

the establishments under shops and establishments Act, Tourism Hotels, Lodges *etc.*, running against the provisions of A.P. Scheduled Areas Land Transfer Regulation 1/1970, and it is not out of place to note that, the very process of inclusion of non-tribals in the voters list are going absolutely contrary to the provisions of Regulation 1/1970 by the very authorities who are vested with the power of implementing the said Law. There are several instances of the Government itself allotting the land contrary to the Land Transfer Regulations, and also allowing several non-tribal employees into the scheduled areas ignoring that the existing laws in the scheduled areas are not permitting such non-tribal employees to reside on any immovable property under whatsoever nature. The co-ordination between the various departments of the Government with in the four corners of the special laws applicable in the Scheduled Areas is totally lacking and ignored. It is also not out of place to note here that, the Government though giving special allowances like Bad Climate allowance, agency allowance *etc.*, to its employees working in the Scheduled Areas, no subsidies are providing to the habitants of these areas in the amenities like, Water, Electricity, House Tax, Sales Tax, Income Tax, Stamp Act, Registration Fee *etc.*, and the consumption charges, assessment *etc.*, is par with that of the developed plains people residing in the non-scheduled Areas.

Though under the provisions of V

Schedule to the Constitution of India, the Governor of the State is under obligation to report annually with regard to the administration of the Scheduled Areas in the State, it is unknown to the people in the Scheduled Areas whether the Executive of the State are sending such reports to the Hon'ble Governor with regard to the administration of the Scheduled Areas, so as to enable him to know whether the administration is running strictly adhering to the purposes envisaged under the V Schedule to the Constitution and send his annual reports accordingly with necessary recommendations and suggestions to the Hon'ble President of India.

Therefore it is high time cure the administrative defects in the Scheduled Areas and to go a head for the developmental activities of the Scheduled Tribes and the Scheduled Areas with certain and uniform policy by rescheduling the Scheduled Areas considering the preponderances of the Scheduled Tribe population and other reasons, by inclusion of several new areas in the list of the Scheduled Areas, and by way of extending the powers of implementing the special laws applicable in the Scheduled Areas to the Judiciary under the administrative control of the Hon'ble High Court of Judicature from the hands of the Executive, including the powers of the Civil Administration of justice, for the effective administration and development of these areas for forming peace and good Government with in the four corners of the V Schedule to the Constitution of India.

DISAPPEARANCE OF JUDICIAL APPROACH IN THE QUASI JUDICIAL FORUMS - NEED FOR REFORMS — A CRITICAL SUMMARY

By

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There are various statutes which empowers the Executive of the State with

the decision making power with-in-the four corners of respective statutes, which are

recognized as quasi judicial powers and the authorities are quasi judicial authorities. The quasi judicial authorities are expected to discharge their functions acting judicially with-in-the four corners of the respective statutes and with-in-the jurisdiction. The quasi judicial authorities are bound to adopt the procedure as laid down under such statutes strictly adhering to the principles of Natural justice, in disposing of the quasi judicial matters before them, keeping in mind that the principles of Natural justice are intended to prevent a judicial, quasi judicial or administrative authority from doing injustice while discharging their functions.

The distinction between the administrative power and quasi judicial power is very very thin. With the result, now a days, the authorities are considering that, the administrative power is nothing but the quasi judicial power. *In India, the authorities who are entrusted with the quasi judicial functions are neither trained nor educated to act judicially in adjudicating the matters before them.* Consequently, the quasi judicial orders are sustaining with many manifest errors, such as non-application of mind, appreciation of the facts in accordance with the Law, official bias, malice in law and prejudice, which causing grave injustice to the respective litigating citizens before them. The very concept of judicial approach, consideration and non-consideration of documents, giving reasons, and pronouncements of the orders in open forum are almost disappeared in the Quasi Judicial Forums. Corrupt practices, undue influences, arbitrariness, capricious, violation of principles of natural justice, acting beyond the jurisdiction, abuse of process of law and powers, misconception of law, non-consideration of the binding precedents of the High Court(s) and the Hon'ble Supreme Court of India , unreasoned remands to the first quasi judicial authorities by the appellate quasi judicial authorities *etc.*, became the common manifest error in almost all the quasi judicial decisions by the Quasi judicial/ Administrative Authorities both in the lower

