

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Principles of Natural Justice in The Light of Administrative Law

Lecture Notes by- INDRA BHUSHAN SINGH

Date:- 25/05/2020

Natural justice is an expression of English common law, and involves a procedural requirement of fairness. The principles of natural justice have great significance in the study of Administrative law. It is also known as substantial justice or fundamental justice or Universal justice or fair play in action. The principles of natural justice are not embodied in rules and are not codified. They are judge made rules and are regarded as the counterpart of the American procedural due process.

Definition:

There is no precise and scientific definition of natural justice. However, the principles of natural justice are being accepted and enforced. Different judges, lawyers and scholars define it in various ways. In *Vionet v. Barrett*,

Lord Esher M.R has defined it as the natural sense of what is right and wrong. Later, he had chosen to define natural justice as fundamental justice in a subsequent case (*Hopkins v. Smethwick Local Board Of health*) [2]. Lord Parker has defined it as duty act fairly. Mr. Justice Bhagwati has taken it as fair play in action. Article 14 and 21 of the Indian Constitution has strengthened the concept of natural justice.

Basis of the application of the principle of natural justice:

The principles of natural justice, originated from common law in England are based on two Latin maxims, (which were drawn from *jus natural*).

In simple words, English law recognizes two principles of natural justice as stated below-

Nemo Judex in causa sua or Nemo debet esse judex in propria causa or Rule against bias (No man shall be a judge in his own cause).

Audi Alteram partem or the rule of fair hearing (hear the other side).

Rule against bias or bias of interest- the term bias means anything which tends to or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased. In simple words, bias means deciding a case otherwise than on the principles of evidence.

This principle is based on the following rules

No one should be a judge in his own cause.

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

The above rules make it clear that judiciary must be free from bias and should deliver pure and impartial justice. Judges must act judicially and decide the case without considering anything other than the principles of evidence.

Kinds of Bias: The rule against bias may be classified under the following three heads:

Pecuniary bias

Personal bias

Bias as to subject matter.

1. Pecuniary Bias:

pecuniary bias arises, when the adjudicator/ judge have monetary/ economic interest in the subject matter of the dispute/ case. The judge, while deciding a case should not have any pecuniary or economic interest. In other words, pecuniary interest in the subject matter of

litigation disqualifies a person from acting as a judge.

Relevant leading cases on this point are:

Dr. Benham's case

Dr. Benham was fined for practicing in the city of London without license of the college of Physicians. According to the statute, the college is entitled to half of the amount and the remaining goes to the King. Coke CJ. Dis- allowed the claim (fine) on the ground that the college had a pecuniary interest. (Fine against Dr. Benham was dismissed). The rule of pecuniary bias was laid down in the case of: *Dimes v. D. J Canal*.

A company filed a suit against a landowner. Lord Chancellor (judge), who was a shareholder of the plaintiff company heard the case and decided in favour of the company. On appeal, the House of Lords quashed this decision on the ground that no man shall be judge of his own cause. *R. v. Hendon Rural District Council, Ex parte charley*.

In this case, one of the members of the planning commission was an estate agent and he was acting for the applicant to whom permission was granted by the planning commission. The decision of the planning commission granting the permission was quashed on the ground of pecuniary bias.

Jeejeebhoy v. Asst. Collector. In this case, it was found that one of the members of the bench of the court was also a member of the co-operative society for which the disputed land had been acquired.

The bench was reconstituted. Similarly, *Visakhapatnam Co-operative Motor Transport Ltd. v. G. Bangar Raju*. In this case, the district collector as the chairman of the regional transport authority granted motor permit to the above co-operative society, to which he was also the president. The court set aside the collector's action on the ground of pecuniary bias.

2. Personal Bias:

Personal bias arises from near and dear i.e. from friendship, relationship, business or professional association. Such relationship disqualifies a person from acting as a judge. Relevant cases on this point is A.k. Kripak v. Union of India. The Supreme Court quashed the selections made by the selection board on the ground that one of the candidates appeared before selection committee was also a member of the selection board.

Meenglass Tea Estate v. Their Workmen. In this case, the manager of the factory conducted inquiry against the workmen who were alleged to have assaulted him. The court disqualified the manager on the ground of personal bias.

State of U.P v. Mohd. Nooh. In this case a departmental inquiry was held against an employee and one of the witnesses against the employee turned hostile. The inquiry officer then left the inquiry and gave evidence against him and thereafter resumed to complete the inquiry and passed the order of dismissal. The order of dismissal was quashed on the ground of personal bias.

