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# Administrative Law and Principle of Fair Hearing

SATYAM SINGLA[1]

## ABSTRACT

*The present piece of work deals with the Principle of fair hearing in Administrative Law. Public authorities should justify the action, assailed on the touchstone of justness, fairness, reasonableness and as a prudent owner. The landmark case of Re Haughey laid down strict natural justice requirements where fundamental rights, including the constitutional right to good name, are affected. Any action taken in contravention of natural justice is violative of fundamental right guaranteed by Art. 21 of the Constitution. The aim of principles of natural justice is the prevention of miscarriage of justice. One of the principles of natural justice is to hear the other side or the party. Therefore, a mandate on the adjudicator to adhere to the principles of natural justice emanates from a requirement of the substantive right of the parties to the proceeding, to be dealt with fairly and impartially. Hearing the other party takes care of fairness of the procedure adopted by the adjudicatory authority. What constitutes a fair hearing, how notice is relevant and why the notice should not be vague are the principle issues which are addressed in the work. The effect of failure to comply with the principle has also been discussed. The right of legal representation and the situations, if any, where violation of the principle won't affect the proceedings, have also touched upon.*

Constitutional Law and Administrative Law are often considered as branch of Public Law. According to Holand[2], while constitutional law describes the various organs of the sovereign power as at rest, administrative law describes them as in motion. Administrative Law can be defined as that branch of public law which deals with the organization and powers of administrative and quasi-administrative agencies and prescribes principles and rules by which an official action is reached and reviewed in relation to individual liberty and freedom[3]. Administrative law is a by-product of intensive form of government.

Administrative function need not be discharged by the judges of the High Court themselves.

[1]Author is a student at Symbiosis Law School, Noida, India.
[2]Thomas Erskine Holland, Jurisprudence, 374 (13th ed. 2013).
[3]I.P. Massey, Administrative Law, 4(8th ed. 2012).

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They can be delegated[4]. The decisions so taken by the administrative authorities are usually subjective, in the sense that they are reached without applying any standard at all, except that of expediency[5]. However the situation has been changed now. Supreme Court in *Gopal krishna v. State of M.P*[6] held that when an administrative authority is required to decide objectively, his decision is said to be quasi-judicial. The term 'Objectively' as used by Hon'ble Court was defined in *Cf. R v. L.C.C*[7]., where Kings Bench held that 'objectively' means upon a consideration of the proposal and the evidence adduced by the parties in support of either.

To make the situation clear let's take an example of license application. It is with the Licensing Authority to decide whether a person is legally qualified to obtain the license. They won't require any evidence or any material to decide the same except the policy framed by the department or government. But when it is decided that the person is legally qualified to have the license, it is for them to decide on the material placed before them to grant license to person or not. The former action of authorities defines administrative function while the later one can be termed as 'quasi-judicial function'[8].

Therefore, any function of administrative authority would be called as quasi-judicial one if it put any obligation on the authority to adopt judicial approach and where the situation is otherwise, it would be purely administrative.[9]

This essay deals with quasi-judicial functions and shall explain one of the principles of natural justice i.e. the doctrine of *audi alterm partem* or fair hearing in the same context.

Justice Chinappa Reddy held[10] *"Natural justice, like ultra virus and public policy, is a branch of the public law and is a formidable weapon, which can be wielded to secure justice to the citizen…While it may be used to protect certain fundamental liberties-civil and political rights-it may be used, as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change"*

It is worth mentioning here that any judicial or quasi-judicial tribunal, determining the rights of individuals, must conform to the principles of 'natural justice' in order to maintain the 'rule of law'[11].The reason for such an approach is evident from the case of *General Medical*

[4]Jamaluddin v. Abu Saleh, AIR 2003 SC 1917 (India)
[5]Labour Relations Board v. J.E.I Works, (1949) A.C. 134 (149) (U.S)
[6] AIR 1968 SC 240 (India)
[7] (1931) 2 K.B. 215 (233) (C.A)
[8]Frome United Breweries v. Bath JJ, (1897) A.C. 556 (569) (U.S)
[9] Ridge v. Baldwin, (1963) 2 All E.R. 66 (73-74,113) (England)
[10]Swadesi Cotton Mills v. Union of India, (1981) 1 SCC 664, 771 (India)
[11] Cf. Rep. of the Committee on Minister's Powers, (1932) Cmd. 4060

*Council v. Spackman*[12]. Court therein said that these principles are considered as essence of natural justice and as such, they are required to be followed.

