

Sri Lanka J.S.S. 1991 14 (1 & 2)

THE ROLE OF THE ADMINISTRATION IN CENTRAL-LOCAL RELATIONS: THE LEGISLATIVE AND EXECUTIVE CONTROL

SHIRANI A. BANDARANAYAKE

Discussing the relations between the Central Government and local authorities, the Royal Commission on Local Government in England which reported in 1969, stated:¹

What is wrong in the relationship at present is partly that the Central Government tries itself to do some of the things that belong properly to local government, and partly that local authorities are not given enough freedom to go their own way. In addition, they are subjected to a number of minor controls and requirements which detract from their ability to manage their own affairs and make their own decisions-controls and requirements which cannot we believe, be justified as necessary in the national interest.²

This analysis shows that in addition to the judicial and financial controls over local authorities, the Parliament through the administration, could control activities of the local government institutions. For instance, in England, section 68 of the Education Act 1944³ empowers the Secretary of State to give directions:

if [he] is satisfied ... that any local education authority... have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act....

Although such statutory interventions are somewhat rare in England as well as in Sri Lanka, it is apparent that in Sri Lanka the Minister of Local Government possessed characteristic powers in controlling local authorities. Prior to the establishment of Provincial Councils in 1987, the local authorities in the country functioned under the Ministry of Local Government and the Minister through a network of Commissioners and Assistant Commissioners of Local Government, in which they had the power to supervise the local Government institutions. Along with the introduction of Provincial Councils, a devolved system of administration was introduced which changed the earlier system of local government administration. Nevertheless, it is important to analyse the type of control that prevailed prior to 1987, in order to understand the role of the administration in central-local relations.

Commensurate with the statutory provisions of Local Government Ordinances, the Minister of Local Government was empowered to approve and confirm by-laws, to grant approval and recommendations to local authority decisions with regard to policy matters, to conduct inquiries and investigations in relation to local councils, to dissolve local authorities and to remove Mayors/Chairmen and councillors of such institutions.

1 The Redcliffe - Maud Committee, Cmd. 4040.

2 *ibid.*

3 Education Act 1944.

Accordingly, local authorities had to depend mostly on the decisions of the Minister as he could not only prevent the local authorities consummate decisions with regard to local government services, but also could limit the life span of councils by dissolving them, even affecting the office of Mayors/Chairmen and councillors.

It is intended to examine in this paper, the principal powers of the Minister in relation to local authority functions, which prevailed prior to 1987, which will enable us to assess the role of the executive in central-local relations. For this purpose firstly, we shall discuss the ministerial powers in relation to local authority by-laws, followed by an analysis of the authority of the Minister in connection with the approvals and confirmations in local authority policy matters. The powers of the Minister with regard to the dissolution of local authorities and the removal of Mayors/Chairmen and Councillors will not be discussed here as it needs separate examination.

I. Legislative supervision : Control of by-laws

Local councils exercise legislative power over their respective areas by making by-laws. Describing a local authority by-law, Lord Russell, C.J., in *Kruse v Johnson*⁴ stated:

A by-law of the class we are here considering I take to be an Ordinance affecting the public or some portion of the public imposed by some authority clothed with statutory powers, ordering something to be done or not to be done; and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which but for the by-law they would be free to do or not to do as they please. Further, it involves this consequence, that if validly made it has the force of law within the sphere of its legitimate operation.⁵

With regard to the powers of making by-laws it is clear that the local authorities have been duly authorized to make their own by-laws. Lord Russell, C.J., in *Kruse v Johnson*, stated:

We thus, find that Parliament has thought fit to delegate to representative public bodies in towns and cities and also in countries, the power of exercising their own judgment as to what are the by-laws which to them seem proper to be made for good rule and Government in their own localities.⁶

For example, the Municipal Councils Ordinance, provides:

Every Municipal Council may from time to time make and when made may revoke or amend such by-laws as may appear necessary for the purpose of carrying out the principles and provisions of this ordinance.⁷

4 [1898] 2 Q.B. 91.

