

PRINCIPLE OF NATURAL JUSTICE AND ITS LEGAL IMPLECATIONS

NATURAL JUSTICE: CONCEPT AND MEANING:

Natural Justice is an important concept in administrative law. The principles of natural justice of fundamental rules of procedure are the preliminary basis of a good administrative set up of any country. The concept and doctrine of Principles of Natural Justice and its application in Justice delivery system is not new. It has its place since the beginning of justice delivery system. Natural justice is an expression of English common law, which involves a procedural requirement of fairness. It is an important concept in administrative law. In the words of Justice Krishna Iyer Natural justice is a pervasive fact of secular law where a spiritual touch enlivens legislation, legislation and adjudication to make fairness a creed of life. It has many colour and shades, many forms and shapes.¹ It is no doubt, a procedural requirement but it ensures a strong safeguard against any Judicial or administrative; order or action, adversely affecting the substantive rights of the individuals. Different jurists have described the principle in different ways. Some called it as the unwritten law (jus non scriptum) or the law of reason. It has, however not been found to be capable of being defined, but some jurists have described the principle as a great humanising principle intended to invest law with fairness to secure justice and to prevent miscarriage of justice. With the passage of time, some principles have evolved and crystallised which are well recognized principles of natural justice.

Natural Justice is an important concept in administrative law. The term natural justice signifies basic principles of justice, which are made available to everyone litigant during trial. Principles of natural justice are founded on reason and enlightened public policy. These principles are adopted to circumstances of all cases. Such principles are applicable to decisions of all governmental agencies, tribunals and judgments of all courts. In the present world the importance of principle of natural justice has been gaining its strength and it is now the essence of any judicial system. Natural justice rules are not codified laws. It is not possible to define precisely and scientifically the expression 'natural justice'. They are

¹ Lord Esher MR in Vionet VS Barrat, (1885) 55 LJQB 39.

basically common – sense justice which are built- in the conscience of human being. They are based on natural ideals and values which are universal in nature. ‘ Natural justice’ and ‘legal justice’ are substances of ‘justices’ which must be secured by both, and whenever legal justice fails to achieve this purpose, natural justice has to be called in aid of legal justice. Rules of natural justice have developed with the growth of civilization. It is not the creation of Constitution or mankind. It originated along with human history. In order to protect himself against the excess of organized power, man has always appealed to someone which is not been created by him and such someone could only be God and His laws, Divine law or Natural law, to which all temporal laws must and actions must conform. It is of ‘higher law of nature’ or ‘natural law’ which implies fairness, reasonableness, equity and equality.

HISTORICAL DEVELOPMENT

The concept of Principle of natural justice is not a new concept. Natural justice has an impressive history which has been recognized from the earliest times. The Greeks had accepted the principle that ‘no man should be condemned unheard’. It was first applied in ‘Garden of Eden’ where opportunity to be heard was given to Adam and then providing him punishment. Some of the evidences of natural justice is also found in Roman law. Principle of natural justice has also been found in the Kautilya’s Arthashastra, Manusmriti and different text. Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it "juranaturalia" i.e. natural law. In India the principle is prevalent from the ancient times. We find it Invoked in Kautilya's Arthashastra. In this context, para 43 of the judgment of the Hon'ble Supreme Court In the case of **Mohinder Singh Gill v. Chief Election Commissioner**², may be usefully quoted:

“Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam-and of Kautilya's Arthashastra-the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other

²AIR 1978 SC 851

Extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

In **Swadeshi Cotton Mills V. Union of India**³, It was observed that Natural justice is a branch of public law and is a formidable weapon which can be wielded to secure justice to the citizen. Also in **Canara Bank V. V K Awasthi**⁴ the supreme court observed that principles of natural justice are those rules which have been laid down by courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, Quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice are those rules which have been laid down by the courts as being minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights.

Frank Committee or the committee on Minister's Power has laid down the following norms of natural justice:

1. No man should be condemned unheard,
2. No man shall be judge in his own cause,
3. A party is entitled to know the reasons for the decision,
4. Making available a copy of statutory report.

