

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.10694 of 2019

V.Eswaran

.. Petitioner

Vs.

R1 deleted vide order dated 09.04.2019
made in W.P.No.10694/19

R2 Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Declaration, declaring G.O.(Ms).No.102 dated 02.05.2013 cancelling the G.O.(Ms).No.289 dated 13.06.1996 which was permitting the practice of doing postmortem during night hours in respect of accident cases, issued by the Respondent herein as null and void as the same is in arbitrary, illegal, capricious and in violation of Article 14 and 21 of Constitution of India and also against principles of natural justice and consequently direct the Respondent to take necessary action to perform postmortem during night hours also.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.E.Manoharan
Additional Government Pleader

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Instant public interest litigation has been filed for a Declaration, declaring G.O.(Ms).No.102, Health and Family

Welfare (Z1) Department, dated 02.05.2013, cancelling G.O.(Ms). No.289, Health and Family Welfare Department, dated 13.06.1996, which permitted the practice of doing postmortem during night hours in respect of accident cases, issued by the respondent herein, as null and void, as the same is in arbitrary, illegal, capricious and in violation of Articles 14 and 21 of the Constitution of India and also against the principles of natural justice and consequently, to direct the respondent, to take necessary action to perform postmortem, during night hours also.

2. On 09.04.2019, we passed the following order:-

"In the supporting affidavit, the petitioner has furnished the details of fatal accidents and fatalities occurred during 2017, according to type of vehicles, as hereunder.

Types of Vehicles	Total Accidents	Fatalities
Bus		
Govt:	2796	1029
Private:	3238	827
Goods carriages	7373	2506
Four Wheelers	18748	3994
Two Wheelers	25393	5322
Three Wheelers	3000	478
Others	5014	2001
Total	65562	16157

2. Contending inter alia that earlier, Government have issued G.O.(Ms)No.289 Health and Family Welfare Department dated 13.06.1996, whereby, a direction was given to all the Government Hospitals to perform postmortem during night hours also in the case of accidental deaths and subsequently withdrawn vide G.O. (Ms.) No.102, Health and Family Welfare (Z1) Department dated 02.05.2013, impugned in this writ petition, which according to the petitioner was a practical difficulty for the relatives to wait for the postmortem, unnecessary crowd outside the hospital and the only reason for not performing the postmortem during night hours is poor lighting facility and on the above averments, Mr.N.Ponraj, learned counsel for the petitioner insisted that the records in G.O.(Ms.) No.102, Health and Family Welfare (Z1) Department dated 02.05.2013, be called for by this Court.

3. Material on record discloses that earlier in 1996, Government have issued G.O.(Ms) No.289 Health and Family Welfare Department dated 13.06.1996,

permitting postmortem to be performed during night hours in the case of deaths due to accident.

4. One Dr. K.Mathiharan, has filed WP.No.3516 of 2000, for a writ of certiorari to quash G.O.(Ms) No.289 Health and Family Welfare Department dated 13.06.1996 read with G.O.Ms.No.283, Health and Family Welfare Department dated 10.06.1997. Government opposed the said prayer. After considering the rival submission, vide order dated 16.06.2010, a learned Single Judge of this Court, in WP No.3516 of 2000, ordered as hereunder.

"8.A perusal of the impugned G.O.Ms.No.289 would go to show that it came to be issued only on considering the proposal submitted by the Director of Medical Education. The Director of Medical Education himself is an expert in medical science. I do not think that the Director of Medical Education would have been unaware of the above practical difficulties which the petitioner has now expressed in the affidavit filed in support of the writ petition.

9.As rightly pointed out by the learned Government Advocate, the Government taken into consideration not only the scientific aspects of the postmortem but also the larger interest of the public. The Government Order clearly states that it is only in cases where the cause of death is well known, that too, only in accident cases, the postmortem can be conducted during night hours also. It also does not say that in all cases irrespective of the complications involved in the same, such postmortem be conducted in the night hours. As it has been carefully worded in the above Government Orders, it is only in accident cases where the cause of death is well known and where there are no complications involved in finding the cause of death, time of death etc., the Doctors are asked to conduct postmortem in night hours, that too only in Madras Medical College. It is needless to point out that in a case where if the Doctor feels that it is better to hold the postmortem during day time, he can choose to do so and the Government Order does not compel him to do postmortem in the night hours. Therefore, I am of the view that when the larger public interest is taken into consideration by the Government and the Government Orders do not mandate that postmortem should be invariably conducted in all cases of accident during night hours, I am of the view that the said Government Orders cannot be stated to be arbitrary in any manner.

10.Now coming to the medical views against the night postmortem expressed in the affidavit filed

in support of the petition and also in the representation made by the Medical Officers, Institute of Forensic, Chennai Medical College dated 28.01.1998, this Court cannot express any opinion as this Court does not have so much of expertise knowledge in forensic science. It is for the experts to express views and it is for the Government to consider as to whether to continue to have the practice of conducting postmortem in accident cases during night hours.

11. In view of all the above, the writ petition is dismissed, however, with a direction to the Government to consider the representation of the Medical Officers, Institute of Forensic Medicine, Chennai Medical College, Chennai dated 21.08.1998, get the views of experts and then to pass appropriate orders as to whether to continue to have the said practice, viz., to conduct the postmortems in respect of accident cases during night hours or not. The said exercise shall be completed by the Government within a period of six months from the date of receipt of a copy of this order. If the petitioner is interested, he can make further representation in this regard to the Government within a period of one month from the date of receipt of a copy of this order."

5. Thereafter, in terms of the order stated supra, Government have constituted a committee of Professors of Forensic Science, Doctors and police and convened a meeting on 08.09.2010, to discuss the issue as to whether postmortem should be permitted to be conducted during night hours.

