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E-BOOK

On

Principles

of

Natural Justice

Principles of Natural Justice

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Sd/-

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Principles of Natural Justice

Introduction

For the purpose of enforcing the provisions of the Customs Act or the Central Excise Act or the Finance Act, 1994, the officers of Customs & Central Excise are empowered to decide whether an infringement or contravention has taken place and whether penal action is called for. Such procedures are known as adjudication proceedings and are also followed when the questions of classification, valuation, grant of refund, drawback, etc. are to be decided. Such proceedings are quasi-judicial in nature and do not require adherence to rigid court room proceedings. However, principles of natural justice have to be strictly followed.

2. The term “Principles of Natural Justice” (PNJ), derived from the expression ***Jus Natural***” of the Roman Law, does not have force of law as they may or may not form part of statute but they are necessarily to be followed. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled.

3. Principles of natural justice are those rules which have been laid down by the 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.

4. The rules of natural justice do not supplant the law of the land but only supplement it. It is now firmly established that in the absence of express provisions in any statute dispensing with the observance of the principles of natural justice, such principles will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties. (A.K Kraipak vs. Union of India (AIR 1970 S.C.150) & Maneka Gandhi (AIR 1978 S.C.597).

5. **Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.**

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6. Natural Justice recognizes three principles:

- (i) Nemo debet esse iudex in propria causa.
- (ii) Audi alteram partem, and
- (iii) Speaking orders or reasoned decisions.

The first two have come to us from the Roman Law and the third one is a recent innovation due to the rapid development of the constitutional as well as administrative law.

Nemo debet esse iudex in propria causa

7. The first principle of impartiality roughly translated into English means nobody shall be a judge in his own cause or in a cause in which he is interested. This principle is more popularly known as the **Doctrine of Bias**. That is the authority sitting in judgment should be impartial and act without bias. To instill confidence in the system, justice should not merely be done but seen to be done.

Bias: Pecuniary Bias

8. Bias can be categorized in three categories namely pecuniary, personal and official. It is obvious that decision of the adjudicator would be affected if he is having pecuniary interest in the subject matter of the proceedings. In **Mohapatra vs. State of Orissa (AIR 1984 S.C. 1572)**, it was held that when the author of a book was a member of the committee set up for selection of books, and his book was also under consideration by that committee, the possibility of bias could not be ruled out and the selection by that committee cannot be upheld. Thus, in addition to the direct personal interest, the test laid down by the court is to consider the real likelihood of bias. In other words, **probability of bias is sufficient to invalidate the right to sit in judgment and there is no need to have the proof of actual bias.**

Personal Bias

9. **Personal bias** may arise out of friendship, relationship, professional grievance or even enmity. Here again likelihood of bias is to be given more credence than for the

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actual bias. “it is difficult to prove the state of mind of a person. Therefore, we have to see whether there is reasonable ground for believing that he was likely to have been biased”. For example, in Tata Motor Challenge vs. Government of West Bengal, on the constitutional validity of Singur Land Rehabilitation and Development Act, Justice Saumitra Pal recused himself from the case, citing that he knew some of the people in relation with the case personally.

Official Bias

10. The third type of bias, namely, **official bias** may arise in cases where an administrator who enunciates, and then has to carry out an official policy, is entrusted with the duty of hearing objections from the concerned persons as to the implementation of the policy. **Here the general rule is that the bias that may be said to be likely to arise because the adjudicator has a general interest in the subject matter and administration of the policy in his official capacity, would not operate as a disqualification.** The mere fact that the Registrar of Cooperative Societies has a power of general supervision over all Co-operative Societies, does not amount to inherent bias in him so as to disqualify him for the purpose of acting as an arbitrator or judge under Section 18 of the Rules made under the Co-operative Societies /Act 1912 to decide-disputes between members of a Society (**Viraj vs. State of Orissa 1967 SC 158**). Thus, no official bias arises while senior officers adjudicate the Customs or Central Excise or Service Tax cases even though the investigations in the case might have been conducted by their subordinates.

Audi alteram partem

11. The second principle of natural justice literally means “**to hear the other side**”. This is necessary for providing a fair hearing and no doubt the rule against bias would also be a part of the procedure. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely ‘*qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit*’ that is, ‘he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right’ or in other words, as it is now expressed, ‘justice should not only be done but should manifestly be seen to be done’.

12. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this

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principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of *Cooper v. Wandsworth Board of Works* [(1863) 143 ER 414], the principle was thus stated:-

“Even God did not pass a sentence upon Adam, before he was called upon to make his defence. “Adam” says God, “where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat”.

