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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 07.03.2019**

% **W.P.(C) 5954/2017 & C.M. No. 24729/2017, C.M. No. 3676/2018**

UNION PUBLIC SERVICE COMMISSION Petitioner

Through: Mr.Ravinder Agarwal, Advocate

versus

DR. R J R KASIBHATLA AND ANR Respondent

Through: Mr.Rajiv Dutta, Sr. Advocate with
Mr.Sameer Sinha, Mr.Gaurav Mahajan,
Mr.Vinay Prakash Singh, Mr.Aditya and
Mr.Devesh Kumar, Adv for respondent no.1
Mr.Ruchir Mishra, Mr.Mukesh Kumar
Tiwari and Mr.Abhishek Rana,
Advocates for respondent no.2/UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The UPSC assails the order dated 14.3.2017 passed by the Central Administrative Tribunal, (The Tribunal) in O.A. No.693/2014. The Tribunal has allowed the said application preferred by the respondent and directed the USPC to recommend the candidature of the respondent for appointment to the post of Additional Legal Adviser (ALA) in the Department of Legal Affairs in the Ministry of Law & Justice, to the

competent authority.

2. The petitioner issued a public advertisement inviting applications for two posts of ALA in the Department of Legal Affairs, Ministry of Law & Justice. The advertisement was issued in July / August, 2013. The essential educational qualifications laid down in the advertisement were as follows:

*“A person shall not be eligible for appointment by direct recruitment to a duty post in Grade II, unless he holds a degree in law of a recognized university or equivalent and unless he has been a member of a State Judicial Service for a period of not less than thirteen years or has held a ***superior post in the legal department of State** for a period of not less than thirteen years or a Central Government servant who has had experience in legal affairs for not less than thirteen years or is a qualified legal practitioner.”*

“Superior post in the Legal Department of a State” means that the applicant should have experience in the State Government in a post which is not clerical and which requires qualification of Degree in Law for appointment to it. Note :- Preference will be given to a person with experience in legal advice work”.

3. The advertisement itself permitted the UPSC to adopt a short-listing criteria – so as to raise the bar, in the eventuality of the number of applicants being large. Clause 3 of the “Instructions and Additional information to candidates for Recruitment by Selection” reads as follows:

“3. MINIMUM ESSENTIAL QUALIFICATIONS: All applicants must fulfill the essential requirements of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least the essential qualifications laid down for various posts.

No enquiry asking for advice as to eligibility will be entertained.

NOTE –I The prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview.

NOTE –II IN THE EVENT OF NUMBER OF APPLICATIONS BEING LARGE, COMMISSION WILL ADOPT SHORT LISTING CRITERIA TO RESTRICT THE NUMBER OF CANDIDATES TO BE CALLED FOR INTERVIEW TO A REASONABLE NUMBER BY ANY OR MORE OF THE FOLLOWING METHODS:

- (a) On the basis of higher educational qualifications than the minimum prescribed in the advertisement.
- (b) On the basis of higher experience in the relevant field than the minimum prescribed in the advertisement.
- (c) By counting experience before or after the acquisition of essential qualifications.
- (d) By holding a Recruitment Test.

THE CANDIDATE SHOULD, THEREFORE, MENTION ALL HIS/ HER QUALIFICATIONS AND EXPERIENCE IN THE RELEVANT FIELD OVER AND ABOVE THE MINIMUM QUALIFICATIONS”

4. For the two posts of additional legal adviser 314 applications were received and, consequently, the UPSC applied the short-listing criteria in respect of essential qualification as follows:

Criteria No. I – Essential Qualifications (A):

- (i) Raised to Ph. D in Law+
- (ii) Minimum of legal experience of 13 years (no change in it).

Criteria No. II – Essential Qualifications (A) :

- (i) Raised to Post Graduation in law+
- (ii) Raised to minimum of 20 years legal experience.