6. Committee constituted by the Government for the abovesaid purpose is extracted hereunder.

Sl.No.	Name of Participants and Designation
1.	Dr.V.Kanagasabai, Director of Medical Education, (FAC)
2.	Thiru.M.Ravi, I.P.S., Additional Commissioner of Police, (Traffic)
3.	Thiru.L.M.S.Gunaseelan, I.P.S., IGP (ESTT) Office of Director General of Police, Mylapore, Chennai.
4.	Dr.B.Santhakumar, Professor of Forensic Medicine, Stanley Medical College, Chennai-1.

Sl.No.	Name of Participants and Designation
5.	Dr.V.Murugesan, Professor of Forensic Medicine, Madras Medical College, Chennai.
6.	Dr.A.Selvamurugan, Associate Professor, HOD Department of Forensic Medicine, Tirunelveli Medical College, Tirunelveli.
7.	Dr.R.Selvakumar, Professor of Forensic Medicine, Madras Medical College, Chennai-3.
8.	Dr.P.Parasakthi, Professor of Forensic Medicine, Chengalpat Medical College, Chengalpatu.

7. Accepting the views of the committee comprising of Professors / Medical Officers of Forensic Medicine and Police, Government have issued G.O.(Ms.) No.102, Health and Family Welfare (Z1) Department dated 02.05.2013, cancelling the earlier order permitting postmortem to be conducted during night hours. Abovesaid Government order is impugned in the instant writ petition.

8. It is trite law that Court cannot sit in appeal over the opinion of the experts. In the case on hand while disposing WP No.3516 of 2000 dated 16.06.2010, a learned Single Judge of this Court has considered the issue as to whether postmortem in accidental deaths should be conducted during night hours or not, and observed that not only scientific aspects of the postmortem, but the larger interest of the public, require the matter to be examined only by an expert and Court does not have so much expertise in forensic science. So saying, the learned Single Judge has also expressed that it is for the experts to consider as to whether to continue to have the practice of conducting postmortem in accident cases during night hours.

9. In the case on hand, correctness of the views expressed by the Professor / Medical Officers of Forensic Medicine and Police, is questioned solely on the grounds that the views of the committee is only based on lighting facility.

10. Having regard to the pronouncement of law in the matter of Courts sitting over the views of the experts and before ordering notice to the respondents

to secure the records in G.O.(Ms.) No.102, Health and Family Welfare (Z1) Department dated 02.05.2013, we made it clear to Mr.N.Ponraj, learned counsel for the petitioner that the instant public writ petition filed on the bald averments that poor lighting facility is the sole reason for not conducting the postmortem during night hours, and that if the reasons are otherwise, petitioner would be imposed with exemplary costs for driving the Court to call for the records even on the basis of a bald averments stated supra.

11. Knowing fully well of the consequences, Mr.N.Ponraj, learned counsel for the petitioner agreed that if reasons are otherwise, petitioner can be imposed with exemplary costs, as observed in the foregoing paragraphs.

12. Thus, while directing notice to be taken on behalf of 2nd respondent, Mr.E.Manoharan, learned Additional Government Pleader is directed to secure the entire records in G.O.(Ms) No.289 Health and Family Welfare Department dated 13.06.1996, G.O.Ms.No.283, Health and Family Welfare Department dated 10.06.1997 and G.O.(Ms.) No.102, Health and Family Welfare (Z1) Department dated 02.05.2013.

13. Chief Secretary, Government of Tamilnadu, Chennai, 1st respondent herein is not a necessary party to the lis. Hence, registry is directed to delete the name of Chief Secretary, Government of Tamilnadu, Chennai, from the array of parties.

14. Post on 15.04.2019, in the motion list."

3. Thus, the matter is listed today.

4. Perusal of the file pertaining to G.O.(Ms).No.102, Health and Family Welfare (Z1) Department, dated 02.05.2013, shows that a meeting of the experts committee, namely, (i) Dr.Selvakumar, MD (Forensic Medicine), Madras Medical College, Chennai; (ii) Dr.V.Murugesan, MD (Forensic Medicine), Kilpauk Medical College, Chennai; (iii) Dr.B.Santhakumar, Stanley Medical College, Chennai; (iv) Dr.P.Parasakthi, Chengalpattu Medical College, Chengalpattu and (v) Dr.A.Selvamurugan, Trinelveli Medical College, Trinelveli, was convened on 06.09.2010 at 4.00 p.m. in the office of the Principal Secretary to Government's Chamber, Chennai in connection with conducting postmortem, during night hours.

5. After the said meeting, a decision has been arrived at, not to conduct postmortem, during night hours. Decision of the experts in Forensic Medicine, has been communicated by the Director of Medical Education, Chennai to the Principal Secretary to the Government, Health and Family Welfare

Department, Chennai. Discussion on different topics by the experts, culled out from the letter dated 28.08.2010 addressed to the Principal Secretary to Government, Health and Family Welfare Department, Chennai, are as follows:-

"AUTHORITY TO REQUEST FOR POSTMORTEM EXAMINATION

The medico legal postmortem is an issue involving the police and executive magistrates. They conduct the inquest in the presence of panchayatdars. If the inquest reveals the need for the postmortem examination, only then they issue the requisition to the medical officers to conduct the postmortem examination of the deceased to find out the Cause of death, time of death and collect the trace evidences from the cadaver for further forensic or histopathological or microbiological analysis. The requisitions for conducting the postmortem are submitted not only by the Police Officers but also by the Executive Magistrates in some select cases. The investigating officer has to necessarily examine the dead body note down the relevant features on the dead body, before submitting the requisition for postmortem.