level as well as in the appellate stages in the hierarchy of decision making power vested with them under various statutes. With the result, the High Court(s) are becoming over burdened on every day in, and day out, with the litigations/writ petitions against the said quasi judicial decisions and in-actions. Therefore, the Government became the major litigant in the High Court(s). *With the result, the very object of suppression of litigation in the Government level itself by establishing the Quasi Judicial Forums entrusting the quasi judicial powers to the administrative/executive of the State is deviated and citizens are put to grave hardship, trouble, sufferance of pending litigations for years together.* Thus the present quasi judicial system, losing confidence of the public.

The Administrative authorities who are vested with the powers of quasi judicial functions are even unable to recognize or appreciate the very very thin wall existing between the Administrative Power and Quasi Judicial Power. It is surprise to know that, it is the common approach of all most of all the Administrative Authorities vested with the Quasi Judicial powers that, *the expression "Government" means only the Administrative Officers and the employees working as Public Servants, and that the citizens are not form part of the Government.* This attitude establish the lack of knowledge of these authorities about the provisions of Indian Constitution and very democratic form of Government existing in our country. With the said misconception of the meaning of the expression "Government" the quasi judicial authorities as well as their subordinate employees under the said belief and attitude, *wrongly differentiating the expression of Government Interest* is different from the public interest, and not considering the very spirit and objects of several statutes under which they are empowered with the decision making power as quasi judicial authorities, and on the other hand with the said attitude that, being the employees of the Government they shall pass orders in favour of the Government alone under such statutes and consequently disposing

of the quasi judicial matters arbitrarily and without appreciating the facts and circumstances, and without verifying their own records in the custody of their subordinates, who is party before them in the quasi judicial matters. On the other hand, insisting the citizens who are parties before them to produce the connected documents, knowing fully well that, those documents are not in their custody. *In other words, the present mind set of the quasi judicial authorities consisting with a negative thought that, whatever the official version before them need not be proved or supported by any relevant documentary evidence and that the burden lies with the citizen litigating or agitating for his rights.* With the said attitude of the administrative authorities in exercising the quasi judicial functions, causing grave prejudice to the adjudicating party before them and the principle of Law that, “an act of Court shall not prejudice a man” is appears to be no place in the present days before them. Further, as no statute is prescribing the definite circumstances or the modus operandi of exercising the *suo motu* powers vested with the quasi judicial authorities under various statutes, the authorities are under the misconception using the *suo motu* powers in their like manner, without appreciating that the said power is a discretionary one, and that it shall be exercised judiciously within a reasonable time for a just and reasonable cause. The exercise of the *suo motu* powers in their like manner by the quasi judicial authorities are keeping the adjudications alive for years together causing grave sufferance to the citizens adjudicating for their rights before these authorities. *Therefore, it is high time to define and clarify the common circumstances under which a quasi judicial authority can exercise the suo motu powers under a statute, so as to conduct their affairs and functions effectively in an absolutely non-discriminatory manner.*

It is to be noted here that, out of the 100% of quasi judicial authorities, only about 2% are dictating the decisions their own and rest of them *are solely dependents on the concerned*

clerks or Government Pleaders appearing before them representing, such Government Officer who is a party before them in the matters. Majority of the Quasi Judicial authorities are habitual in treating the Government Pleader appearing before their tribunal representing the Government Officer who is a party before the said forum, *as an advisor to the presiding officer of the said tribunal for disposing of the said matter, and not treating him as a counsel for one party before him.* Consequently, the opinion, suggestion or version of the Government Pleader is unilaterally considering and passing the orders accordingly. Similarly majority of the quasi judicial authorities are not disposing the matters before them, while considering the facts, connected documents and record before them duly applying the mind, and on the other hand they are solely dependents on the note files submitted by the concerned clerks. *It is not out of place to mention here that, some of the offices which are entrusted with the quasi judicial functions are taking the services of retired employees even as out sourcing employees purely for purpose of drafting quasi judicial orders on their behalf. These attitudes of the quasi judicial authorities, are increasing the corrupt practices in respect of the quasi judicial matters before them resulting the adjudication results with unfair and unreasoned orders.*

