally enforceable rights in case of breach of such directions. Misconstruction or misapplication of a direction by the administration does not amount to an error of law.'²³ The above was stated in the case of *Prabhakar Reddy v State of Karnataka*²⁴ which explains that administrative directions are merely advisory and hence, there is no duty imposed on the authorities except for an expectation to follow these directions for the betterment and welfare of the society.

Administrative directions also don't provide any right to individuals against the violating authority. A direction cannot jeopardize the rights of an individual, and a breach of the same may lead to disciplinary actions but not a legal case in the courts of law. Thus, when administrative directions, such as the Part II Rules aren't complied with, the remedies are intra-departmental and not through the Court of Law. '*Abdulla Rowthar v STA Tribunal*²⁵ decided that even in cases where there is a clear violation of an administrative directive, the

²¹ Constitution of India 1950, art 73

²² Constitution of India 1950, art 162

²³ Pournavnair (n 7)

²⁴ *Prabhakar Reddy K.C. v State. High Court of Karnataka*, 2013 (1) AKR 136

²⁵ *R. Abdulla Rowthar v STA Tribunal* AIR 1959 SC 896

court will not grant a writ challenging the legality of an administrative action done in violation of the directive.²⁶

The Part II Rules of the Act thus, being administrative directions do not impose any obligations on the management of the school and the aggrieved appellant doesn't have a right to hold the management liable for not adhering to the Rules as they're not binding. The Supreme Court was right in holding that the management was not bound by the Rules and hence, the school was under no duty to reinstate the appellant to her position of the Headmistress as directed by the Divisional Inspector of School as written in the proviso of Rule 13 of the Part II Rules.

Therefore, it is sufficiently established that the Part II Rules fell outside the scope of furthering the purposes of the Act since they were standalone rules and weren't related to any other sections. The rules are merely administrative directions with no statutory status. The Government still held the power to frame Rules under Section 56(2)(h) since this provision was retained even after the amendments, and they can enforce such Rules on the institutions by withdrawing their recognition or aid for non-compliance with the conditions mentioned in the Rules. However, the scope of the preserved Clause (2)(h) is limited to such conditions of non-enforceability on the elementary schools and the issue in question as to the post of the appellant isn't protected under this provision. Hence, the appellant cannot bind the school management with the Part II Rules.

Private contracts supersede administrative directions: This case has brought into discussion the scope of private employment contracts and the overlapping of such contracts with Government-laid administrative directions. The school's argument emphasized the value of the private contract of employment between the school and the appellant teacher and stated that the non-enforceable nature of the Part II Rules of the Act would give an overpowering advantage to the private contract as the employment of the appellant has to be governed by a concrete set of terms and conditions in the absence of a statutory provision.

It is an established principle that administrative directions are struck by the principle of non-enforceability, however, the courts can make exceptions to this rule using their discretion

²⁶ Pournavnair (n 7)

on an individual case basis. An organisation may be held liable for the administrative direction to the extent it confers benefit on an individual²⁷, and if it doesn't run counter to any Statute. The school contends that the enforcement of the Part II Rules u/s 56(2)(h)²⁸ is between the Government and the School, and the appellant being a third party to the contract will not have any cause of action to bring against the school based on the Rules. Since there's no statutory backing provided to the Rules and they merely direct the conduct of the school and do not directly mention the benefits to the third-party employees, there's no reason for an exception to the unenforceable nature of the Rules. Therefore, 'the mere fact that the school is recognized doesn't mean it would now not be governed by the contract of employment unless there's a statutory act overriding the employment contract.'²⁹

CONCLUSION

It is evident from the above discussion that administrative directions are only meant to allot certain power to the Government to control the efficiency of organisations and their internal management by issuing certain guidelines. They do not share the binding or enforceable nature of statutes and legislative provisions and 'can supplement a statute, but cannot run contrary to the statutory provisions or whittle down their effect.'³⁰ Based on the above arguments, the Supreme Court's decision to absolve the school management of any liability is, in the author's opinion, justified as the school adhered to the contract of employment while demoting the appellant and it can't be said that there's any contravention to the Rules as they're merely administrative and are not binding. The golden outlining of this judgement is that the Judges specifically highlight the duty of the administration to not depart from their duty to follow the directions issued by the government, in disregard of which disciplinary actions will be imposed in case there's unnecessary prejudice and unfair gains made by the administrative body. The observations made in the case show that the demotion of the appellant was merely because of a breach of the contract of employment by her, and thus, there is no advantage derived by the management of the school by removing the appellant from her original post in the school. Therefore, 'administrative directions serve as essential administrative tools to enhance the

²⁷ *Ibid*

²⁸ Madras Elementary Education Act 1920, s 56(2)(h)

²⁹ *Kumari Regina v St. Aloysius Higher Elementary School and Anr* MANU/SC/0673/1971

³⁰ Naushad (n 3) 86

efficiency of statutes and rules'³¹, however, their non-binding nature cannot be taken in vain to benefit the administrative bodies.

³¹ Pandey (n 4) 12