

ADMINISTRATIVE INSTRUCTIONS

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Introduction

The growth of the administrative process has been accompanied by an increase in the grant of discretionary powers in the hands of administrative authorities. To control the exercise of such discretionary powers, various devices have been resorted to, such as promulgation of rules, announcement of statement of policy and issuance of administrative instructions (or administrative *directions*). The essential rationale behind administrative directions is to fill in the gaps in the prevalent law; with the objective of thwarting arbitrary exercise of power.

Execution and determination of policy is what constitutes the Executive power. The power to issue directions flows from the general administrative powers under Articles 73 and 162 of the Constitution. The executive power of the State and the Union covers all matters with respect to which the State legislatures and the Parliament have the competence to make laws; however, the exercise of this power cannot contravene the provision of the Constitution.

A higher authority can issue administrative directions to a subordinate authority; but may lack statutory force. These instructions can be binding or directory; and be of a generic or specific nature. The statute which confers power to the agent or instrumentality of the administration to issue instructions, determines the nature of these instructions. They can be issued through a circular or letter or even be oral, given in a causal manner.

They can also be published in the state gazette or in the form of pamphlets, press notes, or public notices. Instructions issued using the general administrative power, without statutory authorisation are directory and are unenforceable. The pertinent issue here is not whether a particular official pronouncement has statutory force or not; even if it is devoid of statutory force, no official in practice can disregard it; though no court would enforce it at the instance of an individual.

The nature of these powers also give rise to legal issues such the position of administrative directions *vis-à-vis* delegated legislation, the need for resorting to administrative instructions, the legal basis for administrative instructions and enforceability of administrative instructions.

These aforementioned issues have been dealt with in this paper with the help of case laws, legal principles and authoritative commentaries.

Administrative Instructions v. Delegated Legislations

A direction is inferior in authority *vis-à-vis* a delegated legislation; and does not fall within the category of delegated legislations.¹ In contrast to delegated legislations, administrative instructions do not have the same status of subordinate regulations or rules. Additionally, instructions neither have the authority to override legislative policy nor be in contradistinction to the provisions of the statute. To differentiate delegated legislations from administrative directions, the latter is often referred to as ‘administrative quasi-law’ or ‘administrative quasi-legislations’.² The fundamental distinguishing feature between a direction and delegated legislation is that: the delegated legislation is binding on the administration as well as the individual and is enforceable in a court of law; a direction is usually neither binding nor enforceable, nor does it impose an obligation on the individual or the administration.³

However, the administrative authorities cannot disregard them with impunity. They are expected to follow the instructions and breach of the same may result in disciplinary or other suitable action against them.⁴ An administrative or intradepartmental remedy maybe available to the individual to enforce such directions, to illustrate – one can approach a superior authority in the concerned department. Breach of such directions is usually not taken cognisance of courts of law; and is a matter of consideration for superior officials.⁵

Need for Administrative instruction

The need to resort to administrative direction and also delegated legislations arises because of the wide discretion that has been conferred on the executive by statutes to deal with the peoples’ problems in a welfare state.⁶ Instead of leaving the administrative discretion untraced and unfettered, power to make rules and regulations is ordinarily conferred on the executive by the statute so that rules may be made from time to time according to the exigency of the situation

¹ M.P. Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW, 170, (6th ed., 2010).

² *Id.*

³ Megarry, *Administrative Quasi-Legislation*, 60 LQR 125 (1944); Friedmann and Benjafeld, PRINCIPLES OF AUSTRALIAN ADMINISTRATIVE LAW, 61, (1962).

⁴ M.P. Jain, *supra* note 1, at 170.

⁵ M.P. Jain, *supra* note 1, at 170.

⁶ S.N. Jain, *Legality of Administrative Directions*, 8(349), JOURNAL OF THE INDIAN LAW INSTITUTE, 350, (1966).

and that uncertainty involved in discretion may give way to certainty and fixity.⁷ Promulgation of rules and regulations having statutory force is not the only way to achieve certainty; issuance of administrative directions can have the same effect, but *sans* such a force.

