PRINCIPLES OF NATURAL JUSTICE

CA Ashish Makhija, FCA, AICWA, LLB
Corporate Lawyer
E-mail : amclawfirm@rediffmail.com

In India there is no statute laying down the **minimum procedure** which administrative agencies must follow while exercising decision-making powers. This **minimum fair procedure** refers to the **principles of natural justice**

Natural justice is a concept of **common law** and represents **higher procedural principles** developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual.

Natural justice implies **fairness, equity and equality**.

In a welfare state like India, the **role and jurisdiction of administrative agencies is increasing** at a rapid pace. The concept of Rule of Law would loose its validity if the instrumentalities of the State are not charged with the **duty of discharging these functions in a fair and just manner.**

In India, the principles of natural justice are firmly grounded in **Article 14 & 21** of the Constitution. With the introduction of **concept of substantive and procedural due process** in Article 21, all that fairness which is included in the principles of natural justice can be read into Art. 21. The **violation of principles of natural justice results in arbitrariness**; therefore, violation of natural justice is a violation of Equality clause of Art. 14.

The principle of natural justice encompasses 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.***

2. **Audi alteram partem** - Hear the other party or the **rule of fair hearing** or the rule that no one should be condemned unheard.

RULE AGAINST BIAS (NEMO JUDEX CAUSA SUA)

Bias means an **operative prejudice**, whether conscious or unconscious in relation to a party or issue. The rule against bias flows from following two principles: -

a) No one should be a judge in his own cause

b) Justice should not only be done but manifestly and undoubtedly be seen to be done.

Thus a judge should not only be **impartial** but should be in a position to apply his mind **objectively** to the dispute before him.
The rule against bias thus has two main aspects: -

1. The administrator exercising adjudicatory powers must not have any **personal or proprietary interest** in the outcome of the proceedings.

2. There must be **real likelihood of bias**. Real likelihood of bias is a subjective term, which means either **actual bias or a reasonable suspicion of bias**. It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is **reasonable ground for believing** that the deciding factor was likely to have been biased.

Bias can take many forms: -

- Personal Bias
- Pecuniary Bias
- Subject-matter bias
- Departmental bias
- Pre-conceived notion bias

A.K.Kraipak Vs. UOI

In this case, Naquishband, who was the acting Chief Conservator of Forests, was a member of the Selection Board and was also a candidate for selection to All India cadre of the Forest Service. Though he did not take part in the deliberations of the Board when his name was considered and approved, the SC held that **`there was a real likelihood of a bias for the mere presence of the candidate on the Selection Board may adversely influence the judgement of the other members'**

SC also made the following observations: -

1. The **dividing line between an administrative power and quasi-judicial power is quite thin** and is being gradually obliterated. Whether a power is Administrative or quasi-judicial, one has to look into -

    a) the **nature of power** conferred
    b) the **person** on whom it is conferred
    c) the **framework of the law** conferring that power
    d) the **manner** in which that power is expected to be exercised.

2. The principles of natural justice also apply to administrative proceedings,

3. The concept of natural justice is to prevent miscarriage of justice and it entails -

    (i) No one shall be a judge of his own cause.

    (ii) No decision shall be given against a party without affording him a reasonable hearing.

    (iii) The quasi-judicial enquiries should be held in good faith and not arbitrarily or unreasonably.

J.Mohopatra & Co. Vs, State of Orissa

SC quashed the decision of the Textbooks' selection committee **because some of its members were also the authors of the books**, which were considered for selection. The Court concluded that withdrawal of person at the time of consideration of his books is not sufficient as the element of quid pro quo with other members cannot be eliminated.

Ashok Kumar Yadav Vs. State of Haryana

Issue

Whether the selection of candidate would vitiate for bias if close relative of a members of the Public Service Commission is appearing for selection?

Held

The SC laid down the following propositions: -

1. Such member must **withdraw altogether** from the entire selection process otherwise all selection would be vitiated on account of **reasonable likelihood of bias** affecting the process of selection

2. This is **not applicable in case of Constitutional Authority** like PSC whether Central or State. This is so because if a member was to withdraw altogether from the selection process, no other person save a member can be substituted in his place and it may sometimes happen that no other member is available to take the place of such a member and the functioning of PSC may be affected.

3. In such a case, it is desirable that the **member must withdraw from participation in interview of such a candidate** and he should also not take part in the discussions.