5 *ibid.*, at p. 96.

6 *ibid.*

7 Municipal Councils Ordinance, Section 267(1), Urban Councils Ordinance, Section 153(1), Town Councils Ordinance, Section 152(1), Village Councils Ordinance Section 42.

By means of the power granted to local authorities to make their own by-laws, an opportunity was provided for local government institutions to take decisions with regard to their fundamental objectives. This could be regarded as an important instrument as the decision making power of fundamental responsibilities of local government institutions was in the hands of the representatives of the people.

Although these provisions imply that the local government institutions are empowered to make their own by-laws, it could be seen that the sole authority of making by-laws is not in their hands. The most important feature to be noted in this respect is the authoritative power of the Minister of Local Government in validating a local authority by-law. Consequently, in his judgment, deciding the validity of a particular by-law of the Colombo Municipal Council, De Kretser, J., observed:

By law 47 is kept alive in the present Municipal Councils Ordinance by section 320 which provides for the continuance of existing by-laws and section 267 provides for the municipality to have the power from time to time to make by-laws as may appear necessary for the purpose of carrying out the provision of this Ordinance, while section 268 enacts that no by-law shall have effect until it had been approved by the minister, confirmed by the Senate, and the House of Representatives and notification of such confirmation is published in the *Gazette* while sub-section 2 states that every by-law shall upon the notification of such confirmation be as valid and effective as if it were herein enacted.⁸

Accordingly, it is clear that to validate a by-law made by a local authority, the approval of the Minister of Local Government, confirmation by the Parliament and notification of such confirmation published in the *Gazette* were essential. In England, the procedure for making local authority by-laws is in one way similar to that of Sri Lanka, as the by-laws must receive the sanction from the appropriate Minister in the first instance.⁹ There are however certain differences in the respective procedures. In England, after the by-laws have been made, but one month before applying for their confirmation, notice of the intention to apply for confirmation should be made to the Secretary of State and the local authority must give notice of such intention in one or more local newspapers circulated in its area.¹⁰ A copy of the by-laws must be deposited at the local authority offices and made available for public inspection without charge.¹¹ In Sri Lanka, the publication of by-laws was required only after the by-law has been confirmed by the Parliament.¹²

8 *Fernando v Ramayake* [1972] 75 N.L.R. 543, at p. 545.

9 Local Government Act 1972, Section 236(1).

10 *ibid*, Section 236(4).

11 *ibid*, Section 236(5).

12 Municipal Councils Ordinance, Section 268(1), Urban Councils Ordinance, Section 154(1), Town Councils Ordinance, Section 153(1).

In accordance with the English experience, a by-law made by a local authority could be questioned in advance by a citizen who will be affected by the new introduction. By contrast in Sri Lanka, the inhabitants of the local authority area were given no opportunity of questioning any of the by-laws prior to confirmation and, if any person is affected, he will have to seek justice through the courts only after the by-laws have been confirmed by the Parliament. Nonetheless, it is important to note that the local authorities of Sri Lanka had to satisfy not only the Minister of Local Government, but generally, almost all the members of the Parliament in order to obtain confirmation of the by-law. Thus, it could be argued that local authority by-laws in Sri Lanka were twice exposed to the intervention of the Parliament as it was essential to get the approval from the Minister and the confirmation from the Parliament to validate a by-law, whereas in England only the confirmation of the Minister is necessary in this respect. Under these circumstances, it is essential to examine the nature, extent and effects of these interventions by the Minister.

The intervention by the Minister with local authority by-laws was two fold. On the one hand, the Minister's prior approval and the confirmation of the Parliament were vitally important for a local authority to obtain validity for its by-laws. On the other hand, the Minister of Local Government retained the sole authority to enact standard by-laws in relation to local authorities.