13. It says that no one should be condemned unheard. **Notice is the first limb of this principle.** It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. 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. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

14. When it is said that hear the other side. It means that hearing should not be reduced to mere formality and it does not remain confined to only auditory hearing. It should be effective hearing. The principle of effective hearing embraces a larger sphere and includes the following essential aspects :-

Issuance of Notice

(a) **Prior notice of decision making:-** Giving of a valid notice to the proper or concerned person of the facts of the matter and nature of the action proposed to be taken is a *sine qua non* of a fair hearing. **Notice is to be given even if the statute does not contain any provision for the issue of a notice (Fazalbai Vs Custodian AIR 1961 SC 284).** However, if the statute specifically waives giving of the notice then no notice need be given as the rules of natural justice do not supplant the law. Courts have also held that submission of *suo moto* revision or the claim that there can be no defence to the action proposed cannot justify department i.e. from this requirement of natural justice (**Olga Tellis vs BMC AIR 1986 SC 180**).

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Notice to Indicate Evidence Being Relied Upon

(b) The notice must clearly indicate material on the basis of which the proposed action is being taken. The right to know such material is part of the right to defend oneself. Then only the person will have a fair opportunity to defend, correct or contradict them (**Kanda vs Govt. of Malaya 1962 A.C. 322**). Further, in **Hi-Tron Electronics vs Commissioner (1989 (42))**, the Tribunal observed that even in a case where the party has waived the right to receive a show cause notice, the duty of disclosing the documents on the basis of which the order (regarding valuation) was to be passed should have been disclosed to the party and the order passed without such disclosures was liable to be set aside.

(c) The notice must be with reference to the charges on which the proceedings are to be held. The person against whom proceedings are held cannot be punished for a charge different from the one for which notice had been given. In **Petrofiles Co-operative Ltd. Vs. Collector (1992(59) ELT 144)**, the Tribunal adversely commented on the order in which duty had been demanded in terms of a particular notification though in the show cause notice duty had been demanded in terms of another notification.

Return of Non-Relied upon Documents

(d) During investigation, large numbers of documents are resumed by the departmental officers. While some of the documents are relied upon by the Department for the purpose of proceeding against the noticee, large chunk of these documents are not useful for the purpose of investigation but remains under the possession of the Department. This requirement has been incorporated in legal provision under Central Excise law in s Rule 24A, Central Excise Rules 2002, which explicitly states that books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made thereunder, shall be returned within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice.

(e) **In the case of Methodex Systems vs. Union of India {Citation:- 2001 (127) ELT 44 (MP)}**, Hon'ble High Court of MP held that Once it is shown to the department or the department feels that the documents are not required by the department and the department is of the considered opinion that it is not relying upon

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the documents, then, it is duty bound to return the records. They have no authority either under the law or under the circulars to sit tight over the records and refuse to return the same. The department has no authority under the law to keep the records with it

Right to make Representation

(f) The **right to make representation** requires that the person proceeded against must have opportunity to peruse all material relied upon. Copies of such material should be furnished free of charge without being demanded and even in those cases where the documents having been seized from the party, are relied upon. Furnishing of these copies would include copies of test reports, trade opinions, international price publications, etc. Reliance of any document or material without furnishing the above requisites would render the ultimate decision bad for failure of natural justice. In *Kothari Filaments vs Commissioner of Customs (Port) Kolkata* (Citation:- 2009 (233) ELT 289 (SC)), an order was passed with reference to an overseas enquiry report which was not supplied to the party. SC found the order to be violation of principles of natural justice, further imposing a fine of Rs. 25000 on the department.

Reasonable time to file Reply

(g) After the notice has been received by the person, he must be given opportunity to make a representation in reply thereto. This opportunity must be real and effective. This right to make representation also involves grant of sufficient time to prepare the reply (***Jeramandas Punjabi Vs. UOI 1992 (57) ELT 36 BOM***). Thought refusal of further time for preparation of reply is within the discretion of the adjudicating authority, the refusal should not be arbitrary or fanciful (***Commissioner vs. Prestige Engineering (1989 (41) ELT. 530)***).

Grant of Personal Hearing

(h) Opportunity for hearing also includes personal hearing apart from making written representation. Requirements of a fair hearing has two elements-First that Opportunity to be heard must be given and second that Such opportunity must be real and not illusory and make believe (***1983 (14 ELT 1685 (Ker))***). A fair and reasonable hearing

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means a hearing which is adequate for the purpose of bringing before the officer who makes the decision all the relevant submissions. If fresh factual evidence is brought in and is likely to influence the decision, a fresh hearing should be given (1978 (2) ELT 1320 SC).