5. The respondent applied for the said post. Since the respondent holds the Ph.D. degree, he sought coverage in the first educational qualification criteria set out above. He claimed that he had 23 years one month and 21 days experience. Out of that, he claimed 8 years and 8 months as teaching experience, which the respondent did not accept as relevant. There is no dispute raised by the respondent / applicant to the said teaching experience being considered as not relevant. He claimed that he, in any event, had more than 13 years experience of the kind described above. For this purpose he claimed that he had, inter alia, 2 years and 9 months experience as an advocate.

6. Since the petitioner did not agree with this claim of the respondent, he was not short-listed for interview. The respondent then preferred an O.A.

No.693/2014 before the Central Administrative Tribunal in January, 2014. On 24.2.2014, the Tribunal allowed the respondent / applicant to appear in the interview provisionally. On the directions of the Tribunal, results of the interview were produced before the Tribunal in a sealed cover. Since the respondent did figure in the merit list, the Tribunal proceeded to adjudicate upon the Original Application on merits. The Tribunal allowed the Original Application initially on 25.2.2015, which the petitioner claims was premised on a concession made by the counsel appearing for the petitioner /Commission. The petitioner/UPSC preferred a writ petition [WP(C)No.3941/2015] before this court to assail the order dated 25.2.2015. The operation of the order dated 25.2.2015 was stayed by this court vide its order dated 8.9.2015, and the petitioner /UPSC was given liberty to file a Review Petition before the Tribunal. Consequently, on 21.9.2015, the petitioner preferred RA No.268/2015 which was allowed by the Tribunal on 29.1.2016 and the order dated 25.2.2015 was recalled. Thereafter, the Original Application was heard afresh and the same was allowed by the impugned order dated 14.3.2017. The Tribunal allowed the Original Application on the premise that the respondent was registered as an advocate with the Bar Council of the State of Andhra Pradesh on 12.4.1990. A certificate had been issued by the Bar Council to this effect, which shows and discloses his experience, which is relevant. The Tribunal concluded that the respondent held the requisite 13 years experience by observing as follows:

“9. It is pertinent to note that the applicant registered with Bar Council of the State of A.P. on 12.4.1990. He continued as an advocate till he joined as a Lecturer in law at

Margadarshi College of Law, Karimnagar (AP) on 27.01.1993. Therefore, it would be reasonable to assume that he was a practicing lawyer from 12.04.1990 to 26.01.1993, i.e. for about two years and nine months. It would be ludicrous to assume otherwise. In our country, there is no system of a certificate being issued by the concerned Bar Council to certify the legal practice of a lawyer where he is registered or by the Courts where he has normally practiced. Even in its advertisement No.10/13 (Annexure A-1), UPSC has not stipulated as to the requirement of such a certificate and from whom? The registration certificate issued by a Bar Council must be considered as a proper and appropriate document for the purpose. For this reason, it would be perfectly in order to assume that the applicant was indeed practicing as a lawyer from 12.04.1990 to 26.01.1993 and thus acquired experience as a legal practitioner of about two years and nine months.

10. There is no dispute with regard to the legal experience acquired by the applicant while working in the Department of Legal Affairs, Ministry of Law and Justice from 13.09.2001 to August, 2013 (about 12 years). Thus, taking the experience of the applicant as a legal practitioner of two years and nine months and 12 years experience of his working in the Legal Affairs Department, his total legal experience would be more than 14 years against the minimum requirement of 13 years. For reckoning the legal experience period, his teaching experience as a law Lecturer /Principal is to be discounted for the reason that the applicant being a regular teaching faculty, the college rules would not have permitted him to do private practice.

11. To conclude, we are of the view that the applicant had fulfilled the enhanced criteria for short-listing, i.e., Ph.D. with minimum 13 years of legal experience, as discussed in details in the preceding paras. We, therefore, hold that the applicant was eligible for short-listing for interview. Since on the basis of an interim order of this Tribunal, he has already been interviewed by the UPSC (respondent No.1) and has been declared selected,

it is only logical that the UPSC recommends his case for appointment to the post of Additional Legal Adviser to the concerned authority in the Central Government.”

