BLOGS

Delegation and Sub-Delegation under Administrative Law

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Edit TABLE OF CONTENTS Introduction Meaning of "delegation" under Administrative Law Scope of "delegation" under Administrative Law Meaning of "sub-delegation" under Administrative Law Objective and Need for Sub-delegation Important Case Laws on Delegation Conclusion

Introduction

Delegation and sub-delegation of powers are concepts that are commonly used in administrative law to distribute decision-making authority within an organization or government structure.

In this post, we'll discuss the meaning of delegation and sub-delegation along with a few cases on delegation and sub-delegation under administrative law.

Meaning of "delegation" under Administrative Law

The term "delegation" refers to the granting of authority by an entity or authority to another person or agency to perform certain tasks or exercises discretion on its behalf. It does not imply a complete transfer or surrender of powers by the delegating person or entity but rather involves conferring the authority to perform actions that the delegating person would otherwise have to undertake themselves.

The person or entity granting the delegation retains a general control over the activities of the delegate and does not divest themselves of their rights.

Scope of "delegation" under Administrative Law

Legal scholars do not typically use the term "delegation" to suggest that the delegating person or entity relinquishes their powers in a manner that strips them of their rights. Instead, it signifies the granting of authority or assigning of tasks to another party. The delegation allows the

delegate to act on behalf of the delegating person or entity within the scope of the delegated authority.

Even if the authority retaining control over the delegated discretion maintains a general oversight or control over the activities of the delegate, the act of entrusting the exercise of discretion to the delegate still qualifies as “delegation” and falls within the scope of the maxim.

The crucial factor is whether the authority exercises a substantial degree of control over the actual exercise of discretion, to the point where it can be said that the authority directs its own mind to the matter. If such control exists, then, in legal terms, there is no “delegation,” and the maxim does not apply.

In summary, “delegation” refers to the granting of authority or assignment of tasks by an entity or authority to another person or agency. It does not imply a complete surrender of powers by the delegating entity. The application of the maxim depends on whether the delegating entity exercises a significant degree of control over the exercise of the delegated discretion, thereby directing its own mind to the matter.

Meaning of “sub-delegation” under Administrative Law

In administrative law, sub-delegation refers to the process by which a person or entity that has been granted administrative powers or authority by a higher authority further delegates some or all of those powers to another person or entity.

It involves the transfer of authority from the original decision-maker, known as the delegating authority, to a third party, known as the sub-delegate, who then exercises the delegated powers on behalf of the delegating authority.

This delegation allows for the efficient and effective administration of public affairs by distributing the workload and decision-making responsibilities.

Objective and Need for Sub-delegation

The practice of sub-delegation, or further delegation of authority, is supported by considering the following factors:

Power of Delegation: It is argued that when an authority delegates its powers to another person or agency, it inherently includes the power of further delegation. This means that the delegate has

the authority to sub-delegate the assigned powers to another person or agency.

This view is based on the principle that the delegate should have the flexibility to distribute the workload and ensure efficient administration of the delegated powers.

Ancillary to Delegated Legislation: Sub-delegation is seen as an ancillary or subsidiary process to delegated legislation. Delegated legislation refers to the laws or regulations made by an authority other than the legislature, usually the executive, under the powers delegated to them by the legislature.

Sub-delegation allows the executive to authorize and delegate specific tasks or decision-making authority to lower-level officials or agencies within its own administrative structure. By allowing sub-delegation, the efficient functioning of the delegated legislation can be ensured, as it enables the executive to delegate tasks to those with appropriate expertise and jurisdiction.

Preserving Legislative Authority: Objecting to sub-delegation could potentially undermine the authority granted by the legislature to the executive. The legislature delegates certain powers to the executive to enable effective administration and implementation of laws.

If sub-delegation is prohibited, it may restrict the ability of the executive to distribute tasks and responsibilities, hindering the efficient functioning of the delegated legislation. Therefore, permitting sub-delegation is seen as essential for maintaining the intended authority and functionality of the delegated powers.

Important Case Laws on Delegation

In the case of ***Hamdard Dawakhana v UOI***, the Supreme Court of India addressed the issue of delegation of legislative power by the legislature to the executive. The court held that while there is no specific bar in the Indian Constitution against such delegation, it is well established that essential legislative functions cannot be delegated.

The legislature must lay down the legislative policy itself, and it cannot create a parallel legislature by transferring this power to the executive. Delegation of legislative power should not amount to an abdication of the essential legislative functions.

This case emphasized the principle that the legislature must retain control over the legislative policy and cannot entirely delegate its responsibility to the executive. While certain powers can be delegated, the core functions of determining the legislative policy and enacting laws must remain

within the domain of the legislature itself.

In the case of ***Ultra Tech Cement Limited v. UOI***, the Kerala High Court addressed the issue of sub-delegation of legislative power. The court held that sub-delegation refers to the further delegation of the same power that was originally delegated by the legislature.

The governing principle is that legislative powers must be exercised by the delegatee (the entity to whom the power is initially delegated) and cannot be further delegated unless expressly permitted by the parent law.

The court invoked the principle of *delegatus non potest delegare*. Unless the parent law explicitly allows for sub-delegation, the original delegatee, such as the Central Government in this case, cannot transfer its power to any other officer or entity.

This case highlighted the importance of maintaining the integrity and accountability of the delegation process. It emphasized that the authority granted by the legislature should be exercised by the delegatee itself, ensuring that the legislative powers are not dispersed to multiple levels or entities without proper authorization.

Conclusion

Overall, these cases illustrate the principles surrounding the delegation of legislative power and the limitations imposed on such delegation. While delegation is permitted to a certain extent, it should not result in the abdication of essential legislative functions or the unauthorized sub-delegation of powers.

The legislature must retain control and responsibility for laying down the legislative policy, while the executive or delegatee can carry out the implementation and execution of the laws within the framework provided by the legislature.