1. Approval by the Minister and confirmation by Parliament

It was essential that a local authority should first acquire the Minister's approval for a local authority by law, prior to seeking its confirmation from the Parliament. This emphasizes the fact that in theory the requirement of an approval from the Minister exposed the local authorities to the supervision of the executive. On this ground it could be argued that if the Minister was not satisfied with the by-law in question or for some reason had a personal grudge against the local authority he could withhold his approval for that particular by-law. For instance, if the by-law in question was of a local authority which consisted of councillors who belong to the opposition party of the Government, there was the possibility of the minister rejecting the said by-law. On the other hand, with regard to the confirmation by Parliament it could be said that this provided an opportunity for any of the members of the Parliament to focus their attention on the particular local authority. Discussing this particular aspect, Dr Tressie Leitan points out,

Central legislative surveillance of local authority activity is possible on a number of occasions. By-laws passed by local bodies have to be placed before the legislature - which provides an opportunity for any of its members to focus attention on the functioning of local government. Questions relating to local authorities can be asked of the Minister of Local Government.¹³

13 Dr Tressie Leitan, *Local Government and Decentralized Administration in Sri Lanka*, Lake House Investments Ltd., Colombo, 1979 p. 95.

Consequently, it could be argued that in accordance with the discretionary and supervisory powers granted to the Minister in relation to the approval and confirmation of by-laws even the Parliament can ultimately decide that they are not satisfied with the by-law and refuse to grant confirmation. Despite this theoretical possibility the minister and the members of Parliament have not used this power overwhelmingly. Although there have been certain instances, such as the refusal by the Parliament to confirm the by-laws of the Galle Municipal Council to increase water rates within the area,¹⁴ most of the local authority by-laws presented to the Parliament had obtained due confirmation.¹⁵ According to statistical information¹⁶ it appears that the Minister and the Parliament had no hesitation in granting approval for and the confirmation of local authority by-laws.¹⁷

However, when ministerial powers in making standard by-laws are taken into account it is clear that the Minister of Local Government is endowed with overwhelming powers over local government institutions.

2. Standard by-laws

The local authority standard By-laws Act of 1952 specifies:

It shall be lawful for the Minister to frame draft by-laws with respect to any subject or matter with respect to which a local authority is empowered by any other written law to make by-laws and to cause such draft by-laws to be published in the *Gazette*.¹⁸

When the draft by-laws are approved by resolution passed by the Parliament and the notice of such approval is published in the *Gazette*, the draft by-laws become standard by-laws¹⁹. The standard by-laws made at the discretion of the Minister, whenever and wherever he feels necessary have the same effect as by-laws made by the local authorities,²⁰ and local authorities have no power to intervene. According to sub-section 3 of section 3 of the Act,

Where the standard by-laws with respect to any subject or matter come into force in the area within the administrative limits of any local authority, all by-laws with respect to that subject or matter previously made or deemed to have been made by that local authority.....and all other by-laws inconsistent with the standard by-laws shall be deemed to be repealed.²¹

14 Administrative Report of the Commissioner of Local Government 1962-63 p. BB16.

15 Administrative Report of the Commissioner of Local Government 1979, pp. BB 34-35.

16 Administrative Report of the Commissioner of Local Government 1980, p. BB 23.

17 Administrative Report of the Commissioner of Local Government 1982, p. BB 41.

18 Local Authority Standard By-Laws Act 1952, Section 2(1).

19 *ibid.*, Section 2(3).

20 *ibid.*, Section 3(1).

21 *ibid.*, Section 3(3).