(emphasis supplied)

7. The submission of counsel for the petitioner/UPSC, Mr. Ravinder Agarwal is, that the application filed by the respondent itself raised serious doubts about the respondent's claim of his having experience as a practicing advocate for 2 years and 9 months. In this regard, counsel for the petitioner has drawn our attention to the application of the respondent. The same shows that the respondent obtained LL.M. degree in Labour Law from the University Law College, Bangalore University, Bangalore; during the period June, 1990 to June 1992. He also claimed experience – under the head “General Experience”, as an “Advocate”. The kind of experience declared by him was that of “Law Practice” and the experience was claimed to have been gained during the period 12.4.1990 to 15.1.1993. In response to the query with regard to the field of experience/ specialization; the address of the organization / institute/ place of posting, and; the “Nature of Duties Performed”, the respondent, firstly, disclosed that he practiced in “Courts *in and around Kakinada, Court Complex, Kakinada*”. He disclosed the “Employment Type / Nature of Appointment” as being ‘Regular’ and the “Nature of Duties Performed” as “*Advocacy, Tendering legal advice to clients including corporate bodies like A.P. State Electricity Board, Co-operative Societies, Trade Unions and participating in Lok-Adalats and conducting legal aid programmes*”.

8. Learned counsel for the petitioner submits that the application form itself raised serious doubts about the experience claimed by the respondent,

since there was an overlap between the period when the respondent claimed to have pursued the full time regular LL.M. two year course between June, 1990 and June 1992 from Bangalore University, Bangalore and the experience that the respondent claimed to have gained as an advocate in legal practice, practicing in courts in and around Kakinada in the State of Andhra Pradesh. The distance between Kakinada and Bangalore is around 900 k.ms. and it could not have been physically possible for the respondent to pursue the regular full time two year LL.M. course from Bangalore and, simultaneously and regularly practice as an advocate in and around Courts at Kakinada at the same point of time. Counsel for petitioner further submits that respondent had also provided a certificate issued by the Kakinada Bar Association on 16.1.1998, which showed that he was enrolled as an advocate with the State Bar Association on 2.7.1992. The submission is that the said certificate also shows that the respondent practiced as an advocate only after completing his LL.M. course from Bangalore University, which ended in June, 1992.

9. Learned counsel next submits that it was for the UPSC to assess whether the respondent possesses the requisite educational qualifications and experience. The Tribunal could have interfered with the said assessment only on one or more of the grounds on which judicial review is permissible. He submits that in the light of the aforesaid circumstances, it could not be said that the decision of the petitioner was either arbitrary, irrational or unreasonable. He submits that the view taken by the petitioner being a plausible view – based on germane considerations, it was not open for the Tribunal to interfere with the same, by placing itself in the position of

the UPSC.

10. On the other hand, learned senior counsel for the respondent has submitted that there is no doubt about the fact that the respondent was registered with the Bar Council on 12.4.1990. He submits that the respondent had even obtained permission of the Bar Council of the State of Andhra Pradesh on 24.7.1990 to seek permission to study LL.M. course from the University of Bangalore, Bangalore, while practicing as an advocate. Counsel for the respondent submits that practice as an advocate need not necessarily be as a litigator in court. He submits that once a person is registered as an advocate with the State Bar Council in terms of the Bar Council Act, he could practice as an advocate by rendering legal advice / consultation etc. In support of his aforesaid submission, he places reliance, firstly, on the decision of the Supreme Court in **Bar Council of India Vs. A.K. Balaji & Ors.**, 2018 SCC Online 214, and in particular paragraphs 41, 42 of the said decision. He submits that it was permissible for the respondent to pursue his LL.M. course and, at the same time, to practice as an advocate in the aforesaid manner. He further submits, by placing reliance on the judgment of the Jammu & Kashmir High Court in **Tahir Ahmad Dar Vs. State of Jammu & Kashmir & Ors.** SWP No.1127/2016 decided on 7.9.2017, that an advocate registered with the Bar Council continues to remain in practice, even when he is undertaking a related educational course within India, or even abroad. The said decision refers to and relies upon the decisions of Andhra Pradesh High Court in **Tirumala Devi Eada Vs. State of Andhra Pradesh, Law (LA & J SC.F) Department (Andhra Pradesh)** [WP Nos.34683 of 2011, 34805 of 2011, 894 of 2012 and PIL WP No.10 of

2012 decided on 17.7.2012].