The SC conceptualised the **doctrine of necessity** in this case.

AUDI ALTERAM PARTEM OR RULE OF FAIR HEARING

The principle of *audi alteram partem* is the basic concept of principle of natural justice. The expression *audi alteram partem* 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 which administrative adjudication pasees starting from notice to final determination. Right to fair hearing thus includes:-

1. Right to **notice**
2. Right to **present case and evidence**
3. Right to **rebut adverse evidence**
   (i) Right to **cross examination**
   (ii) Right to **legal representation**
4. **Disclosure of evidence** to party
5. **Report of enquiry** to be shown to the other party
6. **Reasoned decisions** or speaking orders

POST DECISIONAL HEARING

Post decisional hearing means hearing after the decision is reached. The idea of post decisional hearing has been developed by the SC in ***Maneka Gandhi Vs. UOI*** to maintain the balance between administrative efficiency and fairness to the individual.

Mankea Gandhi Vs. UOI

Facts

In this case the passport dated 01.06.1976 of the petitioner, a journalist, was impounded `in the public interest' by an order dated 02.07.1977. The Govt. declined to furnish her the reasons for its decision. She filed a petition before the SC under article 32 challenging the validity of the impoundment order. She was also not given any pre-decisional notice and hearing.

Argument by the Govt.

The Govt. argued that the rule of *audi alteram partem* must be held to be excluded because otherwise it would have frustrated the very purpose of impounding the passport.

Held

The SC held that though the impoundment of the passport was an administrative action yet the **rule of fair hearing** is attracted by the **necessary implication** and it would not be

fair to exclude the application of this cardinal rule **on the ground of administrative convenience.**
The court did not outright quash the order and allowed the return of the passport because of the special **socio-political factors** attending the case.

The technique of post decisional hearing was developed in order to **balance these factors** against the requirements of law, justice and fairness.

The court stressed that a fair opportunity of being **heard following immediately the order** impounding the passport **would satisfy the mandate of natural justice**

The same technique of validating void administrative decision by post decisional hearing was adopted in ***Swadeshi Cotton Mills Vs. UOI*** . Under section 15 of IDRA, an undertaking can be taken over after making an investigation into its affairs. But u/s 18-AA, a take over w/o an investigation is permitted where `immediate' action is required.

The court validated the order of the govt. which had been passed in violation of the rule of *audi alteram partem* because the govt. had agreed to give post-decisional hearing. The ratio of the majority decision was as follows: -

1. Pre-decisional hearing may be dispensed with in an **emergent situation** where immediate action is required **to prevent some imminent danger or injury or hazard to paramount public interest.**
2. **Mere urgency** is, however, no reason for exclusion of *audi alteram partem* rule. The decision to exclude pre-decisional hearing would be **justiciable**.
3. Where pre-decisional hearing is dispensed with, there must be a **provision for post-decisional remedial hearing.**

In ***K.I.Shephard Vs. UOI*** certain employees of the amalgamated banks were excluded from employment. The Court allowing the writs held that post-decisional hearing in this case would not do justice. The court pointed out that there is **no justification** to throw a person out of employment and then give him an opportunity of representation when the requirement is that he should be given an opportunity as a condition precedent to action.

In ***H.L.Trehan Vs. UOI***, a circular was issued by the Govt. on taking over the company prejudicially altering the terms and conditions of its employees w/o affording an opportunity of hearing to them. The SC observed that "In our opinion, **the post decisional opportunity of hearing does not subserve the rules of natural justice.** The authority who embarks upon a post-decisional hearing will normally proceed with a closed mind and **there is hardly any chance of getting proper consideration of the representation at such a post decisional hearing**."

Thus in every case where pre-decisional hearing is warranted, post-decisional hearing will not validate the action except in very exceptional circumstances.

Conclusion

It can be concluded that pre-decisional hearing is the standard norm of rule of audi alteram partem. But post-decisional hearing atleast affords an opportunity to the aggrieved person and is better than no hearing at all. However, post-decisional hearing should be an exception rather than rule. It is acceptable in the following situations:_

1. where the original decision does not cause any prejudice or detriment to the person affected;
2. where there is urgent need for prompt action;
3. where it is impracticable to afford pre-decisional hearing.

The decision of excluding pre-decisional hearing is justiciable.