The most notable feature in this process is the Ministers solitary power to make standard by-laws for local authorities, without leaving any provision for the local authorities to intervene with the decision. However, it should also be noted that, according to the Local Authority standard By-Laws Act, the local authorities have the power to amend, add to or repeal any standard by-laws adopted under this Act with the exception that the amendment or addition may not contain any provision which the local authority is not otherwise empowered to make under any written law.²² The Act specifies that the power granted to the Minister to make standard bylaws will not in any sense affect the power of a local authority to make by-laws,²³ and also that no greater validity will be given to the standard by-laws adapted by the councils.²⁴

Accordingly it could be argued that the Minister of Local Government had no overwhelming power in relation to the making of local authority by-laws. Although it is apparent from the statutory provisions that the Minister and the Parliament were empowered with overwhelming authority, it is clear that in practice it is not so. Nevertheless, the power of the Minister to make standard by-laws without the co-operation of local authorities signifies that local government institutions were not free from the supervisory powers of the Central Government. However, before we come to a final conclusion with regard to the role of the Minister of Local Government in central-local relations and the effect of his decisions in connection with a devolution of the Government, it is essential to analyse the power of the Minister in granting recommendations, and the conduct of inquiries.

II Executive controls: Inquiries and investigations

An analytical evaluation of the local authority functions shows that the Minister or on his behalf, the Commissioner of Local Government as the Chief Officer in the Department of Local Government had the power to intervene with local authority affairs, to grant recommendations and approvals and to conduct inquiries and investigations in relation to local authorities. On these occasions, the local councils had no authority to refuse the orders from the centre.

1. Recommendations and approvals granted by the Minister

Local authorities as we know, are institutions mainly established to carry out the essential services such as sanitation for the well being of the citizens within their area of authority. For this purpose the Councillors are empowered to carry out the relevant duties allocated to them under the local authority ordinances and Acts. Accordingly, the discretionary power as to the accomplishment of the essential duties in relation to the local authority functions is in the hands of the local authority councillors who are the representatives of the general public. An examination of the statutory provisions,

22 *ibid.*, Section 3(4).

23 *ibid.*, Section 5(1).

24 *ibid.*, Section 5(2).

however, reveal that the Minister or the Commissioner of Local Government had the power to interfere with the general procedure of local authorities and bring to the notice of the councils that they had to carry out certain specified functions. Section 195 of the Urban Councils Ordinance for instance, provides:

The Minister or the Commissioner may,

- a) bring to the notice of any Urban Council any measure which in the opinion of the Minister or the Commissioner ought to be taken within the town administered by the Council in the interests of public health or safety; or
- b) bring to the notice of any Urban Council any general question of administrative policy as to which it is desirable in the opinion of the Minister or the Commissioner that the Council should co-ordinate its policy with the policy, generally in force in Ceylon or in any part of Ceylon.²⁵

It is evident from the above discussion that the Minister or the Commissioner of Local Government could issue directives with regard to policy matters of a local government institution. When such an order is made the local authorities were obliged to carry out the relevant functions in terms of the directive issued. The procedure to give effect to any resolution or decision of a village committee also demonstrates the authoritative power attributed to the Minister or the Commissioner of Local Government in this context. The Village Communities Ordinance provides:

The power conferred on a village committee..... shall be subject to the limitation and condition that it shall not be lawful for the village committee to give effect to any resolution or decision arrived at in the exercise of those powers until such resolution or decision is approved,

- a) by the Minister with the concurrence of the Minister of Finance in every case when the resolution or decision relates to the imposition of any rate, tax other than a tax on vehicles and animals....or toll.....²⁶

The approval of the Assistant Commissioner, who was the head of the Department of Local Government located in the districts subject to an appeal to the Minister was regarded as essential to give effect to any resolution or decision. This is so, especially if the resolution or decision was related to,

- a) the purchase, sale or exchange of any land or building; or
- b) the lease of any immovable property handed over to the Committee by a vesting order under section 32, or

25 Urban Councils Ordinance, Section 195.

26 Village Communities Ordinance, Section 46.

c) the creation of any salaried office in the service of the Committee or the scale of salary to be attached to such office, or the rates of the subsistence or travelling allowances payable by way of reimbursement of the expense incurred by the holder of such office in the performance of any duty.²⁷