11. He also relies upon the decision of Punjab & Haryana High Court in *Lovekesh Kumar Vs. Haryana State Industrial and Infrastructure Development Corporation and Ors.* [CWP No.12187/2009 decided on 27.5.2011], and more particularly paragraphs 12, 19 and 21 thereof. He submits that, in similar circumstances, the Punjab & Haryana High Court ruled that experience as an advocate does not mean experience of only legal practice. Mr. Datta has also relied upon the definition of the term “Advocate” contained in the Advocates Act in support of his submission.

12. In his rejoinder, counsel for the respondent has drawn our attention to the Indian Legal Service Rules, 1957 framed under Article 309 of the Constitution of India, which are applicable in relation to post in question. He points out that the expression “*qualified practicing advocate*” is defined *inter alia* mean “*in relation to appointment to a duty post in Grade II by direct recruitment, an Advocate or a pleader who has practiced as such for at least thirteen years, or an attorney of the High Court of Bombay or Calcutta who has practiced as such attorney and an advocate for a total period of at least eleven years.*”. (emphasis supplied) Since the post of legal adviser, which is the post in question, is a Grade –II post being filled by direct recruitment, the said definition of “*qualified legal practitioner*” is attracted in the present case.

13. Counsel for the respondent submits that the said definition is very wide inasmuch, as, it not only covers advocates, who are registered under the Bar Council Act, but also pleaders, who need not necessarily be advocates.

14. The primary controversy that we need to adjudicate is whether the tribunal was justified in concluding that the respondent had the requisite experience of 13 years by including the period when he claimed to have practiced as an advocate between 12.04.1990 to 26.01.1993 i.e. for about 2 years and 9 months. We also need to address the issue whether the tribunal could have interfered with the assessment made by the petitioner UPSC in the facts of the present case.

15. There can be no doubt that while practicing as an advocate, a person may simultaneously pursue the LL.M course without suspension of his/ her licence to practice. The difficulty, however, arises when the person claims that he has practiced as an advocate at one place, and pursued the two year regular LL.M course at another place, which is so far away that it would be impossible for the person to carry out both the activities simultaneously

16. The respondent could not have pursued the regular two year LL.M course conducted at the University Law College by the Bangalore University, Bangalore, without physically remaining present during the period of the course i.e. between June 1990 to June 1992. The claim made by the respondent with regard to his pursuing the profession as an advocate i.e. carrying out his law practice between the period 12.04.1990 to 15.01.1993, is that he practiced as an advocate in the court complex Kakinada in and around Kakinada, and in the State of Andhra Pradesh. The respondent claimed that between 12.04.1990 and 15.01.1993, he undertook advocacy. He also tendered legal advice to clients including corporate bodies, Andhra Pradesh State Electricity Board, Cooperative Societies,

Trade Unions and participated in Lok Adalat and conducted legal aid programmes. Pertinently, he did not claim that he practiced as an advocate and provided the services, as aforesaid, at Bangalore.

17. The submission of Mr. Datta that while pursuing the LL.M course at University Law College, Bangalore, there was no impediment in the respondent practicing as an advocate by tendering legal advice and doing non-litigation work is a theoretical submission with no factual foundation. The issue is not whether the respondent could have practiced as an Advocate while undertaking the L.L.M. Course at Bangalore. The issue is whether, as a matter of fact – he did. As noticed above, the respondent himself disclosed that he practiced law as an advocate in the courts in and around Kakinada and in the court complex Kakinada. There can be no quarrel with the proposition that practice of law as an advocate takes within its sweep not just active practice as a litigator in courts and tribunal, but also includes services of giving opinions, drafting instruments and participating in conferences involving legal discussion etc. No doubt, the respondent could have undertaken all these activities while pursuing his LL.M course at Bangalore. But it was not his claim that he did all this at Bangalore.

