

## **NATURAL JUSTICE**

“It is beyond doubt that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or quasi-judicial decisions ought to conform. The principles on which they rest are, we think, implicit in the rule of law. Their observance is demanded by our notional sense of justice”.

### **- The Committee on Minister's Powers**

## **INTRODUCTION**

In the olden days of laissez-fair practice, when industrial relations were governed and administered by the unscrupulous and harsh weighted law of hire and fire, the management was in supreme command and at its best with the passage of time, notions of social justice developed and the expanding horizons of socio- economic justice necessitated statutory protection to the workmen. The freedom to hire men/women is embedded in the management philosophy and thinking and the liberty is restrained to firing them arbitrarily or at its own will.

It is too late in the day now to stress absolute and unconditional freedom of an employer to impose any condition which he likes on his employee. For the management, to get rid of an unproductive, undesirable and erring employee, shall have to initiate disciplinary action against him as per the provisions of Standing Orders or Service Rules and by following principles of natural justice in holding the domestic enquiry for proving the alleged misconduct against him.

The handling of the disciplinary matters has become the most difficult task of the management as well as for the defence. For the management, it is an extremely volatile matter in industrial relations and any pitfall on this score is bound to fill a cup of miseries for the management. He cannot axe an employee at his own will. On the other hand for the defence representative, it is not only matter of defending the delinquent but his ability to lead the workmen is also at test.

## **ORIGIN OF THE PRINCIPLES OF NATURAL JUSTICE**

It is said that principles of natural justice is of very ancient origin and was known to Greek and Romans. The Principles were accepted as early as in the days of Adam and of Kautilya's Arthashastra. According to the Bible, when Adam & Eve ate the fruit of knowledge, which was forbidden by God, the latter did not pass sentence on Adam before he was called upon to defend himself. Something was repeated in case of Eve.

Later on, the principle of natural justice was adopted by English Jurist to be so fundamental as to over-ride all laws.

The principles of natural justice were associated with a few 'accepted rules' which have been built up and pronounced over a long period of time. The word 'Natural Justice' manifests justice according to one's own conscience. It is derived from the Roman Concept '**jus - naturale**' and '**Lex naturale**' which meant principle of natural law, natural justice, eternal law, natural equity or good conscience. **Lord Evershed**, Master of the Rolls in **Vionet v Barrett** (1985, 55LLJ QB, 39, Page 45) remarked, "Natural Justice is the natural sense of what is right and wrong."

## THREE IMPORTANT PRINCIPLES OF NATURAL JUSTICE

1. **Nemo debet esse judex in propria causa:** No man must sit in judgment in his own cause, or the deciding authority must be impartial and without bias.

It is also called as the 'doctrine of bias' as the judge may have a prejudice in the case. It has been pithily put by Sir Edward Coke, namely, Vacate, Interrogate and Judicate, i.e., call, question, and adjudicate. However, this concept has undergone lot of changes in recent times, but fundamental still stands the same.

**Types of Bias:** There are three types of Bias -

### (i) Pecuniary Bias:

1. Dimes vs. Grant Junction Canal. (1852,3 HLC 579).
2. Jeejeebhoy vs. Asst. Collector of Thana. (AIR 1965 SC 1096)

### (ii) Personal Bias:

1. Personal friendship - A.K. Kraipak's Case.
2. Personal Hostility - Mineral Development Ltd. v State of Bihar, (AIR 1960 SC 468 - also AIR 1976 SC 2428)
3. Family relationship.
4. Professional relationship.
5. Employer & Employee.

### (iii) Bias as to Subject Matter:

1. Partiality - State of U.P. v Mohammed Noor (AIR 1959 SC 86 also AIR 1967 SC 4080)
2. Departmental Bias - **Gullapalli Nageswara Rao v APSRTC.** (AIR 1959 SC 308)
3. Prior Utterances and Pre-judgment of issues - **K.S. Rao v State of Hyderabad.** (AIR 1957 AP 614)

## **Real Likelihood of Bias**

“Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice”

**-Lord Hewart C.J.**

“Justice must be rooted in confidence; and confidence is destroyed when right minded people go away thinking”.

**- Lord Denning.**

2. **Audi Alteram Partem:** Hear the other side or both the sides must be heard or one should not be condemned unheard. In other words, No person accused of any charge or likely to suffer any civil consequences, must be adjudged unless and until he is aware of the proceedings together with a notice thereon and an opportunity to present his case fully.

(i) Notice

(ii) Hearing - **Ridge v Baldwin,**

**State of Kerala v K.J. Shaduli,** (AIR 1977 SC 1627)

**Hiranath Mishra v Principal, Rajendra Med.College,**(AIR 1973 SC 1260).

The right of representation by a lawyer is not considered to be a part of natural justice and it cannot be claimed as of right, unless the said right is conferred by statute. Under the Industrial Disputes Act, 1947, the appearance of advocate is allowed with the permission of the tribunals concerned.