This reveals that the village communities for example had to obtain the approval from the Minister or the Assistant Commissioner of Local Government to discharge there day-to-day functions. Prior to 1952, in addition to the above mentioned instances, the Assistant Commissioner's approval was essential for the decisions taken by the Village communities regarding

- a) the expenditure of any sum of money exceeding one hundred rupees out of the communal fund in any work, scheme or project; or
- b) the formation of any contract or other agreement involving any expenditure exceeding one hundred rupees out of the communal fund, or
- c) the organization of any scheme for the relief of distress to which contributions are to be given from the communal fund; or
- d) the allocation of any part of the communal fund for any purpose specified in the Village Communities Ordinance.²⁸

This meant that the village communities were under the direct supervision and control of the Minister of Local Government and the Assistant Commissioner of Local Government. For these reasons it is impossible to categorize village communities as democratic local government institutions. However, in 1952, it was enacted that for the above mentioned instances, the Commissioner of Local Government's approval was not a necessity. According to Local Government (Enlargement of Powers) Act of 1952:

Notwithstanding anything in section 46 [of the Village Communities Ordinance] but subject to sub-section (2) of this section, the approval of the Assistant Commissioner shall not be required before effect is given to any resolution or decision of a village committee in respect of any matter referred to in sub-paragraph (2) of that section.²⁹

Nevertheless, sub-section 2 of section 2 of the Local Authorities (Enlargement of Powers) Act provided:

the Minister may in his discretion by order published in the Gazette declare that the provisions of sub-section (i) of this section shall not apply in the case of any Village Committee specified in the order; and so long as such order remains in force the provisions of section 46 [of the Village Communities

27 *ibid.*, Section 46(2) a-c.

28 *ibid.*

29 Local Authorities (Enlargement of Power) Act, Section 47(1).

Ordinance] shall apply in relation to resolutions or decisions of that Village Committee in all respects as though sub-section (i) of this section had not been enacted.³⁰

Thus, it is clear that the Minister was empowered to re-impose financial control, a powerful weapon which he could use whenever he felt that it was necessary. Discussing this aspect Dr Tressie Leitan has pointed out:

That this is a powerful weapon in the hands of the Minister, which he does not hesitate to use as the necessity arises is proved by the fact that financial control was re-imposed on five village councils in 1952, on two village councils in 1953, on twenty one in 1954, on ten in 1955, on one in 1956, on eleven in 1957 and on five in 1958.³¹

It could be questioned as to whether it was necessary to have such controls over Village Councils. All these local authorities were creatures of statute and they consisted of councillors elected by the inhabitants of the area. The councils therefore, should have had the power to carry out these necessary functions on their own, without the approvals and confirmations either from the Assistant Commissioner or from the Minister or as in some cases from both. Also it could be argued that these approvals and recommendations of Ministers made the local authorities more or less agents of the central government eroding the concepts of local self government, and restricting the possibility of devolution as almost all the decisions regarding planning and policy matters were taken by the Central Government. The applications of such controls are discussed by Hart and Garner in the following terms:

Powers which thus, permit local discretion to be overruled by the central departments go a long way to destroy the idea of local self government and reduce local authorities to little more than agents of the Central Government.³²

The 'inside information' in relation to the decisions of the Central Government in re-imposing financial control over village communities demonstrates a prevalent view that it is essential to 'keep an eye' over the administration of local government institutions. Consequently, it is appropriate to point out a few details about the village community administration from the point of view of the Commissioner of Local Government:

The effect on the administration on village committees of the powers conferred by the Enlargement of Powers Act [1952] was watched with considerable interest. While some committees richly deserved the extension

30 *ibid.*, Section 2(2).