It was pointed out[13] that the 'rules of natural justice' vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature, and that the question whether they have been contravened in a particular case must be judged not by any preconceived notion of what they may be but in the light of relevant facts.

Therefore it can be inferred that the principle of natural justice are different and subjected to the provision of each country's constitution. But it is agreed on all hands that there are certain broad principles deducible from the two Latin maxims which form the foundation of the doctrine and extend to all cases where the doctrine is attracted[14]. These are *Nemo debetesse judex in propria causa* and *Audi Alteram partem.*

First doctrine, *Nemo debet esse judex in propria causa,* means that an adjudicator should be disinterested and unbiased. For the purpose of this essay, second doctrine would be considered. Second doctrine is *Audi Alteram Partem* which means that the parties be given adequate notice and opportunity to be heard[15].

What this simple meaning suggests is that this rule requires that every interested party in the adjudication should be served with a notice and with an opportunity to be heard. It was held that doctrine of *Audi Alteram Partem* has three basic essentials[16].

Firstly a person against whom an order is required to be passed must be granted an opportunity of being heard. This ingredient of the rule was explained by V. Aiyar[17] and he says *"Rules of natural justice requires that a party should have the opportunity of adducting all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them."*

This essential basically establishes the pith and substance of this doctrine. Anybody either judicial or quasi-judicial authority can't rely on any material produced by the party alleging anything against the other party unless reasonable opportunity has been provided to that other party. Matter can't be decided only on the basis of one side of story. Even the Judges are

[12] (1943) A.C 627 (U.S)
[13]New Prakash Transport Co Ltd. v. New Suvarna Transport Co Ltd, AIR 1957 SC 232 (India)
[14]DURGA DAS BASU, ADMINISTRATIVE LAW, 242 (6th ed. 2012)
[15]S P SATHE,ADMINISTRATIVE LAW, 191, (7th ed. 2012)
[16] Auto Piston Mfg Co.(P) Ltd. v.Emp.P.F.Appellate Tribunal, 2013 (1) SCT 307 (P&H) (India)
[17] Union of India v. TR Verma, AIR 1957 SC 882, 885 (India)

bound by the law to hear the person against whom the charges have been leveled. This essential has further two inherent elements in it first is Notice and second is Hearing

Notice is the first and the foremost requirement of natural justice. Person who is supposed to present his side of the story must be first, informed about the charges leveled against him. A notice which is being sent must be clear and failure to give the notice would make the act (quasi-judicial) void, if the statute expressly provides for it.[18]It is the first step towards any departmental enquiry. The term notice is often used as 'show cause notice' which is same.

Hearing is the second aspect of this essential. Mere giving notice would not serve any purpose unless and until any formal hearing is taken and the person is heard. It provides the person to undertake all the steps in order to prove his innocence. He may cross examine the witness produced by the party alleging anything in departmental enquiry or he can counter the evidences produced by the other party. He can show that the evidences adduced by the alleging party are unreliable and may also produce evidences showing his innocence. Law doesn't take into consideration the nature of hearing opportunity provided to the delinquent. Law merely provides for hearing opportunity. It could be oral or written. However, oral hearing is not necessary in every case. It has to been shown to the court that without providing an opportunity of oral hearing, the case of person cannot be adequately presented.

Secondly, the concerned authority should provide a fair and transparent procedure. Mere opportunity of hearing is not necessary. It should also be fair and therefore the word 'reasonable' is often used with 'hearing'. Supreme Court had taken the aspect of fair hearing in consideration. A person can't be terminated from his post without providing fair hearing.[19] What the word 'fair' here means is 'full'. Cutting down the time for presenting the case would amount to denial of fair hearing. Similarly denial of access to person of the documents containing charges against him and at the time of presenting his case would tantamount to denial of opportunity of being heard fairly[20]. Alike criminal cases, in administrative law also, the delinquent has the right to get all the documents which were being relied upon the authorities to make the case against him. Though, the irrelevant documents are not necessarily provided to the person and the same can't be a ground for vitiating the whole proceedings[21]. Situations may arise where the statute is silent on the procedure to be followed

[18]Golak Patel Volkart Ltd. v. Collector, Central Excise, Belgaum, AIR 1987 SC 1161 (India)
[19]Jarnail Singh v. State of Punjab, AIR 1986 SC 1626 (India);*see also*:RajinderKaur v. State of Punajb, AIR 1986 SC 1790 (India).
[20] State Bank of Bikaner & Jaipur v. Srinath Gupta, (1996) 6 SCC 486(India)
[21]ChandramaTewari v. Union of India, (1987) Supp SCC 518 (India)

for such quasi-judicial action. Such circumstances must be covered by Article 21[22]. A minimum fair procedure thus, would be required in each and every case, even when the statute governing the rules and regulations of employment are silent[23].

