

POWER OF REVIEW OF ADMINISTRATIVE BODY WITH SPECIFIC REFERENCE TO CCI (GOOGLE V. CCI)

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INTRODUCTION:

Administrative tribunals are specialized governmental agencies established under federal or provincial legislation to implement legislative policy¹. The power of decision making is conferred upon the public boards and public decision makers by the statute. Such powers when conferred upon administrative tribunals, boards or other decision makers tend to provide a more expeditious, less formal and sometimes less expensive method for resolving certain types of disputes. In this context it is considered to be less expensive in comparison with the courts. Experts in a particular field are appointed in administrative tribunals to decide and adjudicate complex issues pertaining to that field.

Most tribunals are required by common law or statute to follow some basic rules of procedure. Though there is no specific set of rules that apply universally, the procedure to be followed by a tribunal may be found in the enabling statute or related regulation, guidelines, or directives. Procedures may also be provided by a notice issued for a particular proceeding or they may be an unwritten tribunal policy. The expression tribunal as used in Article 136 of the constitution does not mean the same thing as 'court' but includes, within its ambit, all adjudicating bodies provided they are constituted by the state and are invested with judicial as distinguished from administrative or executive functions.² Tribunals are clad in many of the trappings of a court and though they exercise quasi-judicial functions, they are not full-fledged courts³.

Therefore the definition and meaning of Administrative tribunals stated above forms the focal point of the said article. As only if one understands the meaning of administrative

¹. <https://www.lexology.com/library/detail.aspx?g=f59b0866-8483-44ba-8bd6-16276f886c15>

². Durga shankar Mehta V. Raghuraj Singh, Ibid, AIR 522

³. Bharat Bank Ltd V. Employees, AIR 1950 SC 188:1950 SCR 459

tribunal can one understand its powers? This article will deal with one such power that is “power of review” by administrative tribunals.

This specific power is much debated as according to the administrative principles it is not exclusively conferred upon the said tribunals.

POWER OF REVIEW:

There is no inherent power of review with any authority as already stated above. Therefore the said power can be exercised only if it is conferred by the relevant statute.⁴Patel Narshi Thakershi V. Pradyuman Singhji Arjunsinghji,(1971) 3 SCC 844.As a general rule, an administrative tribunal becomes functus officio(ceases to have control over the matter) as soon as it makes an order and thereafter cannot review its decision unless the said power is conferred on it by a statute, and the decision must stand unless and until it is set aside by appellate authority or by competent court. Review is not a re-hearing of the matter on merits. Maybe, the court might not be right in refusing relief in the “first round”, but when once the order is passed by the court, a review thereof “must be subject to the rules of the same and cannot be lightly entertained.”Pathak J rightly observed: whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility⁴.This, however, does not mean that in absence of any statutory provision an administrative tribunal is powerless. An administrative tribunal possesses those powers which are inherent in every judicial tribunal. Thus, it can reopen ex parte proceedings, if the decision is arrived at without issuing notice to the party affected, or on the ground that it had committed a mistake in overlooking the change in the law which had taken place before passing the order, or to prevent miscarriage of justice, or to correct grave and palpable errors committed by it, or what the principles of natural justice required it to do⁵, It is well settled that the **power to review** is not an inherent **power**. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the government had **power to review** its own order."

⁴ . (1980) 2 SCC 167,172:AIR 1980 SC 674,678

⁵. Shivdeo singh V. State of Punjab, AIR 1963SC 1909

Again in a particular case the Supreme Court categorically held that:-

It is now well established that a **quasi-judicial authority** cannot **review** its own order, unless the **power of review** is expressly conferred on it by the statute under which it derives its jurisdiction⁶

COMPETITION COMMISSION OF INDIA - **Competition Commission of India** is an administrative body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an appreciable adverse effect on competition in India. It was established on 14 October 2003. It became fully functional in May 2009 with Dhanendra Kumar as its first Chairman⁷.

Therefore the power to review of the Competition commission came under question in a landmark case. And the facts and judgment are as follows.

GOOGLE INC AND OTHERS v. COMPETITION COMMISSION OF INDIA:-

So the main concept behind the case is “powers of competition commission of India with respect to review/recall its own orders.” The judgment was delivered on 27th of April, 2015 by the chief Justice of high court of Delhi.

An information under section 19(1)(a) of the competition act,2002 was filed against Google INC and Google India private limited alleging that Google runs its core business of online search and search advertisement in a discriminatory manner, causing harm to the consumers and the advertisers by favoring its own services thereby creating an uneven playing field. The commission on perusal of the materials available on record and after hearing the arguments advanced on behalf of the informant, opined that there existed a prima facie case to direct the Director general to cause an investigation to be made into the matter under section 26(1) of the act, since Google was not given the opportunity to present itself, it filed an application for recall which was rejected by the Competition commission, stating that the power to recall is similar to power of review which was removed by an amendment to the competition act.

⁶ <https://indiankanoon.org/docfragment/180242/?formInput=quasi%20judicial%20authority%20power%20of%20review>

⁷ https://en.m.wikipedia.org/wiki/Competition_Commission_of_India

Therefore the court came to the conclusion that- In the light of the judgment of the Supreme Court in SAIL, the power exercised by Competition commission of India is administrative in nature. An administrative decision can be revised by the deciding authority even in absence of specific power. What needs to be considered is that whether there is anything in the statute which indicates that an order under section 26(1) ought not to be reviewed. (Section 26(1) - Procedure for inquiry on complaints under section 19.—

(1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter).The court is not to be understood as conveying that in every case in which CCI has ordered investigation without hearing the person / enterprise complained / referred against, such person/enterprise would have a right to apply for review / recall of that order. Such a power though found to exist has to be sparingly exercised and ensuring that the reasons which prevailed with the Supreme Court in SAIL (supra) for negating a right of hearing to a person are not subverted⁸.

CONCLUSION:

Though the actual principal does not confer the power of review by administrative tribunals, the recent judgment in the above mentioned case has brought about a change in the same. Administrative bodies emerged to reduce the burden of the judiciary. Judicial review of administrative orders further increases the burden. Therefore the question arises thus, why can't the administrative bodies by themselves review their orders?"This is directly going to reduce the burden of the courts. Therefore it can be affirmed that the decision taken in the case Google INC V. Competition Commission of India is a landmark one. It is one such case which extends the powers of the administrative tribunals for common good.

⁸. <https://googleweblight.com/i?u=https://indiankanoon.org/doc/864375/&hl=en-IN>

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