REQUIREMENT OF CROSS EXAMINATION

Cross-examination is used to rebut evidence or elicit and establish truth. In administrative adjudication, as a general rule, the courts do not insist on cross-examination unless the circumstances are such that in the absence of it, an effective defence cannot be put up. The SC disallowed cross-examination in ***State of J&K Vs. Bakshi Gulam Mohammed*** on the ground that the evidence of witness was in the form of affidavits and the copies had been made available to the party.

In ***Town Area Committee Vs. Jagdish Prasad*** , the department submitted the charge, got an explanation and thereafter straightaway passed the dismissal order. The court quashed the order holding that the rule of fair hearing includes an opportunity to cross-examine the witness and to lead evidence.

In ***Hira Nath Misra Vs. Principal, Rajendra Medical College*** the court disallowed the opportunity of cross-examination on the grounds of practicability. The SC rejected the contention of the appellants that they were not allowed to cross-examine the girl students on the ground that if it was allowed **no girl would come forward to give evidence**, and further that it would not be possible for the college authorities to protect the girl students outside the college precincts.

Where, however, witnesses depose orally before the authority, the refusal to allow cross-examination would certainly amount to violation of principles of natural justice.

It can thus be concluded that right to cross-examine is an important part of the principle of fair hearing but whether the same should be allowed in administrative matters mainly depends on the facts and circumstances of the case.

RIGHT OF LEGAL REPRESENTATION

Legal representation is **not considered as an indispensable part** of the rule of fair hearing in administrative proceedings. This denial of legal representation is justified on the ground that -

a) the lawyers tend to **complicate matters, prolong hearings and destroy the essential informality of the hearings.**
b) it gives and edge to the rich over the poor who cannot afford a good lawyer.

Whether legal representation is allowed in administrative proceedings depends on the provisions of the statute. **Factory laws** do not permit legal representation, **Industrial Disputes Act** allows it with the permission of the tribunal and some statutes like **Income Tax** permit representation as a matter of right.

The courts in India have held that in following situations, some professional assistance must be given to the party to make his right to defend himself meaningful: -

a) Illiterate
b) Matter is **technical or complicated**
c) **Expert evidence** is on record
d) **Question of law** is involved
e) Person is facing **trained prosecutor**

The courts have observed in few cases that it would be improper to disallow legal representation to the aggrieved person where the State is allowed to be represented through a lawyer. In ***Nandlal Bajaj Vs. State of Punjab***, the court allowed legal representation to the detainee through a lawyer despite Section 8(e) of COFEPOSA specifically denied legal representation in express terms because the State had been represented through a lawyer.

In ***Board of Trustees, Port of Bombay Vs. Dilip Kumar*** , a request of delinquent employee for legal representation was turned down as there was no provision in the regulations. During the course of enquiry, the regulation was amended giving powers to Enquiry Officer to allow legal representation. The court held that this question whether legal representation should be allowed to the delinquent employee would depend on the fact whether the delinquent employee is pitted against legally trained mind. In such a case, denial of request to engage a lawyer would result in violation of essential principles of natural justice.

Following this case, the SC in ***J.K.Aggarwal Vs. Haryan Seeds Development Corporation Limited*** held that refusal to sanction the service of a lawyer in the enquiry was not a proper exercise of the discretion under the rule resulting in failure of natural justice; particularly in view of the fact that the Presenting Officer was a person with legal attainments and experience.

REQUIREMENT OF PASSING A SPEAKING OR REASONED ORDER

In India, unless there is specific requirement of giving reasons under the statute, it is not mandatory for the administrative agencies to give reasons for their decisions.

Reasons are the link between the order and mind of the maker. Any decision of the administrative authority affecting the rights of the people without assigning any reason tantamounts to violation of principles of natural justice.

The requirement of stating the reasons cannot be under emphasized as its serves the following purpose: -

1. It ensures that the administrative authority will apply its mind and objectively look at the facts and evidence of the case.

2. It ensures that all the relevant factors have been considered and that the irrelevant factors have been left out.

3. It satisfies the aggrieved party in the sense that his view points have been examined and considered prior to reaching a conclusion.

4. The appellate authorities and courts are in a better position to consider the appeals on the question of law.

In short, reasons reveal the **rational nexus between the facts considered and the conclusions reached.**

However, mere recording of reasons serves no purpose unless the same are communicated either orally or in writing to the parties. In fact mere communication of reasons has no meaning unless the corrective machinery is in place.