PROBLEMS ENCOUNTERED IN CONDUCTING POSTMORTEMS AT NIGHT TIME

a) MIXING UP OF THE DEAD BODIES

The postmortem examinations are conducted during day time at present. It is pertinent to mention certain anomalous situations occurring while conducting postmortems even during day time. In some occasions, the kith and kin of the deceased, wrongly identify the dead body causing perturbing confoundedness at various levels of official machinery of criminal investigations. It is not uncommon that we face such situations of change of dead bodies when the relatives of the deceased are shown the dead bodies for identifying even during the day time, particularly in cases of decomposed bodies, which cause the distortion of the facial features making the identification very difficult. Therefore, the first problem in conducting the night postmortem, would result in misidentification of the deceased, will be very grave and would result not only in lot of hardship to the medical officer and administrative officers but also result in miscarriage of justice.

b) LAW AND ORDER PROBLEMS

In cases involving inter rivalry deaths, a milling crowd of both the parties is bound to collect around the mortuary and on flimsy grounds violence may erupt creating law and order problems to the police and a

state of delicate apprehension to the doctor.

The above situation is bound to worsen if the postmortems are allowed during night time, leading to serious law and order problems and wide mix up of dead bodies in the mortuaries. More so, in sudden power failure, trepidating mental agony to the doctor which will be an aggravating one if that doctor happens to be a lady doctor.

c) MEDICAL VIEWS AGAINST NIGHT POST MORTEM

The medical views of non feasibility for conducting the postmortems at nights are as follows, in addition to the grave apprehensions as stated above.

i) COLOUR STATUS

The population of the state of Tamil nadu are a mixture of medium and dark complexioned people. The majority of them are dark complexioned individuals. The medico legal autopsies mainly pertain to victims of violence. The doctor's duty in such cases is to establish the time of assault, the time of death and the cause of death apart from identifying the dead body.

The medical and surgical emergencies are primarily to save the life of a person, where the colour of the skin is not of paramount importance. Such attempts to save the life cannot be equated with the inherent duties of a forensic autopsy surgeon in providing the proper guidance to the investigating Police Officer and finally in the administration of justice.

ii) TIME OF ASSAULT

The time of assault is one of the very crucial and clinching points for the investigating agencies to include or exclude the suspected assailant involved in a particular crime. The time of assault is ascertained by the age of the wound which is assessed by observing the colour changes in the wounds such as colour of the abrasions and contusions, and the stage of healing of the wounds on the dead body. The stage of healing is made out by the specific color changes that appear on the wound surface at different times during the process of healing. Such colour changes are to be differentiated exactly, to opine about the age of the wound. First of all, it is a difficult task to locate the contusion or bruises in medium or dark complexioned people, even in the day time. Therefore an attempt to make out the contusions on the body of a dark complexioned individual is highly difficult and could be missed, especially so in the artificial light during night. Under the artificial light, the color of the skin, in cases of dark or medium complexioned individuals, would mask the color of the bruise and

may escape detection even by the trained eye after careful examination.

The colour of the hypostasis and the colour changes brought in due to the decomposition would be masking or altering the colour changes of the contusions. The colour changes that are to be differentiated to determine the age of the wound, are very subtle and faint change of shades of colour, and not just the primary colours. It is a known fact that the differentiation of various shades of colours in artificial light is misleading and the mistake can be identified and brought out in the natural day light examination. It is extremely important to differentiate the mixture of faint shades of color that occurs in the wounds during the process of the healing. This color observation is a clinching issue to fix the time of assault which can only be made out in sun light.

iii) TIME OF DEATH

Time of death is the very important evidence for the investigating officers to apprehend the suspects and exclude the innocents. The color changes that occur chronologically on the dead body, due to the decomposition changes, would enable the doctor to fix the time of death. The colour changes due to the decomposition are in different shades. The variegating colour changes of decomposition are important to calculate the time of death, considering the various other factors in which the dead body was lying. The slight difference in the colour of the dead body would create a considerable variation in the estimated time of death. The time of death as ascertained by the doctor at the time of postmortem examination of the dead body would be of paramount importance to the investigating officer to analyze the crime and apprehend the culprit. The erroneous time of death ascertained by the examination of the dead body at night, under artificial light would be detrimental to the investigation of the case.

iv) CAUSE OF DEATH

Certain color changes that occur in the tissues also enables the doctor to establish the cause of death as in jaundice, infarction of visceral organs, infection that may complicate thermal and mechanical wounds, intracerebral haemorrhages, haemorrhages in the tissues due to mismatched blood transfusions or other bleeding disorders or due to some poisons and also the colour changes due to some poisons. These color changes can not be made out clearly without ambiguity in artificial light during night time. The

colour changes occurring in cases of poisoning would be paving the way for proper further analysis of the tissues and organs from the dead body. The colour changes if observed wrongly, under artificial light in the night, would be making the postmortem examination a futile exercise.

V) POSTMORTEM ARTEFACTS

During the transportation of the dead body from the scene of crime, during the storage of the dead body in the mortuary, during the shifting of the dead body to the postmortem table for autopsy many types of artifacts can be introduced inadvertently either by the public or by the mortuary workers. These postmortem artifacts are to be identified and differentiated from the ante mortem mechanical injuries such as abrasions and bruises. The wrong interpretation of the postmortem artifacts as in ante mortem wounds would prove detrimental in the process of the investigation of the crime.

ANALOGOUS PRACTICE

In most of the countries the postmortem is conducted only during the day time. The natural day light is preferred by the prudent doctors to conduct the postmortem as their findings are unambiguous and would not give room for the unnecessary argument in the Court of Law by the defense counsels about the observation and interpretations of the findings. Even the twilight has the particular wave length that distinguishes the colour as in natural sunlight. Artificial light can and will never be a substitute for natural sun light as it lacks the specific wavelength that distinguishes the finer shades of mixture of colors. The finer shades of colour are not important for the surgeons who perform the surgery under total artificial light. Though the postmortem examination is being conducted in the closed room of the mortuary with artificial light, it cannot be denied that the natural light due to its pervasiveness helps the doctor to differentiate the important colour changes. When in doubt the examination of the body can be done in natural sun light, which is possible if the postmortem is done only during the day time.

