

Original Paper

Research on Judicial Review of Manifestly Improper Administrative Acts

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Abstract

Judicial review, as a form of external supervision, can effectively improve the lack of self-supervision by administrative subjects. Obviously improper as one of the circumstances of administrative behavior, the definition of the academic community, and the “Administrative Procedure Law” and its judicial interpretation of the lack of clear definitions and application standards, resulting in the court in the judicial practice of the application of “obviously improper” as the basis for review of the standard is not uniform and inconsistent application of the problem, judges and Relying on their accumulated professional knowledge and practical experience to determine whether the administrative subject of the administrative act constitutes “obviously improper”, with a greater subjectivity, which may lead to administrative action as well as the judicial trial of the phenomenon of the same case, undermining the impartiality and authority of the judiciary, not conducive to the construction of the rule of law, the rule of law government. Therefore, in order to solve the above problems, the need for the meaning of clearly improper and its judgment standards, standardize the “clearly improper” the scope of application of the basis for review, the establishment of a unified standard of judicial review, but also to continue to improve the administrative case guidance system. Therefore, clarifying its criteria is of great significance to the people’s courts in correctly adjudicating administrative cases to safeguard the lawful rights and interests of citizens and legal persons, and also helps to standardize the criteria for judicial review, and to regulate and limit administrative power.

Keywords

Manifestly Improper, Judicial Review, Judicial Remedies, Administrative Action

1. Introduction

1.1 Clearly Inappropriate Textual Interpretation

First, from a literal point of view, manifest impropriety consists of two main lexemes: “manifest” and “impropriety”. “Obvious” is a value judgement, indicating a degree of clarity, intelligibility and particular ease of recognition. “Inappropriate”, on the other hand, is a factual judgment, indicating unreasonableness and inappropriateness. Its overall meaning is a clear indication of unsuitability and inappropriateness. Obvious impropriety is essentially a general and vague legal concept, which is subject to subjective judgment in the light of the spirit of legislation and legal principles.

1.2 Obviously Inappropriate Academic Opinions

Different scholars have different views on the meaning of the term “manifestly improper” in the academic world. Mo Yu-chuan professor that the administrative organ to make the administrative act to meet the requirements of legality and reasonableness, when the administrative act reaches the degree of obvious unreasonableness, unfairness, that is characterized as obviously improper, then need the court to intervene. Professor shen han thinks: “obviously improper in the legislation is for the judicial review of the intensity of the establishment of a relative limit, to avoid excessive judicial intervention in administrative discretion. Obviously inappropriate this standard can cover the administrative organs due to cognitive bias, negligence or error and made with the legislative purpose, the spirit of the legislation, the basic principles of the rule of law, the general concept of fairness and justice or common sense discretionary decisions obviously contrary to each other”. Prof. Jiang Ming’an defines obvious impropriety as obvious unreasonableness and injustice; Prof. Hu Jianmiao argues, “Obvious impropriety refers to the problem that an administrative act is not in accordance with reasonableness although it is not illegal”. Professor He Haibo, on the other hand, from the point of view of distinguishing between formal legality and substantive legality, obviously improper in terms of formal legality, although in conformity with the legal rules established by laws, regulations, rules and so on, but in accordance with the point of view of substantive legality, in addition to not violating the specific rules of the laws, administrative regulations, rules and regulations, it also can not be contrary to the principles of administrative law, the spirit of the legislation, administrative precedent, public morality and other sources of legal expressed in the legal norms. Summarizing the above views, the author believes that: “Obvious impropriety is an illegal act committed by an administrative organ that is contrary to the principles of administrative law, the purpose of legislation, and public morality, and that causes substantial damage to the administrative relative and legitimate rights and interests”.