Similarly, the approach, attitude, consideration of the appellate quasi judicial authorities, who are senior administrative officers also not appreciable, and their orders also sustaining with the above discussed manifest errors and disposing of the matters in the manner stated supra, *adversely affecting the rights and interests of the citizens before them.* They are disposing of the appeal, with the manner either to uphold the order of the Lower Quasi Judicial authority or to remand the case back for *de novo* enquiry without any reasons and notwithstanding anything with regard to the defects, merits and demerits of the order appealed before them. Even, the appellate quasi judicial tribunals refused to grant stay of execution of the order of the Lower Authority, without giving any

opportunity of being heard, despite the pleading that, the Government Officer who is party to the proceedings taking steps to evict him from the land knowing fully well the *lis* in respect of the subject-matter of the said appeal, and that in case he evicted the very purpose of filing appeal will become futile, and there is no provision under such statute to get back the possession of the land.

The very interesting fact to be noted is that, the Revenue Tahsildars/Mandal Revenue Officers are generally respondent(s) in the (Revenue side) quasi judicial tribunals, and they are differentiating the orders issued by the LAS Officers with that of the Non-LAS Officers. If the Quasi Judicial Tribunal is presided over by an I.A.S. Officer, these respondents never made attempts to file any appeal against the orders passed by such officers, irrespective of the demerits, procedural lapses etc., existing in the said decisions. Even, any aggrieved party files an appeal also, the general result would be confirmation of the order issued by such officer. But, in case, such order was issued by the said tribunal presided over by a Non I.A.S. Officer, the appellate tribunal generally presided over by a senior I.A.S. Officer, the result would be reversal of the said orders, despite existing of merits, discussion of the documents, application of mind, and in accordance with the precedents of the High Court(s) or the Hon'ble Supreme Court of India.

In the existing circumstances, in order to uphold the system and to deprecate the existing practices adopted by the Quasi Judicial Tribunals (especially Revenue Department side) in disposing of the matters, the judicial check or control is essentially required in the Quasi

Judicial adjudicating stage itself by way of appointing a Judicial Officer not less than in the rank of District Judge, as the final appellate authority in the hierarchy of the appeals under such statute(s), who is able to cure the defects in the decisions by the Lower Quasi Judicial Authorities and able to put an end to the litigation in majority matters according to strict application of the Law, par with that of a civil Court. *Like appointment of District Judge as the Presiding Officer of the Land Reforms Appellate Tribunal under the provisions of Land Reforms Act.*

Therefore, in order to reduce the litigation on the file of the High Court(s), the Hon'ble Supreme Court in respect of majority of the matters consisting with the above discussed common manifest errors, not only the judicial check and control by way of appointing the Judicial Officers in the rank of District Judges as the final appellate authority under such various statutes became essential, but also suitable amendments have to be made in the service rules, prescribing minimum qualifications in Law, necessary training in writing the judgments by application of mind to the issues involved in the matters, fixing of minimum responsibility, to promote and post the administrative authorities as the first quasi judicial authority under various statutes, including the possibility of utilizing the services of the senior advocates by way of appointing them as the Quasi Judicial Authorities are essentially required to create confidence among the public litigating for their rights before the quasi judicial tribunals as a part of reforms in the quasi judicial tribunals and appellate tribunals.

IS THE PERIOD OF LIMITATION FOR BSNL/GOVT. COMPANIES 30 YEARS OR 3 YEARS ?

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Introduction

This article raises an important question

on the period of Limitation as applicable to Government of India Companies in general and BSNL in particular.