SPECIAL PROBLEMS ENCOUNTERED IN NIGHT POSTMORTEMS ON THE DEAD BODIES WHICH HAVE UNDERGONE 'ORGANS HARVESTING'

Conducting the postmortem during the night time in the routine Medico Legal cases would pose a lot of problems which will result in miscarriage of justice, the postmortem conducted in the night time, in cases of "Organ Donation" would be all the more deleterious

to the very purpose of submitting the body for post mortem examination due to the following reasons:

1) There will be minimal amount of Vital tissues and important structures in the dead bodies which have been submitted for organ donation, that will make it almost impossible to find out the exact cause of death, even when the postmortem is conducted in the day time. Postmortem conducted in the night time in such cases would become a nightmare for the postmortem medical officer.

2) The removal of the vital organs during the harvesting of the organs would cause structural alteration in the neighboring organs, which if had been already injured will pose a great problem in ascertaining the cause of death. E.g.: In cases of removal of the Heart, the lungs will invariably be found collapsed and the injuries in the lungs both macroscopically and microscopically would be doubtful and questionable in the court of law. If in such cases the postmortems are conducted in the night time it would be highly improbable to differentiate the changes in the non harvested organs as due to the injuries sustained by the individual during the accident or during the process of harvesting.

3) The ante mortem injuries inflicted by the Organ Harvesting team on the non harvested organs in the region of the harvested organs would be causing lot of confusion in determining whether those injuries were caused during the accident / assault or they were iatrogenic injuries caused inadvertently during the removal of the organs. If postmortems are conducted during night time it would be erroneous to opine on those injuries as to, whether they were ante mortem or perimortem or postmortem in nature.

4) There will be a sort of "Kennedy Phenomenon" (Original injuries intervened by the surgical procedures) in cases of death due to accidents, where the dead bodies are submitted for organ harvesting. If postmortems are conducted during night time it would again be causing difficulty in ascertaining the cause of death.

CONCLUSION

It should not be forgotten that the basic aim of postmortem is ultimately to help the society at large, by conducting the postmortem thoroughly, without any ambiguity in the observation and inference obtained there from. Conducting postmortem examination is not a mere ritual performed in cases of unnatural deaths. It is of no doubt that conducting night postmortem would bring happiness to some people, only by way of getting

the dead body early, even in the night time. But it is very pertinent to consider the negative impact that would result in improper crime investigation, faulty observation, wrong analysis of the findings in the dead body and ultimately miscarriage of justice to the society at large, due to the night postmortems. Every case needs careful approach which sometimes requires combined efforts of the doctors and it is difficult to predict when such situation arises. If it occurs during night it becomes complex predicament. It is crystal clear from the above that errors are bound to occur if the postmortems are allowed to be conducted during night in the artificial light. This fact cannot be denied in the court of law, thus weakening the prosecution evidence and strengthening the defense plea for acquittal in all criminal cases. There are instances where the Judicial Courts have commented on the incomplete and erroneous postmortems, which had caused judicial turmoil. Finally, I would like to state that if 'Night Postmortems' are permitted, it would not only result in miscarriage of justice but also in greater misery to the public at large, than the physical and mental agony caused to the medical officers and the paramedical staff involved in conducting the postmortem."

6. Contention of the petitioner is that postmortem has not been conducted probably, due to poor lighting, is without any basis. On the other hand, an expert committee of doctors, in the field of Forensic Medicine, has considered several issues before arriving at a decision as to why postmortem is not feasible, during night hours.

7. It is trite law that Courts do not have the expertise to sit in as an appellate authority, unless the decision making process is manifestly arbitrary, or against the statute.

(i). In Basavaiah (DR.) vs. DR.H.L.Ramesh and others, reported in (2010) 8 SCC 372, the Hon'ble Supreme Court, dealt with a case relating to selection of Readers in Central Sericultural Research and Training Institute which was done on the basis of recommendations of an expert committee, which comprised of leading experts in the field of Sericulture. Though the reported case, relates to selection, principle of law laid down therein can be made applicable to the case on hand. The Hon'ble Supreme Court held thus:-

"20 [Ed.: Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./108/2010 dated 18-9-2010.]

. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before selecting

them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

22. A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in Central College, Bangalore in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] in which the Constitution Bench unanimously held that normally the courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts who had constituted the Selection Board. The Court further observed that it would normally be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be.

25. ... M.C. Gupta (Dr.) vs. Dr. Arun Kumar Gupta reported in (1979) 2 SCC 339 : 1979 SCC (L&S) 168], SCC pp. 344-45, para 7, held thus:-

"7. ... When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be."

26. In J.P. Kulshrestha (Dr.) v. Allahabad University [(1980) 3 SCC 418 : 1980 SCC (L&S) 436] the Court observed that the court should not substitute its judgment for that of academicians: (SCC p. 426, para 17)

"17. Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

27. In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27] the Court observed thus: (SCC pp. 56-57, para 29)

"29. ... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

28. In Neelima Misra v. Harinder Kaur Paintal [(1990) 2 SCC 746 : 1990 SCC (L&S) 395 : (1990) 13 ATC 732] the Court relied on the judgment in University of Mysore [AIR 1965 SC 491] and observed that in the matter of appointments in the academic field, the court generally does not interfere. The Court further observed that the High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted.