There are several reasons for the device of administrative directions being preferred over statutory rules; certain formalities such as laying before the parliament, prepublication, consultation of affected interests, publication in the gazette may be prerequisites for promulgation of rules.⁸ Such prerequisites do not exist for issuing administrative directions and consequently, they are easy to change and issue. Further, administrative directions may have to be issued and useful, in the event of a completely new kind of problem has to be dealt with, without any past experience. The trial and error method may in fact be necessary to allow for rules having some stability later. Till the problem has been dealt with for an adequate duration, the guidelines for administrative action could be laid down through administrative instructions which can be changed or modified based on the gained experience.⁹

The issuance of directions where principles for the exercise of power could be laid down with some degree of stability is an anomaly. Instructions may be relied up on when the exigencies or the scenario is fluidic and subject to rapid change. Thus, principles for the exercise of power must be stated with precise articulation and have to be in a state of quick changes.¹⁰ Lastly, a temporary situation could be preferably dealt with through the directions rather than rules.¹¹

Legal Foundation of Administrative Directions

Directions can come from a superior authority when the power is conferred to a specified authority by a statute; and the legality of such directions can significantly affect the internal administration of the executive. If the object behind the designation of an official in the statute is to create a particular kind of public authority outside the control of the minister, then ideally no directions must come from above. However, there may not be such difficulty if his position is equivalent to that of an ordinary civil servant. This question arose in two cases and court seemed to favour the former view. In the case of *Commissioner of Police v. Gordhandas Bhanji*,¹² the Commissioner of Police was designated as the cinema licensing authority under

⁷ *Id.*

⁸ *Id.*

⁹ The Direct Taxes Administrative Enquiry Report, 38-42, (1959).

¹⁰ Friendly, THE FEDERAL ADMINISTRATIVE AGENCIES – THE NEED FOR BETTER DEFINITION OF STANDARDS, 146, (1960).

¹¹ S.N. Jain, *Legal Status of Administrative Directions – Three Recent Cases add to the confusion*, 24(1), JOURNAL OF THE INDIAN LAW INSTITUTE, 126, 128, (1982).

¹² *Commissioner of Police v. Gordhandas Bhanji*, AIR 1952 SC 16.

the Bombay Police Act, 1902. A cinema licence was cancelled by the Commissioner on the direction of the Bombay government. The Supreme Court had held that the government could not issue a direction, as the commissioner was the authorised authority under the parent statute. In this case, it was specific; however, the result would have been the same even in case of a general direction. In the case of *Sri Ram Vilas Service v. Road Traffic Board*¹³, the government of Madras had issued directions laying down the principles for the issue of motor vehicles permits to various transport authorities who derived their power under the Motor Vehicles Act, 1939. The Madras High Court disallowed this action and had upheld the independence of the board. Thus if it is desired that the government may issue directions to a statutory authority, it is imperative to explicitly make a provision to that effect in the statute. As a consequence of this decision, the Motor Vehicles Act was amended to include Section 43A which authorised the government to issue directions of a general character which would have to be complied with by the transport authorities. Another apt illustration is Section 119(1) of the Income Tax Act, 1961.¹⁴

Can directions be issued to quasi-judicial bodies even if there is an explicit provision in the statute for the same? As per the prevailing judicial opinion, this cannot occur, irrespective of the general or specific nature of directions. Therefore, the courts have regarded the assessment proceedings before an Income Tax Officer under the statute as quasi-judicial and have held that he should exercise his own independent judgement without any control by the superior authority. In the case of *Sewa Singh Gill v. Commissioner*¹⁵, a direction by the Commissioner of Income tax to the Income Tax Officer to obtain a draft assessment order approved by the Inspecting Assistant Commissioner was held to be illegal by the Punjab High Court; despite the statute containing an express provision for the issue of such directions. In the case of *Rajagopala Naidu v. State Transport Appellate Tribunal*¹⁶, the same question was considered by the Supreme Court. Section 47 of the Motor Vehicles Act, conferred wide discretion to the Regional Transport Authority for granting stage carriage permits; one of the determinants for granting was “*the interest of the public generally.*” To limit the discretion, the Madras Government issued directions of a general character laying down principles for issuing of permits, under section 43A. An aggrieved applicant challenged the action of the government. Relying of precedents which had held that these authorities were discharging quasi-judicial

¹³ *Sri Ram Vilas Service v. Road Traffic Board*, AIR 1948 Mad. 400.

¹⁴ S.N. Jain, *supra* note 11, at 352.

¹⁵ *Sewa Singh Gill v. Commissioner*, (1962) 46 ITR 152.

¹⁶ *Rajagopala Naidu v. State Transport Appellate Tribunal*, AIR 1964 SC 1573.

functions¹⁷, the court held that such directions were invalid and would go against the fundamental principle of judicial process.

Enforcement of Administrative Instructions

It is a complex task to determine whether the source of statutory direction was statutory or non-statutory.¹⁸ Even in scenarios where administrative directions are sourced from a statute, the obligatory nature of those instructions would depend on a range of other factors. The Judiciary has adopted a residuary and variegated approach towards the enforceability of administrative instructions and with regard to its statutory status, keeping the legal position in a flux. This is vindicated by the decisions of the Supreme Court. In *G.J. Fernandez v. State of Mysore*¹⁹, it was held by the court that the Mysore Public Works Department Code of instructions was devoid of the force of law because it had exercising general power of administration.