1.3 Manifestly Improper Legal Interpretations

In the Administrative Litigation and Judicial Interpretation Related Understanding and Application, the definition of obviously improper administrative behavior basically adopts the viewpoint of Professor Jiang Ming’an, that is, the administrative behavior is unreasonable and unjust by seriously violating the principle of reasonableness. From the results of the interests of the interpretation of clearly improper administrative behavior results in violation of the usual clean-up degree. But an administrative act is

unreasonable to what extent is considered obviously improper, how to distinguish between general improper and obviously improper, these are no specific refinement of the standard. Obviously improper as a legal concept of uncertainty due to the lack of specific theory and refinement of the provisions of the court in specific cases of trial and review of certain difficulties. Although obviously improper itself with a certain degree of ambiguity, but also should be specific quantitative concept of its scope, so as to make the judicial review of the objective criteria to maintain its fairness. Therefore, the concept of clearly improper administrative action and specific refinement of the standard is conducive to regulating the administrative organs of the exercise of discretionary administrative action and the fairness of the court's judicial review.

2. The Need for Judicial Review of Manifestly Improper Administrative Action

2.1 Administrative Rule of Law Needs

In the dictionary, "administration" means management, and in the English dictionary, administration and management are even one word. In the usual sense, the term administration refers to the activities of a social group that organizes and manages a certain range of affairs for a specific purpose. According to this interpretation, administration exists in all social organizations, government, enterprises, institutions, mass organizations and so on. It can be seen that administration exists in all aspects of human life. In order to regulate the exercise of administrative power, it is necessary to impose certain constraints on it to ensure reasonable administration in order to realize the efficient management of the state and social affairs, maintain social peace and stability, and further promote administration in accordance with the law and the rule of law. However, with the continued expansion of modern administrative power, there is a risk of abuse of power, and in order to implement administration in accordance with the law and the rule of law, it is necessary to remain vigilant against the downward expansion of administrative power on the grounds of governance. In addition to the horizontal expansion of administrative power, resulting in its management of social affairs more detailed, wider coverage, and administrative power is not like the exercise of power that is strictly regulated, it will inevitably be abused, the administrative subject is very easy to make obviously improper administrative behavior. Therefore, in the process of safeguarding the exercise of administrative power, attention should also be paid to the supervision of administrative power.

Administration in accordance with the law is an inevitable requirement for the construction of a rule-of-law state and a rule-of-law government. Administration in accordance with the law requires that administrative subjects shall not violate the provisions of laws, administrative rules and regulations in carrying out administrative activities. If the administrative organ or other administrative subject violates the relevant laws and regulations, exceeds the authority, made unreasonable, inappropriate administrative decisions need to bear the corresponding legal responsibility. Therefore, to clarify the meaning of administrative behavior is obviously improper, for judicial review and the rule of law has important significance.

2.2 Need for Administrative Discretionary Control

Administrative discretion is also a fuzzy concept, similar to the criminal law in the fitness of crime and punishment. Academics mostly define it in terms of legislative power, judicial power and administrative power. For example, Professor Jiang Ming'an believes that in line with the spirit of legislation, legislative purposes, legislative principles, in order to achieve the administrative purposes, the administrative organs to choose, decide to make the behavior is administrative discretion.

With the legislator's substantive provisions of the substantive law of administrative discretion, the court can realize the administrative organs of their own choice of administrative action to achieve the supervision of the litigation, and to achieve the legislator's purposes and requirements. Therefore, administrative discretion is viewed from the perspective of the legislature, the judiciary and the executive, which helps to understand its meaning. Therefore, how to realize the balance between the freedom of administrative discretion and judicial supervision is the focus.

Administrative discretion has several characteristics as follows. First, the power of administrative discretion is clearly defined by law. Including the power by whom to exercise, discretionary standards, discretionary content, etc., violation, abuse of power need to bear the corresponding responsibility. Secondly, administrative discretion is made by a specific person within certain limits, although the laws and regulations have objectivity, but also less subjective. The choice and decision of administrative discretion is relatively free, must be made within reasonable and lawful limits. Third, the scope of discretion, there are different academic differences. One party claims that administrative discretion is limited to specific administrative action. And the other side advocates, administrative discretion and in all administrative behavior. Because of the expansive nature of administrative action, so the abstract administrative action field should also have the right amount of discretion in order to regulate the administrative power. Fourth, the certainty and predictability of discretionary decisions. Although administrative discretion has subjective initiative, it is also limited by norms. The choice of administrative behavior must strictly abide by the laws, regulations and other restrictions and in line with the legislative principles and the spirit of legislation.