18. The point is, whether the petitioner was entitled to conclude that he did not do so, since the respondent did not claim so. The point is, whether the respondent can subsequently, while pursuing his legal remedy before the tribunal or before the court, be permitted to alter his stand and offer an explanation, which is not borne out from his application and, whether the assessment made by the petitioner UPSC on the basis of the information

disclosed by the respondent in his application, in his own words, can be faulted by resort to such alteration/ clarification/ elaboration.

19. In our view, the answer to this question is an emphatic ‘No’. While testing the correctness of the decision of the petitioner, the tribunal should have viewed the situation from the point of view, and the position in which the petitioner was placed. In response to the advertisement, the petitioner received scores of applications. The petitioner, to deal with the situation, applied the short listing criteria to restrict the number of candidates to be called for interview to a reasonable number. Insofar as we are concerned, it raised the educational qualification from a mere law degree to a Doctorate in law, while maintaining the minimum experience criteria as 13 years. All the candidates were informed well in advance – while making their applications, that the petitioner may adopt a short listing criteria and the candidates were informed that they “*should, therefore, mention all of his/ her qualification and experience in the relevant field over and above the minimum qualifications*”. The respondent was aware of this stipulation in the advertisement and, accordingly, filled up his application form. His application form, as noticed above, clearly presents a discrepant situation in relation to the period when he claims to have obtained the two year regular LL.M degree; between June 1990 to June 1992. During the same period, he also claims to have practiced as an advocate on regular basis in the courts in and around Kakinada, which is about 900 kms away. The respondent also produced the certificate issued by the Bar Association at Kakinada, which showed that he enrolled as an advocate with the Bar Association Kakinada only on 02.07.1992 i.e. after he had completed his LL.M course in June

1992. In the light of the aforesaid, in our view, it cannot be said that the petitioners had no basis to conclude that the respondent did not practice law as an advocate between June 1990 and June 1992, as claimed by the respondent, or that its assessment of the petitioners qualifications/ experience was arbitrary, illegal or unreasonable.

20. The decision in ***Tahir Ahmad Dar*** (supra) relied upon by the respondent was rendered in a materially different factual context than the present case. The material difference is that the petitioner after enrolling as an advocate in the year 2009, got admitted in the LL.M course in the year 2010 in the Department of Law, University of Kashmir. He was enrolled as an advocate in 2009 locally by the High Court of Jammu & Kashmir. It is in the said background that the High Court accepted his claim to have the requisite two years actual practice at the Bar. In ***Tahir Ahmad Dar*** (supra), the Jammu & Kashmir High Court relied upon ***Tirumala Devi Eada*** (supra). Firstly, we may observe that the complete citation of the said decision is not available, and a copy of that decision has also not been placed before us. Secondly, we noticed that the observations made by the Andhra Pradesh High Court, and sought to be relied upon by the Jammu & Kashmir High Court in ***Tahir Ahmad Dar*** (supra) was an *obiter dicta*. This is for the reason that the Andhra Pradesh High Court rejected the claim of the petitioner on the ground that the petitioner had not attained the age of 35 years, which was a stipulation in the advertisement. The issue, whether the petitioner had 7 years standing at the Bar, therefore, did not necessarily arise for consideration at all.