The Supreme Court decided that the instructions which were passed under Section 43-A of the Motor Vehicles Act, 1929 lacked the force of law in the case of *Raman and Raman Ltd. v. State of Madras*²⁰. Nonetheless, in the case of *Jagjit Singh v. State of Punjab*²¹, the apex court set the dice rolling in different direction; in this case, the State government had made a request to the Punjab Public Service Commission to select and endorse six vacancies in the Punjab Civil Services(Executive Branch). The appellant secured third position amongst the Scheduled Caste(SC) candidates in the competitive exam that was consequently conducted. The reserved quota was 20% and appointment letters were issued to the first two candidates. However, one of the selected candidates resigned. The appellant being next in merit on the selection list, made an application for the vacancy. He based his claim on the instructions given by the State Government through a circular. The government came to reject this claim and a petition was filed in the High Court. On dismissal, it went on appeal to the Supreme Court; it was decided that the general practice was that if SC/ST candidate is terminated, an eligible candidate belonging to the same community must be appointed on ad hoc basis. Instructions contrary to such a practice were held to be invalid. The court's opinion also made it clear that instructions cannot contravene or supersede statutory rules but rather augment the rule or regulation.²²

¹⁷ Abdulla Rowther v. State Transport Appellate Tribunal, AIR 1959 SC 694; New Prakash Transport Co. v. New Swarana Transport Co., AIR 1957 SC 232.

¹⁸ Kumari Regina v. St. Aloysins Higher Secondary School, 1972 4 SCC 188.

¹⁹ G.J. Fernandez v. State of Mysore, AIR 1967 SC 1753.

²⁰ Raman and Raman Ltd. v. State of Madras, AIR 1959 SC 694.

²¹ Jagjit Singh v. State of Punjab, 1978 2 SCC 196.

²² Gurdial Singh Fijji v. State of Punjab, AIR 1979 SC 1622.

In *V.T Khanzode v. RBI*²³, the fact in issue was whether a mere circular could modify staff regulations based on seniority. The court was of the view that since administrative instructions lacked statutory force, they cannot amend statutory regulations or rules. However, in the present case the staff regulations had not been issued under Section 58 of the Reserve Bank of India Act, 1934 and thus were not rules; but were only directives which was amendable.

In *Amitabh Shrivastava v. State of Madhya Pradesh*²⁴, even though administrative instructions sought to modify statutory rules, it was allowed to be enforced by the court. In this case, for the purposes of admission to medical colleges, a cut-off was prescribed through statutory rules by the State Government. The petitioner had not qualified for admission based on the rules. Consequently, the cut-off was decreased by an administrative direction; as a result, the petitioner had become eligible to be admitted. The admission was allowed by the Supreme Court, in spite of the administrative instruction being against the rule. The justification provided by the court was that enforceability of the administrative direction at the instance of an individual was not objected by the government. Nevertheless, the Supreme Court in successive judgements has held that administrative instructions can complement a statute or function in spaces where the law is silent; however, cannot contravene statutory provisions or diminish their outcome.²⁵ Hence, in the *Mahadeo Bhau Khilare v. State of Maharashtra*²⁶, it was decided that a scheme framed by an administrative instruction in violation of statutory rules cannot be sustained.

If a body incorporated under a statute issues administrative instructions and even if they are issued under a statutory provision, they are not law per se. At the most, these are comparable to the constitutional documents of a company that lack the force of law.²⁷ Though the general premise is that statutory instructions are unenforceable; however, if they have been constantly adhered to for a long duration, the administration may not make a whimsical deviation, without a suitable explanation as that would be a patent infringement of rights under Articles 16 and 14 of the Constitution.²⁸ The ground of equitable estoppel is available in cases where the administrative instructions are for the purpose of making a public representation and based on

²³ *V.T Khanzode v. RBI*, AIR 1982 SC 917.

²⁴ *Amitabh Shrivastava v. State of Madhya Pradesh*, AIR 1982 SC 827.

²⁵ *C.L. Verma v. State of M.P.*, 1989 Supp 2 SCC 437.

²⁶ *Mahadeo Bhau Khilare v. State of Maharashtra*, (2007) 5 SCC 437.

²⁷ *Coop. Central Bank Ltd. v. Industrial Tribunal*, (1969) 2 SCC 43.