29. In Bhushan Uttam Khare v. B.J. Medical College [(1992) 2 SCC 220 : 1992 SCC (L&S) 554 : (1992) 20 ATC 223] the Court placed reliance on the Constitution Bench decision in University of Mysore [AIR 1965 SC 491] and reiterated the same legal position and observed as under: (Bhushan Uttam case [(1992) 2 SCC 220 : 1992 SCC (L&S) 554 : (1992) 20 ATC 223] , SCC p. 223, para 8)

"8. ... the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it

thinks it must do so in the interest of justice."

30. In *Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan* [(1990) 1 SCC 305 : 1990 SCC (L&S) 80 : (1991) 16 ATC 528] the Court in somewhat similar matter observed thus: (SCC pp. 309-10, para 12)

"12. ... It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection, etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

31. In *Chancellor v. Dr. Bijayananda Kar* [(1994) 1 SCC 169 : 1994 SCC (L&S) 296 : (1994) 26 ATC 570] the Court observed thus: (SCC pp. 174-75, para 9)

"9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the Selection Committees concerned which invariably consist of experts on the subjects relevant to the selection."

32. In *J&K State Board of Education v. Feyaz Ahmed Malik* [(2000) 3 SCC 59] the Court while stressing on the importance of the functions of the expert body observed that the expert body consisted of persons coming from different walks of life who were engaged in or interested in the field of education and had wide experience and were entrusted with the duty of maintaining higher standards of education. The decision of such an expert body should be given due

weightage by courts.

33. In Dental Council of India v. Subharti K.K.B. Charitable Trust [(2001) 5 SCC 486] the Court reminded the High Courts that the Court's jurisdiction to interfere with the discretion exercised by the expert body is extremely limited.

34. In Medical Council of India v. Sarang [(2001) 8 SCC 427] the Court again reiterated the legal principle that the court should not normally interfere or interpret the rules and should instead leave the matter to the experts in the field.

35. In B.C. Mylarappa v. Dr. R. Venkatasubbaiah [(2008) 14 SCC 306 : (2009) 2 SCC (L&S) 148] the Court again reiterated the legal principles and observed regarding importance of the recommendations made by the expert committees.

36. In Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887] the Court reminded that it is not appropriate for the Supreme Court to sit in appeal over the opinion of the experts.

37. In All India Council for Technical Education v. Surinder Kumar Dhawan [(2009) 11 SCC 726] again the legal position has been reiterated that it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters."

(ii). In Tata Cellular vs. Union of India, reported in (1994) 6 SCC 651, the Hon'ble Supreme Court dealt with a case relating to tender, Government Contract, Principles of law on judicial review on administrative action can be made applicable to the case on hand. The Hon'ble Supreme Court held thus:-

"71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness

is set right by judicial review.

72. Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment, reported in [1986 AC 240, 251 : (1986) 1 All ER 199] proclaimed:

" 'Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power."

Commenting upon this Michael Supperstone and James Goudie in their work Judicial Review (1992 Edn.) at p. 16 say:

"If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in Butcher v. Petrocorp Exploration Ltd. 18-3-1991."

75. In Chief Constable of the North Wales Police v. Evans [(1982) 3 All ER 141, 154] Lord Brightman said:

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms:

"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is

intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In *R. v. Panel on Take-overs and Mergers, ex p Datafin plc* [(1987) 1 All ER 564] , Sir John Donaldson, M.R. commented:

"An application for judicial review is not an appeal."

In *Lonrho plc v. Secretary of State for Trade and Industry* [(1989) 2 All ER 609] , Lord Keith said:

"Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re* [*Amin v. Entry Clearance Officer*, (1983) 2 All ER 864] , Lord Fraser observed that:

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

76. In *R. v. Panel on Take-overs and Mergers, ex p Guinness plc* [(1990) 1 QB 146 : (1989) 1 All ER 509] , Lord Donaldson, M.R. referred to the judicial review jurisdiction as being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be

classified as under:

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

78. What is this charming principle of Wednesbury unreasonableness? Is it a magical formula? In *R. v. Askew* [(1768) 4 Burr 2186 : 98 ER 139] , Lord Mansfield considered the question whether mandamus should be granted against the College of Physicians. He expressed the relevant principles in two eloquent sentences. They gained greater value two centuries later:

"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practise this profession is trusted to the College of Physicians and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike."

79. To quote again, Michael Supperstone and James Goudie; in their work *Judicial Review* (1992 Edn.) it is observed at pp.119 to 121 as under:

"The assertion of a claim to examine the reasonableness been done by a public authority inevitably led to differences of judicial opinion as to the circumstances in which the court should intervene. These differences of opinion were resolved in two landmark cases which confined the circumstances for intervention to narrow limits. In *Kruse v. Johnson* [(1898) 2 QB 91 : (1895-9) All ER Rep 105] a specially constituted divisional court had to consider the validity of a bye-law made by a local authority. In the leading judgment of Lord Russell of Killowen,

C.J., the approach to be adopted by the court was set out. Such bye-laws ought to be 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they would be reasonably administered. They could be held invalid if unreasonable : Where for instance bye-laws were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, or if they involved such oppressive or gratuitous interference with the rights of citizens as could find no justification in the minds of reasonable men. Lord Russell emphasised that a bye-law is not unreasonable just because particular judges might think it went further than was prudent or necessary or convenient.

In 1947 the Court of Appeal confirmed a similar approach for the review of executive discretion generally in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn* [(1948) 1 KB 223 : (1947) 2 All ER 680]. This case was concerned with a complaint by the owners of a cinema in Wednesbury that it was unreasonable of the local authority to licence performances on Sunday only subject to a condition that 'no children under the age of 15 years shall be admitted to any entertainment whether accompanied by an adult or not'. In an extempore judgment, Lord Greene, M.R. drew attention to the fact that the word 'unreasonable' had often been used in a sense which comprehended different grounds of review. (At p. 229, where it was said that the dismissal of a teacher for having red hair (cited by Warrington, L.J. in *Short v. Poole Corpn.* [(1926) 1 Ch 66, 91 : 1925 All ER Rep 74] , as an example of a 'frivolous and foolish reason') was, in another sense, taking into consideration extraneous matters, and might be so unreasonable that it could almost be described as being done in bad faith; see also *R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.* [1988 AC 858, 873 : (1988) 2 WLR 654 : (1988) 1 All ER 961] (Chapter 4, p. 73, supra). He summarised the principles as follows:

'The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they have taken into account matters which they ought not to have taken into account, or, conversely, have refused to take into account or neglected to take into account matter which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say

that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the power which Parliament has confided in them.'