21. We also find that the Jammu & Kashmir High Court referred to *Madan Lal & Ors. v. State of Jammu & Kashmir & Ors.*, (1995) 3 SCC 486. Para 20 of that decision was quoted in *Tahir Ahmad Dar* (supra). The said paragraph read as follows:

*“20. It was next vehemently contended by the petitioners that actual practice would mean that the candidates concerned should have appeared before courts and conducted cases during these two years. It is difficult to accept this contention. A member of the Bar can be said to be in actual practice for 2 years and more if he is enrolled as an Advocate by the Bar Council concerned since 2 years and more and has attended law courts during that period. Once the Presiding Officer of the District Court has given him such a certificate, it cannot be said that only because as an Advocate he has put in less number of appearances in courts and has kept himself busy while attending the courts regularly by being in the law library or in the Bar room, he is not a member of the profession or is not in actual practice for that period. **The words “actual practice” as employed in Rule 9 indicate that the advocate concerned must be available whole-time as a professional attached to the court concerned and must not be pursuing any other full-time avocation. To insist that the term “actual practice” should mean continuous appearance in the court would amount to rewriting the rule when such is not the requirement of the rule.** There is no substance even in this additional aspect of the matter canvassed by the learned Senior Counsel for the petitioners. It must therefore be held that Respondents 10 and 13 were eligible for competing for the said posts of Munsif. {Emphasis added}”*

22. In fact, the aforesaid extract shows that the words “actual practice” were understood to mean that the concerned advocate must be whole time available as a professional attached to the concerned court and must not be pursuing any other full time avocation. However, in the present case, the

respondent does not fulfill even this test, since he was pursuing his two year regular LL.M course from the University of Bangalore at Bangalore. Thus, in our view, the decision in ***Tahir Ahmad Dar*** (supra) is not apposite in the facts of the present case.

23. Reliance placed by Mr. Datta on the decision of Punjab & Haryana High Court in ***Lovekesh Kumar*** (supra) is also not apposite. The said decision was rendered only on the consideration that a person who is enrolled as an advocate with the Bar Council is not required to surrender his license to practice as an advocate at the time of his joining the LL.M course as a regular student. In that case, the respondent no.3 had produced the practice certificate from the President, Bar Association Ketal with regard to his experience as an advocate. In the present case, the certificate issued by the Bar Association at Kakinada only states that the respondent was enrolled with the Bar Association “*on 02.07.1992 since then he has been practicing as an advocate in and around Kakinada courts both civil and criminal*”(emphasis supplied). Thus, this certificate certifies the experience of the respondent as an advocate only on and from 02.07.1992, and not from 12.04.1990, as claimed by the respondent.

24. We find merit in the submission of Mr. Agarwal that the primary responsibility to assess the eligibility of a candidate is that of the petitioner UPSC. Once that assessment is made, the decision of the UPSC could be examined and interfered with only on the well established principles of judicial review of administrative action, and not otherwise. The tribunal could not have sat as an appellate forum to undertake, for itself, the exercise

of determining the eligibility of the respondent. If the decision of the petitioner UPSC was found to be arbitrary, patently erroneous/ illegal, suffering from non application of mind or unreasonable, or if it was found to be not based on germane considerations, the same could have been interfered with, but not otherwise. In **Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Pates and Others**, (2006) 8 SCC 200, the Supreme Court elaborated on the scope of judicial review of administration action by the High Court under Article 226 of the Constitution. The same principles apply to judicial review of administrative action by the Central Administrative Tribunal. The Supreme Court observed:

“12. Article 226 of the Constitution is designed to ensure that each and every authority in the State, including the State, acts bona fide and within the limits of its power. However, the scope of judicial review in administrative matters has always been a subject-matter of debate despite a plethora of case-law on the issue. Time and again attempts have been made by the courts to devise or craft some norms, which may be employed to assess whether an administrative action is justiciable or not. But no uniform rule has been or can be evolved to test the validity of an administrative action or decision because the extent and scope of judicial scrutiny depends upon a host of factors, like the nature of the subject-matter, the nature of the right affected, the character of the legal and constitutional provisions applicable, etc. While appreciating the inherent limitations in exercise of the power of judicial review, the judicial quest has been to find and maintain a right and delicate balance between the administrative discretion and the need to remedy alleged unfairness in the exercise of such discretion.