## **3. Reasoned Decisions or Speaking Orders**

It is an order speaking for itself and giving reasons. **Lord Denning says,** the giving of reasons is one of the fundamentals of good administration.

### **Three Grounds on Which it Stands**

- (i) The party aggrieved has the opportunity to demonstrate before the appellate or revisional court that the reasons which persuaded the authority to reject his case were erroneous;
- (ii) The obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with judicial power; and
- (iii) It gives satisfaction to the party against whom the order is made.

The power to refuse to disclose reasons in support of the order is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully satisfied by the exigencies of uncommon situations.

1. **Siemens Engineering v Union of India** (AIR 1976 SC 1785).

2. **Maneka Gandhi v Union of India.** (AIR 1978 SC 597).

The principles of natural justice have for sometime past, come into common use in our country. But it is difficult to ascertain from the law reports or other source as to how these principles came to be applied in the field of Industrial Law. There is no legal provision found anywhere which prescribes them.

The Patna High Court in **Raj Kishore Prasad Jaiswal v Subak Narain**, (AIR 1959) has aptly observed:

“It is well-established rule of law that rule of natural justice is applied only where the law itself is silent and is not inconsistent with what it provides, but where any provision as to the rule of natural justice is expressly or by necessary implication negated by law that cannot be a ground for holding that the enactment giving that law is ultra vires or unconstitutional”.

The Principles of natural justice are enforceable on all courts of law, general or special, all tribunals statutory or otherwise, and all persons or bodies exercising a judicial or quasi-judicial function by statute or by agreement between the parties. This applies equally to any domestic enquiry.

In the **Province of Bombay v Madhukar**, AIR 1952 Bom. 37, 46 Vyas J concluded.

“It is clear that all that is meant by compliance with the rules of natural justice by a domestic tribunal is that the tribunal must act honestly and in good faith, and must give the delinquent a chance of explanation and defence. If its rules postulate an enquiry, the delinquent must have a reasonable opportunity of being heard and of correcting and contradicting relevant statement prejudicial to his view.”

Model Standing orders in its sub-clause (4) of clause 14 provides that no order or dismissal shall be made unless the workman concerned is charge-sheeted and given adequate opportunity to explain his alleged misconduct. Standing orders, applicable to an industrial establishment generally prescribe a procedure for initiating disciplinary action against workmen. While taking so, it is always necessary to follow a set of approved and well accepted procedures.

Sri S. Chakravarti, in his book “Natural Justice”, has very aptly summarised the constituents of the rules of natural justice. They are:

- Substantial requirement of justice shall not be violated.
- The tribunal must give both the parties an opportunity of being heard and stating their case and view.
- Notice to be given to the parties about when the judge will proceed with the matter.
- The tribunal should act honestly and impartially.
- Must not be at the dictation of others to whom no authority has been given by law.
- There must not be malversation of any kind.

- A person cannot be a judge in his own cause.
- The least bias or prejudice on the part of the person deciding the cause will vitiate the order.

The principles of natural justice could therefore, be summarised as follows:

1. That every person whose rights are affected must have a reasonable notice of the matter he has to meet.
2. That he must have reasonable opportunity of being heard in his defence.
3. That the hearing must be by an impartial person, i.e. a person who is neither directly nor indirectly a party to the case. One who has an interest in litigation is already biased against the party concerned.
4. That the authority hearing the case must act in good faith and not arbitrarily but reasonably.

### **APPLICATION OF NATURAL JUSTICE IN DISCIPLINARY PROCEEDINGS**

The principles of natural justice are not recognized as fundamental rights under the Constitution of India (vide S.C. in the A.K. Raipak Vs. Union of India). Since the term 'Natural Justice' is vague, it implies a number of other requirements, observance of which is essential if one has to comply with the principles of Natural Justice. Moreover Natural Justice in favour or against depends of varies from case to case. Therefore it becomes all the more difficult to adhere to principles of Natural Justice.

In one case the Madras High Court has set out the **Requirements of Natural Justice** in the following words:

All enquires, judicial, departmental or other, into the conduct of individuals must conform to certain standards;

1. The person proceeded against must be given a fair and reasonable opportunity to defend himself.
2. The person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness.
3. He must conduct himself objectively and dispassionately not merely during the procedural stages of the enquiry, but also in dealing with the evidence and the material on record when drawing up the final order.
4. The conclusion must be rested on the evidence and not on matters outside the record, and
5. That it is not based on misreading of the evidence.