Whether the reasons should be recorded or not depends on the facts of the case.

In ***Tarachand Vs. Municipal Corporation***, an assistant teacher was dismissed on the ground of moral turpitude. The Enquiry fully established the charge. The Asst. Education Commissioner confirmed the report w/o giving reasons. The SC held that where the **disciplinary authority disagrees with the report of the enquiry officer, it must state the reasons.**

In other words, the citing of reasons is not mandatory where the disciplinary authority merely agrees with the report of enquiry officer.

S.N.Mukherjee Vs. UOI

Issue

Whether it was incumbent upon the Chief of Army Staff to record the reasons of the orders passed by him while confirming the findings and the sentence of the CG

Observed

SC observed that

- The requirement to record reasons could be regarded as one of the **principles of natural justice.**
- An administrative authority must record the reasons in support of their decisions, unless the requirement is **expressly or by necessary implication excluded.**
- The reasons cited would enable the court to effectively exercise the **appellate or supervisory powers.**
- The giving of reasons would **guarantee consideration of the matter** by the authority.
- The reasons would produce **clarity** in the decisions and **reduce arbitrariness**.

Held

U/s 162 of the Army Act, the reasons have to be reached only in cases where the proceedings of a summary court martial are set aside or the sentence is reduced and not when the findings and sentence are confirmed. Thus requirement of recording reasons cannot be insisted upon at the stage of consideration of post-confirmation petition by the CG.

Mahindra & Mahindra Vs. UOI

Order passed by MRTPC, a quasi judicial body - Clauses in agreement with the dealers are found to be offensive and resulting in RTP - No reasons were cited - Co. filed appeal before SC - SC held that the order suffers from an error of law apparent from the face of it as no reasons have been given.

REPORT OF ENQUIRY REPORT TO BE SHOWN TO THE OTHER PARTY

Whether a copy of enquiry report must be submitted to the delinquent employee before passing the order?

Until 1987, there was no precedent or law which made it obligatory, in all cases, for the disciplinary authority to serve a copy of the enquiry report on the delinquent before reaching a final decision. For the first time in 1987, full bench of CAT held that failure to supply a copy of the enquiry report to the delinquent before recording a finding against him is obligatory and failure to do so would vitiate the enquiry. ***(P,K,Sharma Vs, UOI)***

The SC in 1973 considered this question in ***Keshav Mills Co. Ltd. Vs. UOI***.

Facts

Appellant Co. after doing business for 30 years closed down. 1200 persons unemployed - On the basis of commission to enquire into the affairs of the co. u/s 15 of IDRA, GOI passed an order u/s 18-A to take over the mill. Challenged before SC on the ground that enquiry report not submitted

Held

- Not possible to lay down general principle on this Q.
- Answer depends on facts and circumstances of each case
- If the non-disclosure of the report causes any prejudice in any manner to the party, it must be disclosed, otherwise non-disclosure would not amount to violation of principles of natural justice.

In ***UOI Vs. Mohd. Ramzan Khan (1991)*** a bench of 3 judges held that **non-furnishing of the enquiry report would amount to denial of the principles of natural justice**.

In ***Managing Director, Electronic Corporation of India Limited Vs. B.Karunakar*** SC laid down the all-important guidelines on this issue: -

S.No.	Question	Answer
1.	Whether Mohd. Ramzan case applies to all establishments?	Yes this rule extends to all establishments - whether Govt., non-Govt., public or private
2.	Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists otherwise?	It is the right of the employee to have the copy of the report to defend himself. Failure to ask for report does not amount to waiver of his right. The report must be given.
3.	Whether the report should be furnished even when the rules are either silent or against it?	The delinquent employee is entitled to the report, as denial of the report is a denial of reasonable opportunity and breach of principles of natural justice. Such rules denying such right shall be invalid.
4.	What id the effect of non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?	The courts will decide whether the employee has been prejudiced because of non-supply of report. If the court comes to the conclusion that the non-supply of report would have made no difference to the ultimate findings and the punishment given the courts would not interfere with the order of punishment. Otherwise the order of punishment can be set aside.

However, the rule laid down in ***Mohd. Ramzan Khan case*** will not apply if the disciplinary authority itself is the hearing/enquiry officer.