Mineral Development Ltd. v. State of Bihar. In this case, the petitioner company was owned by Raja Kamakshya Narain Singh. The petitioner was granted mining license for 99 years. The license was cancelled by the minister of revenue acting under Bihar Mica Act. Raja Kamakshya Narain Singh, the owner of the company had opposed the minister and filed a criminal case under section 500 of the Indian Penal code. The case was political rivalry between the minister and Raja Kamakshya Narain Singh. The cancellation order was set aside on the ground of personal bias.

Kirti Deshmankar v. Union of India. In this case, the mother-in-law of a student selected for the admission to the medical college was vitally interested in her admission. The mother-in-law was a member of the college and hospital council and she participated in the meeting of the council. On this ground the court held that the selection of the student for the admission to the medical college was vitiated. The court made it clear that it was not necessary to establish bias.

Reasonable likelihood of bias was considered sufficient to vitiate the selection for admission. In short, for vitiating the decision on the ground of bias, it is not necessary to establish bias. It is sufficient to invalidate the decision if it can be shown that there has been reasonable

likelihood of bias.

3. Bias as to subject matter (official bias):

Any interest or prejudice will disqualify a judge from hearing the case. When the adjudicator or the judge has general interest in the subject matter in dispute on account of his association with the administration or private body, he will be disqualified on the ground of bias if he has intimately identified himself with the issues in dispute. To disqualify on the ground there must be intimate and direct connection between the adjudicator and the issues in dispute. Now the question is, whether this principle can be extended to administrative adjudication also.

If so, no decision will be free from bias. *Gullampally Nageswara Rao v. A. P.S.R.T.C* . In this case, the government proposed nationalization of motor transport. Objections for nationalization were referred to be heard by the secretary to the Government, who upheld the validity of the scheme (for nationalization). It was challenged on the ground that the said secretary in fact, initiated the nationalization.

The Supreme Court held the government secretary's action invalid. *K. Chelliah v. Chairman, Industrial Finance Corporation*. In this case, the disciplinary action against an employee was taken by the chairman of the corporation. There was statutory provision for the appeal from the chairman to the board of directors. The chairman was also a member of the board of directors.

The chairman participated in the meeting of the board in which the appeal was considered. The order of the board was quashed on the ground of bias. The presence of the chairman in the meeting of the board in which the appeal was considered created a reasonable apprehension in the mind of the party that there was real likelihood of bias. *Lavanya v. Osmania University (1999) A.P.*

Brief facts: lavanya wrote B.Sc. (maths) examinations of Osmania University in 1999. In the result, it was intimated that she failed in maths. She applied for re-valuation. In re-valuation she passed. She appeared for M.B.A. entrance examination in 1999 and qualified for

admission. However, Osmania University authorities refused to admit her rejecting her application that she passed in re-valuation. She sought directions from the A.P High Court.

Judgment: The Andhra Pradesh High court gave judgment on 13-10-1999 in favour of Lavanya and ordered the Osmania University authorities to admit her.

Exception to the rule against bias or the Doctrine of Necessity.

When bias is provided, it disqualified the adjudicator and an impartial adjudicator should replace him. However, there are certain extreme cases in which substitution/replacement of impartial adjudicator is not possible. In such situations, the principle of natural justice, under necessity has to give way.

Otherwise the administration of justice breaks down and there is no other means to decide. Though Indian courts have not expressly adopted it, this (doctrine of necessity) has been impliedly applied in several occasions. In contempt of court, the rule that no one shall be a judge in his own cause is not followed strictly. Similarly, in departmental enquiry in service matters the employee appoints enquiry officer and there is every possibility that the enquiry officer acts in favour of employer.

2. Audi alteram partem or the rule of fair hearing (hear the other side)

The second fundamental principle of natural justice is audi alteram partem or the rule of fair hearing. It means no one shall be condemned unheard i.e. there must be fairness on the part of the deciding authority.

According to this principle, reasonable opportunity must be given to a person before taking any action against him. This rule insists that the affected person must be given an opportunity to produce evidence in support of his case. He should be disclosed the evidence to be utilized against him and should be given an opportunity to rebut the evidence produced by the other party.

Essentials of fair hearing

To constitute fair hearing, the following ingredients are to be satisfied-

Notice

Hearing

1. Notice: There is a duty on the part of the deciding authority to give notice to a person before taking any action against him. The notice must be reasonable and must contain the time, place, nature of hearing and other particulars. If the notice is defective or vague, all subsequent proceedings would be vitiated. Relevant case on this point is Punjab National Bank v. All India Bank Employees Federation .

