

Doctrine of Natural Justice

INTRODUCTION

The Phrase 'Natural Justice' means that justice should be impartial, fair, equal for all and ensuring protection of individual rights against arbitrary procedures and miscarriage of justice by the authorities. In other words, it is the soul of the body of justice and foundation on which delivery of justice is based. The rules of natural justice are foundational and fundamental concepts of law, which are considered as an indispensable part of the legal and judicial system. They are the principles ingrained into the conscience of man. It is a general duty of the quasi-judicial authority to act fairly. Its principles not only applied to courts of law only but to each and every quasi judicial or statutory authority who have upon them, the responsibility of determining the obligation and rights, of the people

In India 'Natural Justice' plays a vital role in Income Tax assessments as the authorities before delivering any order in assessment and collection of taxes is required to consider the documents and evidences submitted and should answered the objections raised by the assessee. Undue haste is against the principle of fairness and such a conduct on the part of assessing officer required to be deprecated. Natural Justice in Income tax hearings includes provision of adequate & proper opportunity of being heard, to ensure fair hearing and fair dealing the assessee. Yardstick of Natural Justice is essential to measure that the authorities have not acted ignoring the basic human principles. Fairness founded on reasons is the essence of the concept of Natural Justice so that the public trust in the judicial process can be enhanced.

PRINCIPLES OF NATURAL JUSTICE IN INDIA

Natural justice is the administration of justice in a commonsense liberal way. The basic principle underlying of Natural Justice is that "Justice must not only be done but must be seen to be done" and this rule has received wide recognition in several decisions of the Supreme Court. These principles have been laid down as being the minimum protection of rights of individuals against arbitrary procedure, and to halt misuse of powers vested in authorities. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons

of rationality. The principles of natural justice encompasses the following two rules :

- 1. Nemo judex in causa sua** : No one should be made a judge in his own cause or the rule against bias. Departmental bias arises when the functions of a Judge *and the prosecutor are combined in the same department as it is not uncommon* to find that the same department which initiates the matter also decides it, therefore, at times, department fraternity and loyalty reduces against the concept of fair hearing.
- 2. Audi alteram partem**: Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard. This principle is the basic concept of principle of natural justice. This expression implies that a person must be given opportunity to defend himself. This principle is sine qua non of every civilized society. This rule covers various stages through the administrative adjudication process starting from notice to the final determination of tax liability.

Right to fair hearing includes right to notice which is the first limb of this principle There is mandatory requirement of reasonable opportunity of being heard. This pre-requires issuance of a proper notice. The authority has to issue show cause to the party/assessee to explain and produce evidence before an adverse inference may be drawn against him. The notice should be specific and unambiguous so that proper compliance can be made by the assessee. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. .Any order passed by the assessing authorities without giving notice is violative of the principles of natural justice.

Time to time, Indian courts have observed that an assessment without a valid notice is void. The honorable Supreme Court in the case of East India Commercial Co. v. Collector of Customs held that “Even, if there is no provision in the statute about giving of notice, if the order in question adversely affects the rights of an individual, the notice must be given”. In the Case N.R. Co-operative Credit Society Ltd. v. Industrial Tribunal our Apex Court held that “The notice must be clear, specific and unambiguous and the charges should not be vague and uncertain”

In the case of Thakur V. Hariprasad v. CIT [1987] the High Court held as follows: “The doctrine of natural justice is a facet of fair play in action. No person shall be saddled with a liability without being heard. In administrative law, this doctrine has been extended when a person is made liable in an action without being heard. The principles of natural justice do not supplant the law but merely supplement the law or even humanise it. If a statutory provision can

be read consistent with the principles of natural justice, the court could do so, for the Legislature is presumed to intend to act according to the principles of natural justice.

Reasoned orders

Another Important aspect of Fair Hearing is reasoned orders. In the case of Baidya Nath Sarma v. Commissioner of Wealth Tax[1983], the High Court observed as under: “The duty to give reasons is a safety-valve against arbitrary exercise of discretionary power. If such quasi-judicial authorities are permitted to render order without reason, apart from arbitrariness there might be potent danger of non-consideration of the application and would encourage mechanical exercise of the power.” Observance of the principles of natural justice is implicit in the rule of law--the rule of law itself commands a reasoned decision. The minimum requirement of the rule of law is that one ought not to be deprived of his rights without the authority of law. It has been held in Mahabir Prasad v. State of U.P., AIR 1970 SC 1302, 1304, that the duty to give reasons is the minimum requirements of the rule of law

In State of Punjab v. Bhag Singh, 2004 (164) ELT 137 (SC), the Supreme Court was considering a case where the High Court had dismissed the appeal without giving any reasons. The court held that reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. The court further held that right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out.

In Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010), the supreme court in the context of necessity to give reasons, has held as under:

- (a) A quasi-judicial authority must record reasons in support of its conclusions.
- (b) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

- (c) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (d) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (e) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (f) Reasons facilitate the process of judicial review by superior courts.
- (g) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
- (h) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery
- (i) Insistence on reason is a requirement for both judicial accountability and
- (j) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (k) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making
- (l) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny

Consequences of Violation

In India the Courts have taken the view that whenever there is violation of any rule of natural justice, the order is null and void. Whenever the courts believe that the authority has been vitiated from the principles of natural justice, they quash

the order and direct the authority to dispose of the matter afresh in consideration of the principles of Natural Justice. Violation of Principle of natural justice is attracted whenever a person suffers a civil consequence or a prejudice is caused to him by an administrative action. In other words principle of natural justice is attracted where there is some right which is likely to be affected by any act of the administration including a legitimate expectation. Judgments dealing with the administrative decisions proceed on the footing that the presence of bias means

In *Hari Khemu Gawali v. The Deputy Commissioner of Police* [AIR 1956 SC 559] an externment order was challenged on the ground that since the police department which heard and decided the case was the same, the element of departmental bias vitiated administrative action and this Court rejected the challenge on the ground that so long as two functions (initiation and decision) were discharged by two separate officers, though they were affiliated to the same department, there was no bias. In *The General Secretary, South Indian Cashew Factories Workers' Union v. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Ors.* [(2006) 5 SCC 201], it was held that the inquiry had been conducted by the Assistant Personnel Manager of the Corporation and the Union raised an industrial dispute in which Labour Court set aside the inquiry on the ground of institutional bias as the Enquiry Officer was part of the same institution and had also made certain uncorroborated remarks against the employee. This Court in appeal held that mere presumption of bias cannot be sustained on the sole ground that the officer was a part of the management and where findings of the Enquiry Officer were based on evidence and were not perverse, the mere fact that the inquiry was conducted by an officer of the management would not vitiate the inquiry. On a bare perusal of these decided cases, it could be strongly established that the fact that P.K.Mukherjee, the Enquiry Officer, who was also the company lawyer cannot be considered as being “biased and partisan” who favoured and was partial towards the management of the company.

Exceptions to the Doctrine of Natural Justice

In India, a law made by the parliament or a state legislature should stand the test of constitutionality. It is submitted that even if there is no provision for observance or compliance with the natural justice, Courts may read natural justice with a view to sustain the law as constitutional. The concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there can be exceptions to the said doctrine. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural

justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula.

In cases of emergency situation which requires immediate action in consideration of public interest or where it is impracticable or in situations which require immediate preventive action etc, the requirement of hearing may be excluded. Natural justice may be excluded if its effect would be to stultify the action sought to be taken or would defeat and paralyse the administration of the law. Similarly, where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature, right of prior notice and opportunity to be heard may be excluded. In cases of emergency situation which requires immediate action in consideration of public interest. In *Abhay Kumar v. K Srinivasan*, the institution passed an order debaring the student from entering the premises of the institution and attending classes till the pendency of a criminal case against him for stabbing a co-student. This order was challenged on the ground that it violates Principles of Natural Justice. The Delhi High Court rejecting the contention held that such an order could be compared with an order of suspension pending enquiry which is preventive in nature in order to maintain campus peace and hence the principles of natural justice shall not apply.

Conclusion

Several courts have observed in many cases that the assessing authorities issued orders in haste ignoring, the procedural requirements such as a valid notice or without providing a proper opportunity of being heard to the assessee and non speaking orders which lead assessee in to an unending process of litigation as well as huge amounts got locked for long time affecting with the Income Tax department adversely affecting the liquidity position of the business which sometimes even led to the closure of Business. The non-observance of the rules of natural justice is itself prejudice to any man. However the rules of natural justice must not be stretched too far, for, only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences. Thus "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.