31 Dr T. Leitan, *op. cit.*, p. 10.

32 W.O. Hart and J.F. Garner, *Hart's introduction to the law of local government and administration*, 9th edition, London, Butterworths, 1973, p. 361.

of their powers by their capable handling of the finances and general high standard of administration, there were others which failed to grasp the opportunities of service that the enlarged powers conferred on them and still others though happily few in number whose chairman found in the new dispensation an avenue for malpractice and abuse of powers. "The details of all these cases cannot be enumerated. In order however, to illustrate the type of unauthorized transactions committed by those chairmen, a few instances are given. "Some chairmen did not deposit the collections to the credit of the communal fund but temporarily misappropriated them. Monies were drawn sometimes running into several thousands, for a specific purpose, but no work was started or agreement entered into. The chairman of one local authority for instance, withdrew a sum of over Rs. 14,000/= on payment orders issued by himself in his own favour and did not bring this into account. Contracts were entered into without advertisement or proper selection of contractors by tender procedure. Monies were paid from the communal fund on works without obtaining the necessary certificates from superintendents of village works in accordance with the rules. Payments were made by some chairmen without being authorized to do so by the committees. Large sums of money were paid on works which would have been completed at a fraction of the expenditure incurred. The Chairman of one village committee, for instance, made payments amounting to over Rs. 40,000/= without the approval of the Committee for work on a road, for work on which was at a later investigation assessed at only Rs. 4500/= ! He further incurred over Rs. 4000/= on check roll labour without the approval of the committee or Assistant Commissioner of Local Government". Such glaring cases of abuse of powers or malpractice by some chairmen of village committees necessitated stern action on the part of the Central Government. Steps were taken to remove the chairmen from office and re-impose the control of the Assistant Commissioner of Local Government on the Committee. Such action was found necessary in the case of the following village councils.

Kumbukke Village Council (Kalutara District)
 Kunchuttukorale Village Council (Anuradhapura District)
 Panawal and Alutgam Korale Village Council (Kegalle District)
 Mannar East Village Council (Mannar District)
 Dondra Village Council (Matara District)
 Kirama Village Council (Hambantota District)
 Ratgama Village Council (Galle District)³³

This information signifies the necessity of supervision and control over the local government institutions. It was essential for the local authorities to be independent from

the authoritative power of the Central Government but if there were such malpractices and corruption within the local government institutions, it is apparent that supervision over such local councils was vitally important. However, this raises the question of the extent of supervision and control to be imposed, and the basis of its implementation, if it is to be carried out. According to the analysis of the Commissioner of Local government, it is apparent that during the period under review only six percent, out of a total of four hundred village committees had been guilty of malpractice or abuse of powers. It should also be noted that the village communities were handicapped by lack of experience, inadequate staff and dearth of technical advisers. Although one may consider that supervision was necessary over local government institutions, it should be clear that this supervisory power should be limited and not overwhelming.

2. Inquiries and investigations conducted by the Minister

The powers of the Minister to hold inquiries and investigations regarding local authority affairs is seen as a powerful weapon in his hands, which he could use even to dissolve a council. It enables the Minister to interfere with local authority functions at his discretion.

According to the Municipal Councils Ordinance:

If at any time it appears to the Minister that any Municipal Council is omitting to fulfil any duty or to carry out any work imposed upon it by this ordinance, or any other written law, he may give notice to the council that unless within fifteen days the council shows cause to the contrary, he will appoint a special officer to inquire into and report to him the facts of the case and to recommend what steps such officer thinks necessary for the purpose of fulfilling such duty or carrying out such work.³⁴

The inquiry, if it is practicable, is to be conducted in an open manner.³⁵ After the inquiry and according to the report, the Minister may determine what duty or work shall be done or executed and make an order requiring the council, within a time to be specified in such order, to fulfil such duty or carry out such work.³⁶ This will, even enable the Minister to dissolve the council or to remove the Mayor or the Chairman. Such an inquiry, for instance, took place in the year 1960. The Galle Municipal Council had failed to manage their finances,³⁷ and the Minister of Local Government had warned the Council to rehabilitate its finances and to re-organize the administration. The Council failed to do so and on grounds of failure to bring the Council's accounts up to date, failure to settle arrears of loan installments, reduction of the consolidated rates, failure to settle bills and neglect to maintain the electricity system, the minister dissolved the council on the twenty fifth July 1962.³⁸

34 Municipal Councils Ordinance, Section 280.

35 *ibid.*,

36 *ibid.*, Section 281.