The underlying concept behind this aspect of present principle was reiterated by Supreme Court when it said[24] procedure cannot be fair if apprising the affected and appraising the representations is absent. Any person cannot be subjected to the decision of administrative authority taken in judicial capacity unless and until he has been heard by the appropriate authorities at length. Representation on any notice, representation being reasonable is thus, a pre-requisite of this rule of *audi alteram partem.*

Another aspect of the same essential is the mode of representing the case. The fact that the authority is acting quasi-judicially, does not affect the right of party to engage any lawyer or to made representation by any other person competent by law to represent. Supreme Court has recognized this aspect and has thus held[25]deprivation of legal assistance amounts to deprivation of liberty and thus vitiates the proceedings. However exception to this also exists which is quite absurd. It was held that where the allegations in charge sheet are simple and not complicated, deprivation of legal aid does not vitiate the proceedings[26]. It is absurd because it states that application of Article 21 would depend upon the gravity of allegations which is not the real intention of Constitution makers. Article 21 is not subjected to any condition, any situation which is evident from the fact that constitutional protection under Article 21 is not suspended even in case of National emergency.

Another question which arises is whether post-decisional opportunity of hearing can be provided to the person and if yes, would it vitiate the proceedings. It was decided that where facts and circumstances of a case make it impossible for the authority to have pre-decisional hearing, post-decisional hearing can be allowed and it would not vitiate the proceedings[27]. However, efforts should be made to avoid such situation and pre-decisional opportunity must be provided. Intention of Article 21 is that no person shall be deprived of his personal liberty without following due process of law. What it therefore, necessarily means that process of law must be applied before depriving the person of his liberty which is not the case with post-decisional hearing.

[22]INDIA CONST. art. 21.
[23]Maneka Gandhi v. Union of India, AIR 1978 SC 597 at ¶ 57-58 (India)
[24]Mohinder v. Chief Election Commission, AIR 1978 SC 851 (India).
[25]MH Hoskot v. State of Maharashtra, AIR 1978 SC 1548(India).
[26]HarinarayanSrivastava v. United Commercial Bank, AIR 1997 SC 3658(India).
[27]Maneka Gandhi, *supra note* 22.

Last, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This essential can be divided further and thus, authority adjudicating the matter has to apply the mind and not mere discretion, and the matter must be disposed of by a speaking order. Speaking order is an order which contains the reasoning applied by the adjudicating authority while deciding the case and accordingly it aids the appellant authority to decide the matter if comes in appeal. It also ensures that summary disposal does not happen and the authority has applied its mind before finally arriving to a conclusion. The word 'mind' means reasoned. Authority is obliged to apply the mind and to act on preponderance of facts and evidences adduced by both of the parties. It is not left with the discretion of the adjudicating authority to decide the matter on whims. Proper application of rules in the case in hand is what expected from the authority. The requirement of reasoned decisions prevents abuse of administrative discretion, and ensures that decision is impartial, objective, and taken in public interest.

Administrative Law has not been yet defined but founds its origin from doctrine of separation of powers. Quasi-judicial functions are performed by the administrative authority which requires conformity with natural justice. The rule of *'audi alteram partem'* is one of the principles of Natural Justice. The rules of natural justice though open-textured, but this doctrine of fair hearing has been universally accepted. It says that no one should be punished without heard. It is the minimum requirement of any decision that has been taken by any authority. Essentials of the doctrine have been interpreted by the Courts on various occasions. The doctrine has been applied in civil and criminal cases as well. Though, legal assistance has not been yet recognized by the law in every situation which is a violation of protection guaranteed under Article 21, any violation of this principle would render whole proceedings vitiated and de novo proceedings have to be initiated.

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