This summary by Lord Greene has been applied in countless subsequent cases.

"The modern statement of the principle is found in a passage in the speech of Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service [(1985) 1 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174] :

'By "irrationality" I mean what can now be succinctly referred to as "Wednesbury unreasonableness". (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680]) It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at.'

80. At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849-850, may be quoted:

"4. Wednesbury principle.- A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680] , per Lord Greene, M.R.)"

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course

of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in *Emma Hotels Ltd. v. Secretary of State for Environment* [(1980) 41 P & CR 255], the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in *R. v. Barnet London Borough Council, ex p Johnson* [(1989) 88 LGR 73] the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.

82. Bernard Schwartz in *Administrative Law*, 2nd Edn., p. 584 has this to say:

"If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. 'It makes judicial review of administrative orders a hopeless formality for the litigant. ... It reduces the judicial process in such cases to a mere feint.'

Two overriding considerations have combined to narrow the scope of review. The first is that of deference to the administrative expert. In Chief Justice Neely's words:

'I have very few illusions about my own limitations as a judge and from those limitations I generalise to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that this Court sees approximately 1262

cases a year with five judges. I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.'

It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinised by the non-expert judge. The alternative is for the court to overrule the agency on technical matters where all the advantages of expertise lie with the agencies. If a court were to review fully the decision of a body such as state board of medical examiners 'it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the pharmacopoeia'. Such a situation as a state court expressed it many years ago 'is not a case of the blind leading the blind but of one who has always been deaf and blind insisting that he can see and hear better than one who has always had his eyesight and hearing and has always used them to the utmost advantage in ascertaining the truth in regard to the matter in question'.

The second consideration leading to narrow review is that of calendar pressure. In practical terms it may be the more important consideration. More than any theory of limited review it is the pressure of the judicial calendar combined with the elephantine bulk of the record in so many review proceedings which leads to perfunctory affirmance of the vast majority of agency decisions."

83. A modern comprehensive statement about judicial review by Lord Denning is very apposite; it is perhaps worthwhile noting that he stresses the supervisory nature of the jurisdiction:

"Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will

not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter. See *Healey v. Minister of Health* [(1955) 1 QB 221 : (1954) 3 All ER 449 : (1954) 3 WLR 815] . But nevertheless, the courts will, if called upon, act in a supervisory capacity. They will see that the decision-making body acts fairly. See *H.K. (an infant), Re* [(1967) 2 QB 617, 630 : (1967) 1 All ER 226 : (1967) 2 WLR 692] , and *R. v. Gaming Board for Great Britain, ex p Benaïm and Khaida* [(1970) 2 QB 417 : (1970) 2 All ER 528 : (1970) 2 WLR 1009] . The courts will ensure that the body acts in accordance with the law. If a question arises on the interpretation of words, the courts will decide it by declaring what is the correct interpretation. See *Punton v. Ministry of Pensions and National Insurance* [(1963) 1 WLR 186 : (1963) 1 All ER 275] . And if the decision-making body has gone wrong in its interpretation they can set its order aside. See *Ashbridge Investments Ltd. v. Minister of Housing and Local Government* [(1965) 1 WLR 1320 : (1965) 3 All ER 371] . (I know of some expressions to the contrary but they are not correct). If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere. See *Padfield v. Minister of Agriculture, Fisheries and Food* [1968 AC 997 : (1968) 1 All ER 694] . If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding – so unreasonable that a reasonable person would not have come to it – then again the courts will interfere. See *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680] If the decision-making body goes outside its powers or misconstrues the extent of its powers, then, too the courts can interfere. See *Anisminic Ltd. v. Foreign Compensation Commission* [(1969) 2 AC 147 : (1969) 1 All ER 208 : (1969) 2 WLR 163] . And, of course, if the body acts in bad faith or for an ulterior object, which is not authorised by law, its decision will be set aside. See *Sydney Municipal Council v. Campbell* [1925 AC 338 : 1924 All ER Rep 930] . In exercising these powers, the courts will take into account any reasons which the body may give for its decisions. If it gives no reasons – in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly. See

Padfield case (as AC pp. 1007, 1061) [1968 AC 997 : (1968) 1 All ER 694] ."

84. We may usefully refer to Administrative Law Rethinking Judicial Control of Bureaucracy by Christopher F. Edley, JR (1990 Edn.). At p. 96 it is stated thus:

"A great deal of administrative law boils down to the scope of review problem; defining what degree of deference a court will accord to an agency's findings, conclusions, and choices, including choice of procedures. It is misleading to speak of a 'doctrine', or 'the law', of scope of review. It is instead just a big problem, that is addressed piecemeal by a large collection of doctrines. Kenneth Culp Davis has offered a condensed summary of the subject:

'Courts usually substitute (their own) judgment on the kind of questions of law that are within their special competence, but on other question they limit themselves to deciding reasonableness; they do not clarify the meaning of reasonableness but retain full discretion in each case to stretch it in either direction.' "

85. In Universal Camera Corpn. v. National Labor Relations Board [340 US 474, 488-89 : 95 L Ed 456 (1950)] Justice Frankfurter stated:

"A formula for judicial review of administrative action may afford grounds for certitude but cannot assure certainty of application. Some scope for judicial discretion in applying the formula can be avoided only by falsifying the actual process of judging or by using the formula as an instrument of futile casuistry. It cannot be too often repeated that judges are not automata. The ultimate reliance for the fair operation of any standard is a judiciary of high competence and character and the constant play of an informed professional critique upon its work. Since the precise way in which courts interfere with agency findings cannot be imprisoned within any form of words, new formulas attempting to rephrase the old are not likely to be more helpful than the old. There are no talismanic words that can avoid the process of judgment. The difficulty is that we cannot escape, in relation to this problem, the use of undefined defining terms."