The famous administrative jurist, Bernard once said: "administration lies in discretion and control of discretion". To a certain extent, it can be said that the vitality of administrative power lies in administrative discretion. And administrative discretion is under the clear provisions of the law, so administrative discretion has an umbrella. And because the choice of administrative power with a great deal of subjectivity and environmental uncertainty, so the administrative body is likely to violate the exercise of power, make a form of legal, but the substance of the administrative decision is unreasonable. The legislative purpose of administrative discretion itself is to make up for the limitations of the law, to supplement the defects and deficiencies of the legislation, and to give full play to the subjective initiative to realize the justice of individual cases. Based on the principle of interconnectedness of power and responsibility, in order to avoid abuse of administrative power, administrative discretion is also subject to restriction and regulation. The regulation of administrative

discretion in most cases focuses on legislative control as well as formalistic checks, that is to say, the legislature enacts strict legal norms at the time of legislation to control the exercise of administrative discretion. Another way is *ex post facto* relief, i.e., in the face of unjust and unreasonable administrative decisions to limit the unfairness caused by the exercise of administrative discretion by means of judicial review. However, the effect in reality is not satisfactory, and the attempt to realize the regulation of administrative discretion through legislation is usually constrained by many circumstances. For example, judicial review has its own limitations and judicial remedies have a certain degree of delay. Therefore, it can be learned that there are many difficulties in trying to realize the regulation of administrative discretion by means of traditional means. So far, the regulation of administrative discretion has shifted from procedural to substantive, from external constraints to internal regulation, which is the only way to minimize or even avoid the making of obviously improper administrative acts.

2.3 The Need for Judicial Remedies

Due to the administrative discretionary behavior itself does not have a specific and clear standards and made the subject with the subjective initiative, always inevitably produce infringement of the legitimate rights and interests of administrative counterparts. Therefore, the administrative remedy should not only include illegal administrative behavior, but also the form of legal but illegal administrative behavior included. The administrative remedies include but not limited to, administrative litigation, administrative reconsideration. Administrative litigation refers to when the legal rights and interests of citizens and legal persons suffered unjust and illegal infringement can seek judicial relief from the court. Therefore, administrative litigation assumes the function of final guarantee.

An important legal principle of our country, power and responsibility are unified, therefore, the power must be regulated, and obviously improper administrative behavior should be regulated. Judicial remedies are characterized by both passive and active. Its passivity is reflected in the initiation of the procedure, that is, no lawsuit, the court may not take the initiative to intervene in the obviously improper administrative behavior of judicial review before the parties to the court litigation. Judicial review at the same time also has a positive and active aspects, that is, after the court accepts the administrative litigation case, the judicial organs can be appealed to the administrative behavior of the initiative to review, and actively safeguard the legitimate rights and interests of administrative counterparts, to maintain the value of legal fairness and justice. Judicial remedies can effectively regulate the administrative subject's discretionary behavior, the period is more reasonable, can significantly reduce the occurrence of improper administrative behavior, and make the law more authoritative.

3. Inappropriateness of the Manifest Impropriety Standard in Judicial Review

3.1 Inconsistent Standards for Determining Manifest Impropriety

The Legal Affairs Commission of the National People's Congress, as the formulation authority of the New Administrative Procedure Law, also organized scholars to publish the "Interpretation of the Administrative Procedure Law", so this book has a high reference value, which can better help us to understand the legislator's attitude towards the obviously improper. The legislator in the "interpretation of the administrative procedure law" on the evaluation of obviously improper is this: administrative punishment results in national celebration or excessive. This interpretation evaluates obvious impropriety from the sense of result. But the court can not agree with this view. Because the court's trial is not only the result, there are other procedures such as trial, this explanation obviously can not meet the requirements of the court practice review. For the court, to judge whether an administrative act is improper, can not only look at the results, but also to judge the administrative organ to make the administrative act to give what purpose, as well as the means used is appropriate. In 2014, before the revision of the administrative procedure law, the academic community on the obviously improper research is very little, administrative organs and judicial organs on the obviously improper are not a unified interpretation of the standard, can only rely on their own experience in practice on its judgment. To this day, the academic community for the interpretation of obviously improper is still divided.

