

THE OPEN UNIVERSITY OF SRI LANKA

LL.B. DEGREE PROGRAMME – LEVEL 5

FINAL EXAMINATION – 2007

ADMINISTRATIVE LAW – LWU 3311 / 4331

DURATION - THREE HOURS



Date: 16th March 2007

Time 1.30 p.m. – 4.30 p.m.

Illegible handwriting will be penalized

Answer Five Questions only

1. “Absence of provisions in the enabling Act granting relief to a citizen affected by an Administrative decision does not prevent him from seeking justice from courts. Well recognized constitutional principles provide the basic foundation for judicial review of administrative action”.

Discuss this statement in the light of the constitutional foundation of judicial review.

2. The Road Development Authority (RDA) is a governmental body established under an Act of Parliament which has been given powers *inter alia* to widen and reconstruct main roads. The RDA has undertaken to reconstruct a 10 k.m. area of the main road from Panawila to Avissawella. This is the only road available for the residents in the Panawila area to gain access to hospitals, schools, police station, their workplaces etc. This road has been in a state of disrepair for the past several years causing severe disruption for public transportation. Only three wheelers and lorries were able to use this road.

The residents of Panawila have written to the RDA several times requesting them to repair the road. But to date the RDA has not taken any steps to do so. The residents of Panawila consult you as to whether any legal action could be taken against the RDA.

Advise them.

3. Victor is a third year student of the Faculty of Science at the University of Ruritania. On 22.12.2006 he was charged under the Anti Ragging Act for ragging a 1st year student of the same faculty. The senior student counselor who saw the incident came forward as a witness. The Vice Chancellor of the University appointed a committee to inquire into the matter. The committee consisted of the senior student counselor and two academics from other faculties. The committee decided to hold an inquiry on 26.01.2007 and sent the charge sheet to Victor by mail 03 days before the inquiry date. Victor received the charge sheet a day before the inquiry. Victor requested a postponement of the inquiry stating that he did not have sufficient time to prepare for his case. However the committee turned down his request.

Victor requested the committee to permit him to obtain legal representation for the inquiry. This request was also refused by the committee. During the inquiry Victor requested to cross examine the eye witnesses. But the committee refused to grant permission to do so. The inquiry lasted for 03 hours and the committee forwarded its decision to the Vice Chancellor. Based on the findings of the committee the Vice Chancellor suspended the classes of Victor for one year.

Victor who is dissatisfied with the decision of the Vice Chancellor consults you as to whether he could challenge the decision of the Vice Chancellor in a Court of Law.

Advise Victor.

4. "Recent controversial decisions of the Judiciary of Sri Lanka have created an uncertainty with regard to the availability of declaratory order against administrative actions"

Critically discuss this statement with reference to decided cases.

5. The Natural Disaster Compensation Board (NDCB) is a statutory body established under an Act of Parliament. The Board has powers *inter alia* to grant compensation for the reconstruction of buildings and houses damaged by natural disasters. The Act further states that the board is empowered to grant compensation only after obtaining a report from the Natural Disaster Management Committee which is a statutory body established under the Act. One of the provisions of the Act declares that "the board's decision is final and conclusive and cannot be challenged in any court of law".

Perera, a resident of Baddegama a coastal area in Galle, forwarded an application to obtain compensation for the reconstruction of his house which was damaged by a recent flood. However the chairman of the board rejected his application after obtaining the report of the committee. But the reasons for the rejection of application were not given by the chairman.

However Perera later discovered that the NDCB had granted compensation to Silva, a resident of the same village and a classmate of the chairman, without obtaining a report from the Committee. Perera consults you as to what remedies available to him.

Advise him

6. The government of Sumiland introduced a policy to grant a monthly allowance for persons who lose at least one of their parents in combat while protecting the country. For this purpose the Sumiland Parliament enacted the Family Assistance Act of 2006. The Act provides that "Every person under age of 18 and who loses one of his/her parent in combat is entitled to a monthly allowance of \$200. The Act further states that the person who is eligible to apply for an allowance should forward the application to the Board of Family Assistance and that every determination of the board shall be final and conclusive and shall not be questioned in any court of Law.

Michael who lost his adoptive parents in combat made an application to the Board of Family Assistance. The board refused to give this benefit to Michael construing the provision as applicable only to persons who lose their natural parents in combat. Michael maintained that he was a legally adopted son and therefore was entitled to compensation under the Act. However the board said that its decision was final and conclusive. Michael consults you as to whether he could challenge the decision of the board in a court of law.

Advise him assuming that the interpretation Act of Sumiland is similar to the Sri Lankan Interpretation (Amendment) Act No 18 of 1972.

7. (a) The National Ports Authority Act of Proland gives authority to the Ports Authority to make by-laws regarding disciplinary matters of dock laborers. One of the provisions of the Act states that the parties who are dissatisfied with the decision of the Authority may appeal to the Minister in- charge of Ports within a period of 30 days from the date of the announcement of the Authority's decision.

The Ports Authority made a regulation which stated that all future appeals should be made to the Appeals Board established by the Authority and the decision of the Appeals Board would be final. The Chairman of the Authority dismissed Gordon, one of the dock laborers from his job on the ground of misconduct. The appeal made to the Appeals Board was rejected. Gordon consults you whether he could challenge the decision of the Chairman

Advise Gordon

- (b) "Convenience and necessity often demand that public authorities be permitted to delegate their functions to subordinate bodies. However keeping delegated legislation under judicial control is essential in a welfare state".

Comment.

8. "A Petitioner seeking a prerogative writ is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still court has discretion to deny him relief having regard to his conduct: delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief." - *Principles of Administrative Law in Sri Lanka* by Sunil F.A. Coorey, p 478

Critically discuss this statement with reference to decided cases.

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