Personal Hearing and Decision by the same officer

(i) The requirement of fair hearing involves decision being taken by the officer who heard the case. If after hearing, that particular officer is transferred, normal rule would be that the successor must hear the arguments afresh before he could pass an order (Amir Singh AIR 1965 Punj 84).

Fixing Multiple Dates of PH in Single Letter Violation of PNI

(j) Another practice being followed in the field is to fix multiple choice by fixing three dates of personal hearing for appearance before the adjudicating authority in one letter. In the case of Bindal Sponge Limited vs. Commissioner of Central Excise, Bhubaneswar-I [Tribunal Order No. ST/A/15/2010 dated 27.08.2012] as well as in the case of Afloat Textiles (P) Limited vs. Commissioner of Central Excise, Vapi [citation: 2007 (215) ELT 198 (Tri-Ahmedabad)], the Tribunal held that such approach is not in accordance with the principles of natural justice and remanded the case for fresh adjudication after giving reasonable opportunity to the party to put forth their case.

Cross Examination

(k) The right to fair hearing involves the right of the affected party to cross-examine the makers of statements. The Tribunal had time and again held that denial of cross examination of witnesses, whose statements were relied upon, amounted to violation of principles of Natural Justice.

(l) Refusal to allow cross-examination of departmental officers constituted violation of Principles of Natural Justice. (1978(2) ELT -J. 502) Cross examination of the officers

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who effected the seizure cannot be denied on the ground that it was not relevant for the defence (1981 (8) ELT 217).

(m) It has been laid down that copy of all relied documents to be given and failure to give such opportunity results in violation of principles of Natural Justice. Officers connected with the investigation, the department must make them available for cross examination if required. Cross examination of expert who conducted the test should be afforded (2001(129) ELT 701).

(n) This right can fully be denied in exceptional cases and only for justifiable reasons or where statute denies the right. Cross examination is covered under Section 137 of the Indian Evidence Act, 1872 (as amended). Quasi-judicial proceedings are not governed strictly by the provisions of law observed by the Courts in the legal proceedings before them.

(o) Requests for cross-examination may be denied under the following situations.

- (i) Warranting cross examination of the source(informer):
- (ii) When there are enough and more documentary evidences, the copies of all of which furnished;
- (iii) When the witnesses to be made available for cross examination are in foreign countries and the expenditure involved will not be commensurate with the seizure, revenue involved etc. and
- (iv) Enough care to be taken in allowing cross examination of experts by another expert which should not unnecessarily protract or prolong the proceedings. The reasons for denial should be clearly detailed in the order passed.

However, refusal of permission to cross-examine witnesses of the party himself would not amount to denial of natural justice (Ludhiana Food Products 1990 (47) E.L.T. 294).

Right of Legal Representation

(p) Fair hearing also involves right of the legal representation during enquiry. Here the rule is that when one of the parties is represented by counsel, or at least legally trained persons, the right of the other side to be represented by counsel is not to be denied.

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(A.K. Roy AIR 1982 SC 710). Similarly, the department has the right to have assistance of its own officers even though they may be the investigating officers in the conduct of the adjudicating proceedings (Sanghi Textile Processors vs. Commissioner 1991(55) E.L.T. 151 A.P.)

Issuance of Speaking Orders or Reasoned Decision

15. The third aspect of natural justice requires speaking orders or reasoned decisions. It is now universally recognized that giving reasons for a certain decision is one of the fundamentals of good administration and a safeguard against arbitrariness. The refusal to give reasons may excite the suspicion that there are probably no good reasons to support the decision. Hence reasons are useful as they may reveal an error of law, the grounds for an appeal or simply remove what might otherwise be a lingering sense of injustice on the part of the unsuccessful party. When the order to be passed is an appealable order, the requirement of giving reasons would be a real requirement. Thus, reasons are also required to be given when the appellate or revisionary authority affirms the order of the lower authority.

Principles of Natural Justice (PNJ) Not applicable in Certain Situations

16. There are, however, certain exclusions of natural justice. Principles of natural justice do not operate in areas where they are statutorily excluded, whether expressly or by necessary implication (Union of India vs. J. N. Sinha AIR 1971 S.C. 40). Similarly, for legislation by Parliament, no principle of natural justice is attracted provided such legislation is within the competence of the legislature (Charan Lal Sahu AIR 1990S.C. 1480). Even if the person entitled to adjudicate may be disqualified on the ground of bias, his decision will not be set aside on that ground if there was no other person competent under the statute or authorized thereunder to adjudicate on that matter. But such a necessity must be real as observed in J. Mohapatra (AIR 1984 S.C. 1572). When the facts are all admitted or undisputed, the decision cannot be assailed on the ground of failure to permit cross-examination (Tripathi vs S.B.I. AIR 1984 S.C. 273). Where disclosure of the information leading to an order may defeat the object of the statute under which the order is passed, the failure to furnish that information would not invalidate the order (S.P. Gupta AIR 1982 S.C. 149). Thus identity of the informer or source of information is not required to be disclosed. Lastly, where immediate preventive action is to be taken, especially in matters such as national security, anti-smuggling, public