However the traditional English law recognises two principles of natural justice

(A) NEMO JUDEX IN CAUSA SUA (Rule Against Bias)

The literal meaning of the Latin maxim 'NEMO JUDEX IN CAUSA SUA is that 'No man shall be a judge in his own cause' i.e. to say, the deciding authority must be impartial and without bias. It implies that no man can act as a judge for a cause in which he has some Interest, may be pecuniary or otherwise. Bias means an operative prejudice, whether conscious or unconscious, in relation to a party or issue. Such operative prejudice may be the result of a preconceived opinion or a predisposition or a predetermination to decide a case in

³ AIR 1981 SC 818

⁴ Air 2005 6 SCC 321

a particular manner so much so that it does not leave the mind open. Pecuniary interest affords the strongest proof against impartiality. The emphasis is on the objectivity in dealing with and deciding a matter. Justice Gajendragadkar, has observed in the case of **M/S Builders Supply Corporation v. The Union of India and others**⁵, "it is obvious that pecuniary interest, howsoever small it may be, In a subject matter of the proceedings, would wholly disqualify a member from acting as a judge". Lord Hardwick observed in one of the cases, "In a matter of so tender a nature, even the appearance of evil is to be avoided." Yet it has been laid down as principle of law that pecuniary interest would disqualify a Judge to decide the matter even though it is not proved that the decision was in anyway affected. This is thus a matter of faith, which a common man must have, in the deciding authority. The principle is applicable in such cases also where the deciding authority has some personal Interest in the matter other than pecuniary Interest. This may be in the shape of some personal relationship with one of the parties or ill will against any of them. In one of the cases order of punishment was held to be vitiated, as the officer who was in the position of a complainant/accuser/witness, could not act as an enquiry officer or punishing authority. There may be a possibility, consciously or unconsciously to uphold as Enquiry Officer what he alleges against the delinquent officer.

In one of the selections, which was held for the post of Chief Conservator of Forest, one of the members of the Board was himself a candidate for the post. The whole process of selection was held to be vitiated as the member would be a judge in his own cause.

In the case of **A.K.Kraipak V. Union of India**⁶ a precaution was taken by a member of the selection Board to withdraw himself from the selection proceedings at the time his name was considered. This precaution taken could not cure the defect of being a judge in his own cause since he had participated in the deliberations when the names of his rival candidates were being considered for selection on merit. The position, however, may be different when merely official capacity is involved in taking a decision in any matter as distinguished from having a personal Interest. There are certain statutes which provide that named officers may resolve the controversy, if any, arising between the organisation and the other persons, e.g., in the matters relating to nationalisation of routes, Government officers or authorities were vested with the power to dispose of the objections. In such matters as above, it has been held by the Hon'ble Supreme Court that proceeding will not vitiate as It was only in official capacity that the officer was Involved and It would not be correct to say that he was a judge

⁵AIR 1965 SC 1061

⁶AIR 1970 SC 150,

in his own cause being an officer of the Government. It is a kind of statutory duty which is performed by a public officer, unless of course bias is proved in any case. In another case **Manak Lal v. Prem Chand**⁷, where a committee was constituted to enquire into the complaint made against an Advocate, the Chairman of the Committee was one who had once appeared earlier as counsel for the complainant. Constitution of such a committee was held to be bad and it was observed, "in such cases the test is not whether in fact the bias has affected the Judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributed to a member of the Tribunal might have operated against him in the final decision of the Tribunal." However, such objections about the constitution of committees or Tribunals consisting of members having bias should be taken at the earliest opportunity before start of the proceedings otherwise, normally, It would be considered as waiver to that objection. Lord Denning observed in, **Metropolitan Properties Ltd. v. Lunn**⁸, "The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking, the Judge was biased". But we find accusation given that the suspicion should be that of reasonable people and must not be that of capricious and unreasonable person. The principle is of great Importance. It ensures hearing or consideration of a matter by unbiased and impartial authority.

TYPES OF BIAS

1. Pecuniary Bias

Judicial approach is unanimous and decisive on the point that any financial interest, howsoever small it may be, would vitiate administrative action. The disqualification will not be avoided by non-participation of the biased member in the proceedings if he was present when the decision was reached.

In the age of free market economy where investment in shares is very common there is very much chance of the bias of this type. However considered opinion is that it would serve no public interest if the deciding officer rescues himself where he has no substantial pecuniary interest.

2. Subject Matter Bias

⁷AIR 1957 SC 425

⁸(1969) 1 OB 577

Those cases fall within this category where the deciding officer is directly, otherwise, involved in the subject matter of the case. Here again the mere involvement would not vitiate the administrative action unless there is a real likelihood of bias.

In *R. Vs. Deal Justices, Ex p. Curling*⁹, the magistrate was not declared to try a case of cruelty to an animal on the ground that he was a member of the royal society for the prevention of Cruelty to animals, as this did not prove a real likelihood of bias.