In this case, notice did not contain the charges against which fine was imposed. The Supreme Court held that the notice defective and quashed the fine. Similarly in R. v. University of Cambridge (Dr. Bentley's case). In this case, the University authorities without giving any notice cancelled the degree of Dr. Bentley on the ground of misconduct. The University's action was held violative of the principle of natural justice. R. v. Newmarket Assessment Committee.

Brief facts: The municipality issued a notice to the house owner stating that it was going to tax the house at the rate of 2, 500 pounds per year and also stated that if the owner consented to it, he need not attend before Assessment Committee. The house owner did not attend. Later the municipal committee enhanced the tax to @ 4,500 pounds without giving any notice.

Judgment- the House of Lords quashed the municipal assessment order in the writ of certiorari.

Object of Notice: the object of notice is to provide an opportunity to the person so that he can equip himself to defend his case. Any order passed without giving a notice is against the principles of natural justice and is void ab initio. Board of High School v. Kumari Chitra.

In this case, the petitioner appeared for the examination. But the board, without giving a notice cancelled the examination on the ground of the shortage of attendance. The petitioner

was not given an opportunity of being heard. The board contended that giving show cause notice would not serve the purpose since the evidence (shortage of attendance) is borne on the record. The Supreme Court rejected the contention of the board and held the action violative of principle of natural justice.

The principle of natural justice must be observed irrespective of the reason, whether the purpose would be served or not. *Maneka Gandhi v. Union of India* [20]. It is a leading case in personal liberty under Article 21 of Indian Constitution. The petitioner, Maneka Gandhi's passport was impounded without giving any opportunity (by the government of India) in public interest.

The Supreme Court held that the order of the government violative of the principles of natural justice and laid down the following propositions:

The adjudicating authority must be partial and without any interest or bias

The adjudicating authority, whether judicial or quasi judicial cannot delegate or sub delegate its power (the power to decide the case should not be delegated)

The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected interest to submit their case

2. Hearing: Fair hearing in its full sense means that a person against whom an order to his prejudice is passed should be informed of the charges against him, be given an opportunity to submit his explanation thereto, have a right to know the evidence both oral and documentary, by which the matter is proposed to be decided and to have the witnesses examined in his presence and have the right to cross examine them and to lead his own evidence both oral and documentary in his defence. It is a code of procedure, which has no definite content, but varies with the facts and circumstances of the case.

Ingredients of fair hearing: a hearing will be treated as fair hearing if the following conditions are satisfied:

Adjudicating authority receives all the relevant material produced by the individual

The adjudicating authority discloses the individual concerned evidence or material which it wishes to use against him

The adjudicating authority providing the person concerned an opportunity to rebut the evidence or material which they said authority wants to use against him

Exclusion of natural justice (exceptions to the rule of natural justice)

Exclusion by statutory provisions.

Exclusion by the constitutional provisions.

Exclusion in case of legislative act.

Exclusion in public interest.

Exclusion in case of the need of prompt action or in emergency or necessity.

Exclusion on the ground of the impracticability.

Exclusion in case of confidentiality.

Exclusion in cases of academic adjudication.

Exclusion when no right of the person is infringed.

Exclusion in the cases of interim prevention action.

Exclusion in case of fraud.

Effect of Breach of Natural Justice

When the authority is required to observe the principle of natural justice in passing an order but fails to do so, the general judicial opinion is that the order is void.

In England, in the case of *Ridge v. Baldwin*, the court held the decision of the authority void on the ground of the breach of the rule of fair hearing.

In India, the position is well settled that the order passed in violation of the principles of natural justice is void.

Failure to give reason:

Where the reason for the decision are not given to the person concerned or reasons are not given to the court, the order is quashed and the authority is directed by the court to examine the matter afresh. Where the reasons are not communicated to the person concerned that they are on record, in some cases, the court has upheld the action but in some other cases, the court has not upheld it.

In *Ajantha Industries v. Central Board of Direct Taxes* , the court has held that recordings of reasons on the file are not sufficient. It is necessary to give reasons to the person concerned. In this case, the order was quashed on the ground that the reasons were not communicated to the person concerned. The view expressed in the *Ajantha Industries* case appears to be the better view. Reasons are for the benefit of the party concerned and, therefore, they should be communicated to the person concerned and they should not be confined to the record or file.

References:

Dr. kailash Rai, *Administrative Law* (Allahabad Law Agency, Law Publisher, Faridabad (Haryana)-121002,7th edn.,2011)

Dr. I.P Massey, *Administrative law* (Eastern Book Company, Lucknow,8th edn., 2012)