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order, etc., failure to give notice or to grant a hearing before passing the order would not amount to failure of natural justice, such requirement would stand excluded by implication (**Menaka Gandhi AIR 1978 S.C. 597**).

17. Courts have examined the question whether failure of natural justice at equity stage be cured at appellate stage and in **Farid Ahmed v. Ahmedabad Municipality (AIR 1976SC 2095)**. Supreme Court has held that when the first authority did not observe natural justice in its proceedings, the fact that appellate or revisionary authority observed natural justice, does not cure the initial defect. *“If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as instead of a fair trial followed by an appeal, the procedure is reduced to unfair trial followed by a fair trial”* (Administrative Law by Wade).

18. Generally, all the Courts have held that a decision arrived at without following natural justice is void (**Suresh vs. State AIR 1970 MP 154**); (**Jawala Prasad vs. State AIR 1977 Raj 187**) etc. However, in **Swadeshi Cotton Mills (AIR 1981 SC 818)**, Supreme Court refused to quash order of the Government taking over the mills (though the order was passed without following natural justice) and merely directed the Government to give a hearing. Thus, though theoretically, an order passed in violation of natural justice may be void; it would yet be effective in its scope and effect unless somebody entitled to question the same does so and have it set aside or declare void.

19. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated

20. The following instances are held as violation of Principles of Natural Justice, (broadly and generally).

- i. If one person hears the case and another decides the case (**1989(40) ELT 201 & 1987 (30) ELT 957**).
 - ii. Relying upon report of expert without affording and opportunity to rebut the same (**1991(55)ELT 115**)
 - iii. Sufficient time was not given to defend the proceedings because of the late supply of material (**1992 (57) ELT 36 Bom**)
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- iv. Enquiry and verification were made behind the back of the assessee and no opportunity was given to him to rebut the evidence (1991 (52) ELT 278)
- v. Assessee's request for chemical test for proper classification of the goods was ignored by the adjudicating authority (1989(43) ELT 155)
- vi. Request for adjournment of Personal Hearing was not granted by the Adjudicating Authority (1993(63)ELT 89).
- vii. 2002(144)ELT267 (ALL)-If the opportunity given is not availed of by the party concerned, there is no violation of principles of natural justice.
- viii. 1993(63) ELT 427 (MAD)- Principles of Natural justice discussed in detail.
- ix. 1994(73) ELT(266) ALL)—Order passed by Tribunal not a speaking order, held null and void.

Need for Speaking Order

21. In a Constitution Bench decision of Hon'ble Supreme Court in Shri Swamiji of Shri Admar Mutt etc. etc. v. The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors., AIR 1980 SC 1, while giving the majority judgment Chief Justice Y.V. Chandrachud referred to Broom's Legal Maxims (1939 Edition, page 97) where the principle in Latin runs as follows :

“Ces-sante Ratione Legis Cessat Ipsa Lex”

22. The English version of the said principle given by the Chief Justice is that:-

“Reason is the soul of the law, and when the reason of any particular law ceases, so does the Law itself.”

23. In the case of Kranti Associates Pvt. Ltd. vs. Masood ahmed Khan [citation:- 2011 (273) ELT 345 (SC)], the Hon'ble Supreme Court have discussed the importance of passing a **“speaking order”**, i.e. the need to give reasons in support of the decision / order, in all proceedings (whether administrative or quasi-judicial) which affect the rights of the parties involved. From time to time, Court has held that the face of an order

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passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

24. In this case, the Hon'ble court held as under:-
- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
 - (b) A quasi-judicial authority must record reasons in support of its conclusions.
 - (c) 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.
 - (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
 - (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
 - (f) 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.
 - (g) Reasons facilitate the process of judicial review by superior Courts.
 - (h) 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 Life blood of judicial decision making justifying the principle that reason is the soul of justice.
 - (i) 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 system.
 - (j) Insistence on reason is a requirement for both judicial accountability and transparency.
 - (k) 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.
 - (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence
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of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

- (m) It cannot be doubted that transparency is the *sine quanon* 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. (See David Shapiro in *Defence of Judicial Candor* (1987) 100 *Harvard Law Review* 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anya v. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Useless Formality Theory:

25. What is known as 'useless formality theory' has received consideration of Hon'ble Supreme Court in *M.C. Mehta v. Union of India* [1999 (6) SCC 237]. It was observed as under:

25.1 Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See *Malloch v. Aberdeen Corpn.*: (1971) 2 All ER 1278, ML) (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*: (1971) 2 All ER 89; *Cinnamond v. British Airports Authority*: (1980) 2 All ER 368, CA) and other cases where such a view has been held. The latest addition to this view is *R v. Ealing Magistrates' Court, ex p. Fannaran* (1996 (8) Admn.