3. Departmental Bias Or Institutional bias

The problem of departmental bias is something which is inherent in the administrative process, and if not effectively checked it may negate the very concept of fairness in administrative proceeding. The problem of departmental bias also arises in a different context when the functions of a judge and prosecutor are combined in the same department. It is not uncommon to find that the same department which initiate a matter also decides it, therefore at times departmental fraternity and loyalty militates against the concept of fair hearing.

4. Policy Notion Bias

Bias arising out of preconceived policy notions is a delicate problem of administrative law. On one hand, no judge as a human being is expected to sit as a blank sheet of paper and on the floor, preconceived policy notions may vitiate a fair trial.

A classic case bringing this problem to the forefront is **Franklin V. Minister of Town and country planning**¹⁰ also known as Stevenage case. In this case the appellant challenged the Stevenage New Town Designation Order Act, 1946. On the ground that no fair hearing was given because the Minister had entertained bias in his determination which was clear from his speech at Stevenage when he said "I want to carry out a daring exercise in town planning and it is going to be done. Though the court did not accept the challenge on the technical ground that the minister in confirming the report was not performing any quasi-judicial function, but the problem still remains that the bias arising from strong policy convictions may operate as a more serious threat to fair action than any other single factor.

5. Preconceived Notion Bias

This type of bias is also known as unconscious bias. All person exercising adjudicatory powers are humans with human prejudices, no matter some persons are more humans than

⁹ (1881) 45 LT 439 (DC)

¹⁰ 1948 AC 87

others. The problem of bias arising from preconceived notions may have to be disposed of as an inherent limitation of the administrative process. It is useless to accuse a public officer of bias merely because he is predisposed in favour of some policy in the public interest.

6. Bias on Account of Obstinacy

The supreme court has discovered a new category of bias arising from thoroughly unreasonable obstinacy .It literally means unreasonable and unwavering persistence, and the deciding officer would not take “no” for an answer. This new type of bias was discovered in a situation where a judge of the Calcutta High court upheld his own judgment while sitting in appeal against his own judgment.

EXCEPTION TO THE RULE AGAINST BIAS

Doctrine of Necessity-

The doctrine of necessity is an exception to ‘Bias’. The law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. The doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It can be invoked in cases of bias where There is no authority to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit from it. If the choice is between either to allow a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. Where bias is apparent but the same person who is likely to be biased has to decide, because of the statutory requirements or the exclusiveness of a competent authority to decide, the Courts allow such person to decide. In **Ashok Kumar Yadav vs. Haryana**¹¹, the Court held that a member of the Public Service Commission could not entirely disassociate himself from the process of selection just because a few candidates were related to him. He should disassociate himself with the selection of the persons who are related to him, but need not disassociate with the selection of other candidates. Though his presence on the selection committee could create a likelihood of bias in favour of his relations yet, since the PSC is a constitutional authority, such a member cannot be excluded from its work and his presence in the recruitment process is mandatorily required. The Court further held that where substitution is possible, this doctrine would not apply.

Doctrine of Absolute Necessity-

¹¹ AIR 1987 SC 454.

The doctrine of 'absolute necessity' is also taken as an exception to 'Bias' where it is absolutely necessary to decide a case of Bias and there is no other option left. In **Election Commission of India vs. Dr. Subramaniam Swamy**, the SC was asked to decide whether the CEC TN Seshan, who was allegedly biased in favour of Swamy, because of the long friendship, could participate in the giving of opinion by the EC. The opinion was to be given on the alleged disqualification of Jayalalitha, the then CM of Tamil Nadu under Article 191 of the Constitution. Swamy had made a petition to the Governor alleging that Jayalalitha had incurred a disqualification under Article 191 read with Sec 9 of the RPA, 1951, to get elected to the legislative assembly, as at the time of the election she was a party to a contract with the Government. Under Art 192 of the Constitution, before giving any decision on such question of disqualification, a Governor is required to obtain of the EC, and has to act according to such opinion. The Governor forwarded Swamy's petition to the EC for its opinion. Jayalalitha moved the HC of Madras under Art 226 of the Constitution, seeking a writ of prohibition enjoining upon Seshan not to participate in giving opinion. The HC, through a single judge Bench, held that Seshan shouldn't give opinion in view of his prejudice against Jayalalitha. The Single Judge also held that she had not incurred any disqualification. On appeal, the Division Bench held that the single judge Bench had been wrong in deciding the question of Jayalalitha's disqualification, because that question could be decided by the EC alone. The Division Bench, however agreed with the Single Judge Bench that Seshan suffered from Bias, and therefore, should not give his opinion. The Division Bench observed that in view of the appointment of additional two members on the EC, the EC could give opinion through members other than the CEC. On appeal, the SC confirmed that Seshan should not give opinion. The Court, observed that in view of the multi-member composition of the EC and its earlier decision in **T.N Seshan vs UOI**, where it was held that decisions of the EC should be by majority, while giving opinion under Art 192(2) of the Constitution, the CEC could get himself excused from sitting on the Commission, while an opinion on a matter in which he was held to be biased was being given. If the other two members differed, the CEC could give opinion, and the opinion of the majority would be the opinion of the EC. In that case, though he was biased, he would be required to give opinion under the doctrine of necessity and not only mere necessity but absolute necessity. Thus, the doctrine of bias would not be applied.