13. Having said so, we may now refer to a few decisions wherein some broad principles of judicial review in the field of administrative law have been evolved.

14. In *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] **Lord Diplock enunciated three grounds upon which an administrative action is subject to control by judicial review viz. (i) illegality, (ii) irrationality, and (iii) procedural impropriety.** While opining that “further development on a case-by-case basis may not in course of time add further grounds” he added that the principle of “proportionality” may be a possible ground for judicial review for adoption in future. Explaining the said three grounds, Lord Diplock said: (All ER pp. 950j-951d)

By “illegality” he means that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it, and whether he has or has not, is a justiciable question; by “irrationality” he means “*Wednesbury unreasonableness*”. 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 it; and by “procedural impropriety” he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness, but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunal's jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

15. The principle of “*Wednesbury unreasonableness*” or irrationality, classified by Lord Diplock as one of the grounds for intervention in judicial review, was lucidly summarised by Lord Greene, M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] as follows: (All ER pp. 680H-681A)

The court is entitled to investigate the action of the local authority with a view of seeing whether it has taken into account matters which it ought not to take into account, or conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it

may still be possible to say that the local authority, nevertheless, have 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.

16. In State of U.P. v. Johri Mal [(2004) 4 SCC 714] this Court has observed thus: (SCC p. 730, para 28)

“28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court.”

17. Recently in Rameshwar Prasad (VI) v. Union of India [(2006) 2 SCC 1] wherein a proclamation issued under Article 356 was under challenge, Arijit Pasayat, J. observed thus: (SCC p. 166, paras 240-41)

“240. A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

241. It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to

pertinent and proximate matters only, eschewing the irrelevant and the remote.”

18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

19. The following passage from Professor Bernard Schwartz's book Administrative Law, (3rd Edn.) aptly echoes our thoughts on the scope of judicial review:

“Reviewing courts, the cases are now insisting, may not simply renounce their responsibility by mumbling an indiscriminate litany of deference to expertise. Due deference to the agency does not mean abdication of the duty of judicial review and rubber-stamping of agency action: [W]e must accord the agency considerable, but not too much deference; it is entitled to exercise its discretion, but only so far and no further.”

Quoting Judge Leventhal from Greater Boston Television Corpn. v. FCC [444 F 2d 841, 851 (DC Cir 1970)] he further says:

“...the reviewing court must intervene if it ‘becomes aware ... that the agency has not really taken a “hard look” at the salient problems, and has not genuinely engaged in reasoned decision-making....’” (emphasis supplied)

25. In the present factual context, we find merit in the submission of Mr. Agarwal that the rejection of the respondent's candidature was for good reasons in the light of the patent contradiction emerging from the statements made by the respondent in his own application. We find merit in the submission of Mr. Agarwal that the tribunal could not have replaced its own view with that of the petitioner, when the same was premised on application of mind to the facts stated by the respondent himself in his application. The respondent was well aware that he had to make a full and complete disclosure in his own words of his entire experience. When he made the application, he contemporaneously disclosed the position, as it existed. Therefore, the assessment of his eligibility had to be undertaken strictly in the light of his disclosures and statements, and no other material or explanation could have been entertained, merely because he has approached the tribunal or the court. He cannot be heard to either expand or clarify, much less alter, his position. This is exactly what the respondent is seeking to do. Now, ingeniously, he is seeking to urge that he was not prevented from practicing law while pursuing his LL.M course. That may be so. The point is, whether he did claim the said experience. As a matter of fact, he did not. Therefore, all the explanations now put forward by the respondent

would have to be ignored, while testing the decision of the petitioner to treat the respondent as not meeting the short listing criteria.

26. For all the aforesaid reasons, we are of the view that the decision of the tribunal cannot be sustained and we, accordingly, set it aside. The petition is allowed. The parties are left to bear their respective costs.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

MARCH 07, 2019

ssn/sr