²⁸ *Amarjit Singh Ahluwalia v. State of Punjab*, (1975) 3 SCC 503. One should also keep in the mind the inclusive definition of "law" under Article 13 of the Constitution.

that representation, if any person acts it, that person can hold the agency responsible.²⁹ Even in the event that administrative instructions are binding, the effect of its non-compliance on the legality of the decision would depend on the facts and circumstances. Hence, administrative instruction to procure permission of the government beforehand, for making an award under the Land Acquisition Act, 1894, if the value exceeded Rs. 20000 per acre, was though binding; it was held that the violation thereof would not constitute an infirmity in the acquisition itself.³⁰ The Supreme Court has highlighted the significance and legal effect of administrative directions in *P.H. Paul Manoj Pandian v. P. Veldurai*³¹, by stating:

*“Departmental circulars are a common form of administrative document by which instructions are disseminated. Many such circulars are identified by serial numbers and published, and many of them contain general statement of policy. They are, therefore, of great importance to the public, giving much guidance about governmental organization and the exercise of discretionary powers. In themselves they have no legal effect whatever, having no statutory authority. But they may be used as a vehicle in conveying instructions to which some statute gives legal force. It is now the practice to publish circulars which are of any importance to the public and for a long time there has been no judicial criticism of the use made of them.”*³²

The general principle that since administrative instructions are often deemed to be not law, has witness contrary opinions or deviance. There have been instances where the courts have found them to be enforceable. In *Sant Ram Sharma v. State of Rajasthan*³³, it was upheld by the Supreme Court that *“It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”*³⁴ In *Gurman Singh v. State of Rajasthan*³⁵, it was contended on appeal that, the implementation of the Rajasthan Administrative Services 1957 would be subject to the circular issued by the government suggesting the merit formula for the purpose of promotions. On the basis of that formula, appellant officers were bypassed by junior officers; the appellants

²⁹ Union of India v. Anglo Afghan Agencies, AIR 1968 SC 718.

³⁰ Collector v. Narra Venkateshwarlu, (1996) 7 SCC 150.

³¹ P.H. Paul Manoj Pandian v. P. Veldurai, AIR 2011 SC 1660.

³² *Id.*

³³ Sant Ram Sharma v. State of Rajasthan, (1968) 1 SCR 111.

³⁴ *Id.*

³⁵ Gurman Singh v. State of Rajasthan, (1971) 2 SCC 452.

being aggrieved by such an action had challenged the instructions given under the circular. The Supreme Court had held that the merit-based directions issued under the circular was not in violation of Articles 14 or 16. The rules were primarily laid down to serve to public interest, on the basis of merit and were thus justified.

Conclusion

From the analysis that was performed through this paper, some inferences of general nature can be drawn. The growth of administrative functions and powers has made the dividing lines between the different types of administrative actions hazy. But it is importance to identify and differentiate them as it would help discern the nature of the power conferred; the designated/authorised person(s); legality of that power; prescribed manner of exercise of such a power and the remedies available in case of *ultra vires* actions.

Administrative instructions are labelled as ‘administrative quasi-law’ or ‘administrative quasi-legislations’ to differentiate it from delegated legislations. The latter is superior to the former. Further, legislative policy cannot be overridden by administrative instructions; and it cannot contravene the provisions of the statute. Administrative instructions are used to augment the existing provisions of law; or to fill lacunae in the law or tackles new situations.

The general premise is that statutory instructions are unenforceable. Breach of such directions is usually not taken cognisance of courts of law; and is a matter of consideration for superior officials. However, there have been situations which have been at variance with the general premise. Instructions maybe devoid of the force of law as it is usually issued using the general power of administration. Nonetheless, it does not mean that there is no remedy. An administrative instruction against the rule was allowed on the ground that it was not objected by the state government and the remedy was granted in that specific case. The ground of equitable estoppel is another remedy available. A practice which has been constantly adhered to for a long duration cannot be arbitrarily altered through an administrative direction and would be violative of Articles 16 and 14 of the Constitution. An administrative or intradepartmental remedy may also be available for enforcement

Whenever the power is conferred on a designated official by the statute, its exercise must not be controlled by a superior authority through the issue of directions. Whenever the power is conferred on a specified authority by a statute but the authority has sub-delegated the power, whether the delegating authority could issue direction to the delegate would depend upon the

terms in the instrument of delegation. Under no circumstances can directions be issued to a quasi-judicial authority. Issuance of instructions specific in nature to any administrative authority performing quasi-judicial function or any other statutory function, which direct the manner in which such functions have to be performed would be deemed to be meddling with the independence of that agency and violative of the administrative principles.