86. An innovative approach is made by Clive Lewis as to why the courts should be slow in quashing administrative decisions (in his Judicial Remedies in Public Law 1992 Edn. at pp. 294-95). The illuminating

passage reads as under:

"The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards reopening decisions, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive. This is particularly the case when the challenge is procedural rather than substantive, or if the courts can be certain that the administrator would not reach a different decision even if the original decisions were quashed. Judges may differ in the importance they attach to the disruption that quashing a decision will cause. They may also be influenced by the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct.

The current approach is best exemplified by *R. v. Monopolies and Mergers Commission, ex p Argyll Group plc* [(1986) 1 WLR 736, 774 : (1986) 2 All ER 257, CA] ."

87. Sir John Donaldson, M.R. in *R. v. Monopolies and Mergers Commission, ex p Argyll Group plc* [(1986) 1 WLR 736, 774 : (1986) 2 All ER 257, CA] observed thus:

"We are sitting as a public law court concerned to review an administrative decision, albeit one which has to be reached by the application of judicial or quasi-judicial principles. We have to approach our duties with a proper awareness of the needs of public administration. I cannot catalogue them all but, in the present context, would draw attention to a few which are relevant.

Good public administration is concerned with substance rather than form.

... Good public administration is concerned with the speed of decision, particularly in the financial field.

... Good public administration requires a proper consideration of the public interest. In this context, the Secretary of State is the guardian of the public interest.

... Good public administration requires a proper consideration of the legitimate interests of

individual citizens, however rich and powerful they may be and whether they are natural or juridical persons. But in judging the relevance of an interest, however legitimate, regard has to be had to the purpose of the administrative process concerned.

... Lastly, good public administration requires decisiveness and finality, unless there are compelling reasons to the contrary."

88. We may now look at some of the pronouncements of this Court including the authorities cited by Mr Ashoke Sen. *Fasih Chaudhary v. Director General, Doordarshan* [(1989) 1 SCC 89] was a case in which the Court was concerned with the award of a contract for show of sponsored TV serial. At p. 92 in paragraphs 5 and 6 it was held thus:

"It is well settled that there should be fair play in action in a situation like the present one, as was observed by this Court in *Ram & Shyam Co. v. State of Haryana* [(1985) 3 SCC 267, 268-69]. It is also well settled that the authorities like Doordarshan should act fairly and their action should be legitimate and fair and transaction should be without any aversion, malice or affection. Nothing should be done which gives the impression of favouritism or nepotism. See the observations of this Court in *Haji T.M. Hassan Rawther v. Kerala Financial Corpn.* [(1988) 1 SCC 166, 173 (para 14)]

While, as mentioned hereinbefore, fair play in action in matters like the present one is an essential requirement, similarly, however, 'free play in the joints' is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere as the present one. Judged from that standpoint of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will."

89. In *G.B. Mahajan v. Jalgaon Municipal Council* [(1991) 3 SCC 91 (para 43-46)] the concept of reasonableness in administrative law came to be dealt with elaborately by one of us, Venkatachaliah, J. (as he then was). In paragraphs 37 to 41 the Court observed thus:

"It was urged that the basic concept of the manner of the development of the real estate and disposal of occupancy rights were vitiated by unreasonableness. It

is a truism, doctrinally, that powers must be exercised reasonably. But as Prof. Wade points out:

'The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. "With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority"....'

In the arguments there is some general misapprehension of the scope of the 'reasonableness' test in administrative law. By whose standards of reasonableness that a matter is to be decided? Some phrases which pass from one branch of law to another – as did the expressions 'void' and 'voidable' from private law areas to public law situations – carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words 'reasonable', 'reasonableness' etc. In *Tiller v. Atlantic Coast Line Rail Road Co.* [318 US 54 : 87 L Ed 610 (1942)] , Justice Frankfurter said:

'A phrase begins life as a literary expression; its felicity leads to its lazy repetition; and repetition soon establishes it as a legal formula, indiscriminately used to express different and sometimes contradictory ideas.'

Different contexts in which the operation of 'reasonableness' as test of validity operates must be kept distinguished. For instance as the arguments in the present case invoke, the administrative law test of 'reasonableness' as the touchstone of validity of the impugned resolutions is different from the test of

the 'reasonable man' familiar to the law of torts, whom English law figuratively identifies as the 'man on the Clapham omnibus'. In the latter case the standards of the 'reasonable man', to the extent such a 'reasonable man' is court's creation, is in a manner of saying, a mere transferred epithet. Lord Radcliffe observed : (All ER p. 160)

'By this time, it might seem that the parties themselves have become so far disembodied spirits that their actual persons should be allowed to rest in peace. In their place there rises the figure of the fair and reasonable man. And the spokesman of the fair and reasonable man, who represents after all no more than the anthropomorphic conception of justice, is, and must be, the court itself....'

(emphasis supplied)

See Davis Contractors Ltd. v. Fareham U.D.C. [(1956) 2 All ER 145, 160 : 1956 AC 696 : (1956) 3 WLR 37]

Yet another area of reasonableness which must be distinguished is the constitutional standards of 'reasonableness' of the restrictions on the fundamental rights of which the court of judicial review is the arbiter.