(B) AUDI ALTERAM PARTEM (Rule of fair hearing)

The next principle is audi alteram partem, i.e. no man should be condemned unheard or that both the sides must be heard before passing any order. A man cannot incur the loss of property or liberty for an offence by a judicial proceeding until he has a fair opportunity of answering the case against him. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not. De Smith, in his *Judicial Review of Administrative Action* (1980), at page 161, observed, "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice." Wade in *Administrative Law* (1977) at page 395 says that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. In the case of **Cooper v. Sandworth Board of Works**¹², it was observed, "...Although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature."

In A.K. Kraipak's case, the Hon'ble Supreme Court observed that the rules of natural justice operate only in areas not covered by any law validly made. These principles thus supplement the law of the land. In the case of **Smt. Maneka Gandhi v. Union of India and another**¹³, it has been observed that even where there is no specific provision for showing cause, yet in a proposed action which affects the rights of an individual it is the duty of the authority to give reasonable opportunity to be heard. This duty is said to be implied by nature of function to be performed by the authority having power to take punitive or damaging action.

There are mainly two elements of this principle i.e.

(a) NOTICE

(b) HEARING

NOTICE

The term notice originated from the latin word notitia which means being known. In its popular sense it is equivalent to information, intelligence or knowledge. In legal sense, it

¹² (1863) 14 GB (NS) 4 180

¹³ , AIR 1978 SC 597

embraces knowledge of circumstances that ought to induce suspicion or belief, as well as direct information of that fact.

Generally a notice contains the following facts

1. Time, place and nature of hearing.
2. Legal authority under which a hearing is to be held.
3. Statement of specific charges which the person has to meet.

HEARING

It is the basic requirement of the principle of natural justice that the opportunity of being heard must be given. Right to hearing provides an individual to present his case before the court and put forward evidences in support of his case.. It also includes the right of representation and at the same time to defend his side. The application of the principles of natural justice varies from case to case depending upon the factual aspect of the matter. For example, in the matters relating to major punishment, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules before a person is dismissed removed or reduced in rank, but where it relates to only minor punishment, a mere explanation submitted by the delinquent officer concerned meets the requirement of principles of natural justice. In some matters oral hearing may be necessary but in others, It may not be necessary, as we find that in one of the case, **Union of India v. J.P.Mittar**¹⁴, a matter relating to correction of date of birth, it was not considered necessary to provide personal hearing; a mere representation was held to be sufficient to conform to the application of principles of natural justice. In **Srikrishna v. State of M.P.**¹⁵, It has been observed that the principles of natural justice are flexible and the test is that the adjudicating authority must be impartial and fair hearing must be given to the person concerned.

(C) REASONED DECISION

“Reason is an essential requirement of the rule of law. It provides a link between fact and decision, guard against non-application of mind, arbitrariness, and maintains public confidence in judicial and administrative authorities. Reasons also serve a wider principle that justice must not only be done, it must also appear to be done.

DOCTRINE OF POST DECISIONAL HEARING

Post decisional hearing is a hearing which takes after a provisional decision is reached. Post decisional hearing takes place where it may not be feasible to hold pre decisional hearing.

¹⁴ AIR 1971 SC 1093,

¹⁵ AIR 1977 SC 1691

The idea of Post Decision Hearing has been developed to maintain a balance between administrative efficiency and fairness to individuals¹⁶. In Post Decisional Hearing, an individual is given an opportunity to be heard after a tentative decision has been taken by the authorities. In certain situations, it is not feasible for the authorities to have a normal pre-decisional hearing and decisions are being taken on first instance before providing the individual to present his views, than it would be consider reasonable if the authorities provide Post Decision Hearing as well, asset will be in compliance with the Principle of Natural Justice. In Post Decision Hearing, the prominent point is that authorities must take only a tentative decision and not a final decision without hearing the party concerned¹⁷. The fundamental objective is that when a final decision is taken than it becomes difficult for the authorities to reverse it and the purpose of providing a fair hearing gets defeated,therefore, for an accused it turns out to be a less effective than pre decision hearing. The similar proposition was ingeminated by the Apex Court.