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ER 351, 358) (See de Smith, Suppl. P. 89 (1998) where Straughton, L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd v. McMohan* (1987 (1) All ER 1118, CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice.

25.2 The New Zealand Court in *McCarthy v. Grant* (1959 NZLR 1014) however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood-not certainty- of prejudice'. On the other hand, Garner Administrative Law (8th Edn. 1996. pp.271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin* (1964 AC 40: (1963) 2 All ER 66, HL), Megarry, J. in *John v. Rees* (1969 (2) All ER 274) stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider.

25.3 Ackner, J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in *R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton* (1990 IRLR 344) by giving six reasons (see also his article 'Should Public Law Remedies be Discretionary?' 1991 PL. p. 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL. pp. 27-63) contending that *Malloch* (supra) and *Glynn* (supra) were wrongly decided. Foulkes (Administrative Law, 8th Edn. 1996, p. 323), Craig (Administrative Law, 3rd Edn. P. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority.

25.4 De Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn. 1994, pp.526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success.

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25.5 We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse *certiorari*, prohibition, *mandamus* or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma* (1996 (3) SCC 364), *Rajendra Singh v. State of M.P.* (1996 (5) SCC 460) that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

26. To understand the above said theory of "useless formality", the following example may be considered. Consider a case where refund claim is filed by the party after expiry of the statutory period of one year from the due date. On the face of refund claim, it is clear that it is time barred. One argument could be that the claim may be rejected by the adjudicating authority without giving any notice to the party and without conducting any hearing, in other words, without following the principles of natural justice. Another line of thought is that it should be disposed of by following the principles of natural justice- to issue notice to the party, consider his written submission, give him opportunity of personal hearing and then issue order in original, rejecting the refund claim as time barred. The concept of useless formality is based on the first line of argument. It is evident in this case that the refund claim is time barred and outcome will remain same even if the principles of natural justice followed. Even in such a situation, the proper course would be to follow the second line of thought and follow the principles of natural justice.

QUASI - JUDICIAL POWER

27. Courts have held that quasi- judicial authority has to pass orders basing on the judicial principles, facts and fair play. The Quasi - judicial officers have to exercise their powers fairly, reasonably and impartially in a just manner and matters should be decided basing on facts, material available and evidence on record. The order should not be biased and based on mere conjectures and surmises.

28. One very important area of exercising Quasi - judicial power is the dilemma as to whether to follow the Board's Circulars or not. The important aspect held by various Courts is that if a circular is beneficial to the assessee then the benefit has to be extended.

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The assessee also retains the right to challenge the circulars in which case the quasi-judicial authority should treat the provisions of the circular as an expression of opinion and not as a direction and apply their own mind in deciding the issue.

29. Some important decisions on the aspect of Quasi-judicial power are discussed hereunder.

- (i) 2001 (127) ELT 338 9(MAD) - ITC vs. Commissioner of Central Excise - Board's circular cannot be issued to restrict the powers nor can be issued to interfere with the powers of the Quasi-judicial authorities.
- (ii) 1999 (1120 ELT 34 (DEL)- Voltas Ltd. vs. UOI- When order remanded, Pre deposit to be refunded.
- (iii) 2004(178) ELT 1099 (DEL) -Faridabad Iron & Steel Traders Association vs. UOI- Departmental clarifications Instructions or directions issued by Board binding on officers only when acting in administrative capacity but not to interfere with quasi- judicial powers.

Note:

For knowing “How to draft Adjudication Order”, please see another **e-book on ‘Drafting of Adjudication Order (Some basics)’**.

This e-book has been prepared by officers of the RTI, Kanpur on the basis of their practical experience and is meant to be used as training material for the newly recruited officers. It may not be a perfect one and may require improvement. Please assist the NACEN, Kanpur in improving the same by writing to us at goyalcp@hotmail.com or rtinacenkanpur@yahoo.co.in. Errors, if any, may also be brought to our notice.