**C. Gabriel vs. State of Madras, (1959 2 M.L.J. 15 MAD HC.)**

In another case, Allahabad High Court has summarised the principles of Natural Justice in the following words:

1. That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.
2. That he must have reasonable opportunity of being heard in his defence.
3. That the hearing must be by an impartial tribunal, i.e., the case, *Nemo debet esse iudex in propria causa*.
4. That the authority must act in good faith, and not arbitrarily but reasonably (*Mukhtiar Singh Vs. State of U.P. AIR 1957 ALL. 297, 301*)

Requirements of the principles of natural justice are varied. They are:

1. Variation due to subject matter of the dispute.
2. Variation due to different constitution of the tribunals.
3. Variation due to different circumstances
4. Variation due to different facts in different cases.



5. The provisions of natural justice exclude oral enquiries and preliminary enquires.
6. Article 311(2) of the Constitution speaks of “Reasonable Opportunity” but substance of the constitutional guarantee is nothing but compliance with the principles of Natural justice.

The principles of Natural Justice can be said to be inferred from the protection given to employees under article 311 that they would be given reasonable opportunity to defend themselves, (ART 311 (1) says no person who is a member of the civil service of the Union of an all India Service, or holds a civil post under the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed.)

Reasonable Opportunity: As explained in **Khem Chand Vs. Union of India, by Chief Justice S.R. Das**, “reasonable opportunity” is:

- (a) An opportunity to deny his guilt and establish his innocence which he can only do, if he is told what the charges leveled against him are and the allegations on which such charges are based,
- (b) An opportunity to defend himself by cross examining the witness produced against him and by examining himself or any other witnesses to support his defence and finally,
- (c) An Opportunity to make his representation as to why the proposed punishment should be inflicted on him which he can do only if the competent authority, after the enquiry is over and after applying his mind to the gravity or other wise of the charges proved against the Government Servant, tentatively proposes to inflict one of the three major punishments and communicates the same to the Govt. Servant. **Khem Chand Vs. Union of India** (1959 I ILJ 167 175, Air 1958 S.C. 300)

## **SALIENT FEATURES**

The salient features of Natural Justice are summed up as follows:

1. Allegations should be specific and precise and ought to be produced in writing. The charges framed against the workman on the basis of allegations should be such as are violative of specific provisions of the service rules or the notified standing orders applicable to the establishment.
2. Reasonable time should be given to the delinquent employee to reply to the charge-sheet and prepare of his defence, if a formal enquiry is to be conducted.
3. Enquiry officer appointed for conducting domestic enquiry should be totally un-biased and not connected with the incident. He should not be allowed to appear as a prosecution witness himself.
4. All prosecution witnesses should be examined individually in the presence of the delinquent employee and their statements recorded. Pre-recorded statements should not be brought on the record of the enquiry proceedings.
5. When a statement of a particular witness is being recorded the other prosecution witnesses should not be present to hear the same.
6. The delinquent employee or his Defence Representative should be given ample opportunity to cross examine the witnesses and the replies of the witnesses should be recorded by the enquiry officer.
7. The delinquent employee should not be examined as a witness unless he volunteers himself, as none could be compelled to give evidence against himself.
8. Delinquent employee should be allowed to take assistance from a co-employee or a union official of his choice, although, legal practitioner may not be permitted for this purpose.
9. The delinquent employee should be given reasonable opportunity to produce and examine defence witnesses.

10. Enquiry officer should base his findings only on the evidence tendered in the enquiry proceedings. He should not rely upon any record or document which is not brought to the notice of the delinquent employee.
11. Ex-parte decisions should not be taken as far as possible unless the enquiry officer is fully convinced that the delinquent employee does not want to appear before him or wants to drag on the proceedings, unnecessarily.

### **Conclusion**

It is to be understood that the ultimate objectives of departmental/domestic probe is to determine or to draw inference whether punishment should or should not be awarded to an employee and so the **principles of Natural Justice are applicable to domestic enquires even though there may not be any rule or provision to that effect.**

The principles of natural justice are easy to proclaim, but their precise extent is far less easy to define. The rule against bias is one thing. The right to be heard is another. These two rules are characteristic of what is often called 'natural justice'. They are twin pillars supporting it. They have been put into two words- *Impartiality & Fairness*.

The Principles of natural justice are considered to be more important to ensure justice to the workman whose conduct is being enquired into. Hence, it is essential to understand its scope and extent and implications for purpose of domestic enquiry. We come across new cases every day but basic structure about the machinery entrusted with the task of holding departmental enquiry and coming to a decision, remains the same. Therefore, the employer should give proper attention to this aspect of the disciplinary action so that pit falls on this score could be avoided.