With the introduction of this concept, the prospect of Principle of Natural Justice has widened. The Supreme Court has been emphatic and prefers for Pre Decision Hearing rather Post Decision Hearing which must be done only in extreme and unavoidable cases. It strengthens the concept of Audi Alteram Partem by providing Right to Heard at a later stage. The Supreme Court has different views on Post Decision Hearing, on whether providing opportunity to be heard at a later stage sub serves the Principle of Natural Justice or not, or can post decision hearing be an absolute substitute for pre decision hearing. The concept of post-decisional hearing, though jurisprudentially groundbreaking, has been rather frequently discussed; so much so that there only a handful of cases which can be cited to discuss the concept and its jurisprudence in depth and detail. An analysis of the same are as follows with the help of case laws.

CASE LAWS

Mankea Gandhi vs. Union of India¹⁸

This case is a landmark judgement on this point and was instrumental in introducing the concept of Post Decision Hearing in Indian Legal Jurisprudence. The petitioner was provided with a notice by the Regional Passport Office, Delhi to submit the passport within seven days of her receiving the notice. The decision was made by the Government of India under Section 10(3)(c) of Passport Act,1967 on the ground of Public Interest. The petitioner immediately

¹⁶ I.P. Massey, Administrative Law, (6th edition 2005).

¹⁷ M P Jain & S C Jain, Principles of Administrative Law (5th edition, 2007).

¹⁸ 1978 SCR (2) 621.

asked the Passport Office to furnish the grounds on which her passport is impounded upon as provided under Section 10(5), the Government refused to provide the same stating in the interest of the general public, they will not provide the reasons for this order. The petitioner filed a writ petition challenging the order passed by the Government.

The argument presented by the Attorney General regarding the applicability of Audi alteram partem was rejected by the Court. The court stated that is necessary for the authorities to comply by the principle of Natural Justice and an opportunity to be heard must be provided to the petitioner before passing any final order. Court held that procedure established by section 10(3)(c) of Passport Act, 1967 is in conformity with the requirement of Article 21. The Act provides the ground on which the passport could be impounded and this procedure was comprehensively recognized by the Court. Finally the court did not pass any order as assurance was provided by the Attorney General to provide the petitioner with the opportunity to present her views within two weeks (Post Decisional Hearing) and prior to the taking of final decision authorities will consider the views given by the petitioner. Hence first time in Indian Legal Jurisprudence the concept to Audi Alteram Partem was evolved.

Swadeshi Cotton Mills vs. Union Of India¹⁹

In 1978, Swadeshi Cotton Mills was taken over by the Government through the Industries (Development and Regulation) Act, 1951 on the ground that the production of articles will be drastically reduced and immediate action is required to protect it. The management was handed over to National Textile Corporation Limited for a term of five years. The act provides the Centre Government with the power to issue orders regarding any public limited industry which is not been able to function properly. The company decided to file a writ petition in Delhi High Court against the Government's order. The High Court upheld the order of government. The appellant than filed a revision petition before Supreme Court.

The court reversed the decision of High Court and held that Section 18AA does not exclude the rule of audi alteram partem at pre decisional stage The court recognized the principle of Post Decisional Hearing and held that in certain situations it is not possible to give prior notice or opportunity to be heard, in such circumstances the authorities may take the necessary decisions but it must be followed by a full remedial hearing. Regarding the judicial review of the order Apex Court differed from the respondent and stated that taking immediate action is the question of fact and therefore court can interfere if the administration is not

¹⁹ 1981 SCR

reasonable in its approach as they form their opinion by collecting evidences. Post decisional hearing does not exclude the rule of pre decisional hearing unless specifically prescribed by the act. And in this case the Government has violated the Principle of Natural Justice by not providing an opportunity to be heard.

Canara Bank vs. V.K. Awasthi²⁰

The respondent was served with a show cause notice on 6.08.1992 and was granted 15 days to reply. The respondent failed to reply and as a consequence was terminated from the service on 17.08.1992. The respondent contended that principles of natural justice was not followed and High Court upholding the said contention ordered the bank to provide proper hearing to the respondent before the disciplinary committee. Hence, the bank filed an appeal before the Supreme Court.