3.2 Inadequate and Clearly Improper Reasoning in Adjudicative Documents

In accordance with the provisions of the Administrative Procedure Law, in order to maintain the authority of the law, it is necessary to justify the reasons for the decision, with a clear basis and sufficient reasons to argue. The abstract concept of clearly improper more need to be sufficient grounds to argue, make the administrative litigation trial to achieve satisfactory results. The legislator set up obviously improper as the basis for review, its intention is to prevent the abuse of administrative power, safeguard the legitimate rights and interests of the administrative relative, but in practice it is not difficult to find, most of the court's decision, the obviously improper reasoning is obviously not sufficient, which is unconvincing.

For obvious insufficient reasoning, obviously the word can see the legislator for the respect of administrative power, only when the administrative power is obviously wrong after the fact by the judicial power to be corrected. Not only maintain the discretionary power of the administrative organs, but also can give the administrative relative reasonable relief. But in practice, the court for the "obvious" reasoning is usually only a direct quote from the article, only one sentence, not enough.

For "improper" reasoning is insufficient. The specific form of its manifestation is that the violation of what is improper, as well as the reasons for the violation of what is, to what extent the violation is considered improper, these in the decision often did not set out. For example, the court in the decision to write: "the main evidence is insufficient, obviously improper", the latter part of which seems to be followed in the lack of evidence after a result of the description, and no reasoning of the argumentation, was passed over.

4. Proposals for Improving Judicial Review of Manifestly Improper Administrative Acts

4.1 Refinement of the Standard for Determining Manifest Impropropriety

So far, in practice, most judges and scholars have used the basic principles of administrative law as the standard for judging obvious improprieties. Although this approach has a certain theoretical basis, but this standard depends on individual value judgment, which may lead to different judges to treat the same case will come to different conclusions, is not conducive to the consistency and certainty of the law, it is difficult to give adequate reasoning in the judgment, resulting in judicial practice, the confusion of the application of the obviously improper. Appropriate reference can be made to the legislative principles, for example, the principle of equality, in the same case there are more than one relative who has committed an act of comparable degree of violation of the law, the administrative organ should impose a similar degree of punishment on all. Secondly, the principle of proportionality, which is an important principle in administrative discretion, to achieve a balance of the interests of all parties. In order to achieve certain administrative purposes, the administrative organ should obtain greater benefits at the least cost, and maintain a good balance between individual interests and public interests.

4.2 Improving the Administrative Case Guidance System

Although our country does not take jurisprudence as a formal source of law, as do common law countries, it is undeniable that jurisprudence has a great role to play in the application of legal norms by judges in adjudicating cases and in harmonizing adjudication standards. Simply put, it means that such rules of adjudication, which are recognized by the highest judicial body, can provide a basis of legitimacy that is highly persuasive to the judiciary, administrative agencies, and administrative counterparts.

As mentioned earlier, there is also the problem of insufficient reasoning in cases of obvious impropriety. Improve the administrative case guidance system, this can also be improved. The role of the judgment is not just a simple record of the results of the case, which is more important is the basis of the decision and convincing reasoning process. The judge not only to persuade the parties to the litigation, but also to persuade themselves, therefore, the establishment of the administrative case guidance system, to standardize and improve the judicial review of clearly improper administrative action, has practical significance, can unify the judge to decide on the basis of the legal terminology to the maximum extent possible to offset the ambiguity of the legal terminology. In addition also help to improve the judgment on the reasoning part of the argumentation, more clearly see the judge free heart process, so as to form an invisible supervision of the judge, a better balance between the judicial organs, administrative organs and administrative relative interests of the three parties, to maintain the authority of the law, and to maintain social harmony.

5. Conclusion

To start from the focus of the dispute of administrative behavior, according to the scope of obviously improper review of administrative behavior, filtering out irrelevant factors, from the legal principles of administrative law for consideration, after full argumentation to clarify the meaning of the scope of obviously improper. Especially in the adjudication documents to strengthen the argumentation and reasoning, for different audiences, so that the administrative organs, the administrative relative, as well as the public and other satisfaction, so that the law to show the proper feelings and reasoning, to achieve the unity of the legal effect and social effect.

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