37 Administrative Report of the Commissioner of Local Government, 1961-62, p. 11.

38 *ibid.*

In most cases however, the Minister had made orders to the Council to carry out the outstanding duties. It should be noted that the power of the Minister to make inquiries did not include the power to dissolve the councils, even if he was not satisfied with their progress. The power of inquiry is a necessity, as it is essential that local authority functions should be carried out in the best possible manner in the interest of the citizens and for these purposes some limited central supervision is obviously essential. However, the argument here is regarding the extent of the Minister's powers to make inquiries and orders regarding outstanding duties. When the Minister makes an order to hold an inquiry after the receipt of the report of the officer, appointed under section 280 of the Municipal Councils Ordinance, the Minister has the power to determine what duty or work shall be executed by the council³⁹ within a time specified by him. If the council fails to carry out the necessary functions within the specified period, then again the Minister may direct the mayor or appoint any other person to fulfil such duty or to carry out such work.⁴⁰ The Minister can also decide that, instead of appointing another person to that particular local authority to carry out the necessary duties, he should dissolve the Municipal Council. It would be seen that, if the Minister decides to dissolve a Municipal Council for the reason that the council was not able to carry out the instructed duties, the power to hold inquiries can in effect decide the life span of a local authority. This implies that the Minister of Local Government was granted ultimate authority. In England, under the Local Government Act of 1972, the power of the Minister to hold inquiries stipulates:

Where any Minister is authorised by this Act to determine any difference, to make or confirm any order to frame any scheme, or to give any consent, confirmation sanction or approval to any matter, or otherwise to act under this Act and where the Secretary of State is authorised to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, he may cause a local inquiry to be held.⁴¹

Other than this provision, the Local Government Act provides only a set of powers for rendering such inquiries effective. In England neither the Minister of Local Government nor the Secretary of State acting on his behalf will go to the extent of dissolving a local authority as a result of an inquiry held to supervise the functions of the council. There is no provision either for the Minister or for the Secretary of State to dissolve a Council. In such instances, the Secretary of State has the power, to appoint a Commissioner with powers to discharge the defaulting local authority's functions at their expense and could reduce the payment if any, from the subsidies from the Central government.⁴² However, according to *Asher v Secretary of State for the Environment*⁴³ the Secretary of State has a wide discretion when choosing which power he will use in such a case. This

39 Municipal Councils Ordinance, Section 281.

40 *ibid*, Section 282.

41 Local Government Act of 1972, Section 250(1).

42 See for example, the Housing Finance Act, 1972. 2.

43 [1974] 2.A.E.R. 156.

emphasizes the fact that an inquiry held in England with regard to the functions of a local authority will not result in the dissolution of that local government institution.

Conclusion

Administrative supervision over local authorities cannot be treated as an unnecessary element in the process of local government administration. As has been seen, during the pre 1987 era, especially according to the Sri Lankan experience, it had an overwhelming power over the local government institutions, thus raising the question as to how much control and to what extent could the centre interfere with local authority functions. After 1987, along with the introduction of the Provincial Councils and the system being devolved, there were structural changes in the administrative setup. For instance, a local authority by-law which was earlier approved by the Central parliament became a matter to be handled at the Provincial level. However, this did not change the basic principles we had applied regarding the administrative controls over local government institutions and the Minister for Local Government is empowered under the relevant legislative instruments to utilise that power wherever it becomes appropriate. Therefore although our attention was focussed to analyse the pre 1987 period, this aspect regarding the role of the administration in central - local relations would apply to the local government institutions even after the establishment of Provincial Councils in Sri Lanka. Accordingly it is necessary to limit or to curtail the extent of ministerial control of supervision that would be necessary for a healthy relationship between the central administration and the local government institutions in Sri Lanka.