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The bank provided the respondent with personal hearing before the appellant authority. The issue concerning in this case was whether post decisional hearing provided by the bank to the respondent before appellant authority is in concurrence with Audi alteram partem or not. The Apex Court relied on **Charan Lal Sahuv vs. Union of India²¹**. Where the Court held that 'post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing'. Therefore, if there is any lack in the proceedings of any case, then it can be resolved by using post- decisional hearing. Therefore court allowed the appeal and held that no violation of Principle of Natural Justice was witnessed and Post Decisional Hearing in the present appeal serves the purpose of pre decisional hearing.

The application of Post Decisional Hearing has not been appreciated by Courts when the matter was in relation to elections and Representation of People's Act. In case of **Ram Naresh Tyagi and ors. Vs. Election Commission of India & another²²** and **Arun Tyagi vs.**

²⁰ (2005) 6 SCC 321.

²¹ AIR 1990 SC 1480.

²² WP (C) No. 5064 of 2013.

Election Commission of India & another²³. The Delhi High Court ruled out the application of Post Decisional hearing. The issue was regarding the deletion of voter's names from their electoral roll. Section 22-C of Representation of Peoples Act provides that hearing must be provided to the voter before removing their name from the electoral roll. The Election Commission without providing hearing deleted 841 names from the electoral roll. Petitioners challenged before the High Court. Election Commission contended that they are willing to provide post decisional hearing but the Court rejecting their argument held that in such matters post Decisional Hearing does not serve as substitute of Pre Decisional Hearing and if the legislation clearly provides for hearing before deletion of names, than providing hearing after the decision is taken to remove the names does not serve the purpose and hence, Election Commission was ordered to reinstate their names in the Electoral Roll. These cases are a proof that post decisional hearing as a process is here to stay. Primarily, because it is done in cases of extreme and grave importance which have huge bearing on the legality of the thing or act concerned. So, they serve as a good and reasonable method to pass and carry out orders so that the matter doesn't worsen, as well as, respecting the urgency of the situation. Also, post decisional hearing is well within the boundaries of Natural Justice, and we can say that it challenges the boundaries of natural justice to the point on furthering it but never crosses those boundaries. Therefore it is a way to enlarge and broaden the scope of Natural Justice on case to case basis, thus, accrediting the legal jurisprudence with some very practical and sound processes.

Conclusion

The main objective behind the reconciliation between the inclusion and exclusion of protection of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interest where the justice demands. After the discussion of the principles of natural justice it may be concluded that the Courts both in India and England in relation to administrative proceedings created various exception to the requirement of Natural Justice Principles and procedure there off. However, these exceptions are all circumstantial and not conclusive, every exception to be adjudged admissible or otherwise only after looking into the facts and circumstances of each case. The exceptions to the principles of natural justice in UK and India mainly relate to administrative proceedings. The Courts in both these countries especially in India created various exceptions to the

²³ LPA No. 2/2011.

requirement of natural justice principles and procedures taking into account various circumstances like time, place, and the apprehended danger and so on prevailing at the time of decision-making. It must be noted that all these exceptions are circumstantial and not conclusive. They do not apply in the same manner to situations which are not alike. They are not rigid but flexible. These rules can be adopted and modified by statutes and statutory rules also by the Constitution of the Tribunal which has to decide a particular matter and the rules by which such tribunal is governed. Every action of the authorities to be regarded as an exception must be scrutinised by the Courts depending upon the prevailing circumstances. The cases where natural justice principles have been excluded by implication suggest that the Courts have accepted the doctrine even though the legislature has not adopted express words to that effect but those cases appear to depend so heavily on their particular circumstances that they do not yield a clear general principle. There are arguable and also explicable instances where the courts have concluded that natural justice was not necessary.

In order to invoke the exceptions the decision of the authorities must be based on bonafide Intention and the Courts while adjudicating the post decision dispute must find the action of the concerned authorities to be fair and just and every such exceptions to be adjudged admissible or otherwise only after looking into the facts and circumstances of each case. The main objective behind the reconciliation between the inclusion and exclusion of protection of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interest where the justice demands. Thus, exclusion of natural justice should not be readily made unless it is irresistible, since the Courts act on the presumption that the legislature intends to observe the principles of natural justice and those Principles do not supplant but supplement the law of the land. Therefore, all statutory provisions must be read, interpreted and applied so as to be consistent with the principles of Natural justice.