The administrative law test of reasonableness is not by the standards of the 'reasonable man' of the torts law. Prof. Wade says:

'This is not therefore the standard of "the man on the Clapham omnibus". It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called "Wednesbury unreasonableness", after the now famous case in which Lord Greene, M.R. expounded it.' "

(emphasis supplied)

90. Referring to the doctrine of unreasonableness, Prof. Wade says in Administrative Law (supra):

"The point to note is that a thing is not unreasonable in the legal sense merely because the court thinks it is unwise."

91. In Food Corpn. of India v. Kamdhenu Cattle Feed Industries [(1993) 1 SCC 71] it was observed thus : (SCC p. 76, para 7)

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'."

(iii). In Narmada Bachao Andolan vs. Union of India and others, reported in (2000) 10 SCC 664, the Hon'ble Supreme Court in public interest litigation dealt with a case of construction of Sardar Sarovar Dam, but the principles laid down on judicial review of administrative decisions, are applicable to the case on hand. The Hon'ble Supreme Court held thus:-

"229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

230. Public interest litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largesse in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public interest litigation should not be allowed to

degenerate to becoming publicity interest litigation or private inquisitiveness litigation.

231. While exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law."

8. Some of the instances cited by Mr.N.Ponraj, learned counsel for the petitioner, wherein postmortems have been conducted, even during night hours, is not the decision of the Government. In one of the instances, the District Collector, Theni District, has directed postmortem to be conducted during night hours. Random instances at one or two places, is not the decision of the Government and the reasons for such postmortem conducted during night hours, could not be deciphered from the orders.

9. While directing notice and to produce files pertaining to G.O.(Ms).No.102, Health and Family Welfare (Z1) Department, dated 02.05.2013, we made it clear to Mr.N.Ponraj, learned counsel for the petitioner, is that the instant public interest litigation filed on the bald averments that poor lighting facility is the sole reason for not conducting the postmortem during night hours, and that if the reasons are otherwise, petitioner would be imposed with exemplary costs, for driving the Court to call for the records even on such bald averments knowing fully well of the consequences, learned counsel for the petitioner agreed that if reasons are otherwise, costs can be imposed on the petitioner.

10. As extracted supra, recommendation of the expert committee by considering various subjects, has been accepted by the Government and thus, G.O.(Ms).No.102, Health and Family Welfare (Z1) Department, dated 02.05.2013, has been issued.

11. Reasons are otherwise than averred. Therefore, while dismissing the writ petition, we impose a cost of Rs.10,000/-, to be paid by the petitioner, to the account of Juvenile Justice Fund, Director of Social Defence, Ministry of Social Welfare, Government of Tamilnadu, Kellys, Kilpauk, Chennai-600 010, within a period of fifteen days from the date of receipt of a copy of this order, failing which, the District Collector, Coimbatore District, is directed to take proceedings, under the Revenue Recovery Act.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dm

To

1. Principal Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.

Copy To:

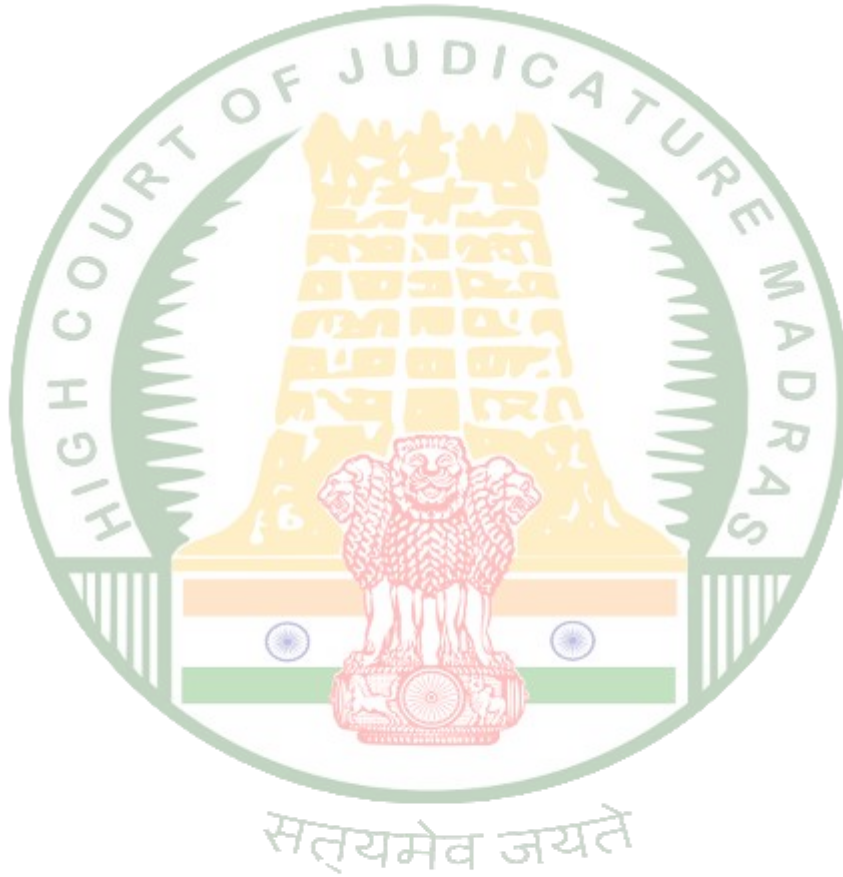
1. The District Collector,
Coimbatore.

2. The Juvenile Justice Fund,
Director of Social Defence, Ministry of Social Welfare,
Government of Tamilnadu, Kellys,
Kilpauk, Chennai-600 010.

+1 cc to The Government Pleader, Sr.No. 38137

W.P.No.10694 of 2019

CNR (CO)
CSL/29.04.2019



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