LET'S BE FAIR: PRINCIPLES OF NATURAL JUSTICE[1]

You never told me. I was never informed!

I was not informed properly!

How can you judge me? You were involved!

These are some of common expressions or defences that we often hear in cases of conflicts. If any of the aforesaid plea is successfully adopted, the accuser's stand is inevitably softened. These are exactly the principles of natural justice:

Nemo Debet Esse Judex propria Causa: no one shall be a judge in his own case
Audi Alteram Partem: Hear the other side.
Speaking Order : Decisions which affect another party should have a cogent reasoning and not based on whims or fancies.

Principles of Natural Justice, derived from the expression "*Jus Natural*" of the Roman Law, are necessarily to be followed by all authorities while determining disputes of any nature whatsoever between the parties. It is firmly established that, even in the absence of express provisions in any statute, principles of natural justice will have to be observed in all judicial, quasi-judicial and administrative proceedings which involve civil consequences to the parties.[2]

While these principles are commonly known, following these simple principles is sometimes difficult when parties are in a hurry to close the disputes at their end or are unwilling to consider an alternate perspective. However, such hurry or inconsideration may backfire if there is prejudice to the other party, and the Courts have come down heavily against such instances even against private parties to ensure adherence to a safe procedure. This article

[1] The article reflects the general work of the author and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.
[2] A.K Kraipak vs. Union of India (AIR 1970 S.C.150) & Maneka Gandhi (AIR 1978 S.C.597).

deals with the principles of natural justice and explains the same through certain significant cases.

ORAL HEARING

Audi Alteram partem literally means "hear the other side". Nobody should be condemned unheard. All Courts are compulsorily required to adhere to this principle and if the principle is not followed, the entire proceeding is vitiated as per one of the recent cases – *ITC Ltd. vs Wide Ocean Shipping Services Limited*[3], before the Telangana High Court (decided in July 2022). The parties were engaged in a dispute related to delivery of bagged soya bean meals. Considering the arbitration clause, an arbitrator was appointed, and the arbitrator passed an award in 2004 against ITC in London. When the respondent, Wide Ocean Shipping Services Ltd. filed an execution application before the Hyderabad Court, ITC contended that its request for oral hearing was not considered by the arbitrator. Thus, the award was bad in law as principles of natural justice were not followed. The arbitrator had refused the oral hearing considering that the claim amount was modest, and the parties had filed lengthy written submissions. This stand was not accepted by the Telangana High Court and the award was set aside while holding that every person has a right of fair hearing. Denial of request for oral hearing is against fundamental policy of Indian Law and therefore, the award cannot be enforced in India.

It should be noted that while generally courts do not interfere in awards passed by arbitrator but considering the violation of principles of natural justice, the award was set aside after the parties had spent more than 18 years in litigation.

NOTICE BEFORE TERMINATION MUST

Another important case on this principle was a recent case of *Virani Enterprise vs State of Gujarat*[4], Gujarat High Court extended its application to contracts which as well specifically permitted termination without notice. This recent case was in the context of a tender. The petitioner was the lowest bidder and had thus been awarded a tender.

[3] Civil Revision Petition 4481 of 2007
[4] R/ Special Civil Application No. 7355 of 2022

When a discrepancy was noticed, the corporation just terminated the services without issuing a notice. The petitioner successfully challenged the termination before the Gujarat High Court and the Court set aside the termination order and held that

"The benefit of audi alteram partem principle was even extended to Adam and Eve, even by God before they were punished for disobeying His command. This signifies that even if the authority already knows everything and the person has nothing more to tell, even then this rule of natural justice is attracted, unless application of this rule would be a mere empty formality."

The termination order was held to be arbitrary, and it was set aside. In this case, the termination notice for blacklisting the vendor was issued on 14th March 2022 and set aside by the Court basis a writ petition on 4th May 2022.

Though the decision was quickly awarded by the Court, the parties had to incur costs of litigation which could have been avoided had a simple notice been issued to the other party.

NEMMO DEBET ESSEX JUDEX SUA NON CAUSA

The best example of determining this principle is evident from the 2015 amendment that was added to the Arbitration and Conciliation Act, 1996 (Act). Through this Act, litigants were provided an alternate dispute resolution mechanism. However, it was noticed that parties were appointing arbitrator as a mere formality and the arbitrator was also sometimes an employee of one of the parties. This was remedied through the 2015 amendment which provided more than 15 restrictions on arbitrator's basis their relationship with either of the litigating party or their counsel.

However, another important point relates to an apparent bias of the arbitrator. Parties started adopting a procedure wherein limited names of 2 or 5 arbitrators were sent to the other party and only one arbitrator had to be chosen. Delhi High Court examined this practise in Overnite Express Ltd v. DMRC[5], and held that the procedure of forwarding a panel of five names to the other contracting party to choose its nominee Arbitrator is now held to be no longer a valid procedure. Though DMRC had given a panel of five retired District Judges, but it cannot be overlooked that it is a restrictive panel limiting the choice of the petitioner to

[5] Arb. P. No. 18 of 2020

pick up any one of those five which tantamount to unilateral appointment of an Arbitrator by the Respondent, which may create a doubt about the Arbitrator being partial or biased. Though one may hasten to state and emphasise that the retired District Judges may be person of impeccable integrity, but the issue here is of a perceived bias which cannot be permitted.

In this case, the parties had invoked the arbitration clause through notice dated 2nd November 2019. This notice was responded in December 2019 forwarding the names of arbitrators. This was challenged through a litigation in 2020 and parties had to spend more than two years in litigation only for appointment of the arbitrator.

TEST OF PREJUDICE

While we should remember that following principles of natural justice is must, there is also a word of caution that the rules should not be applied mechanically to defeat the ends of justice itself. Simply insisting on procedural safeguards or notices or alleging vague prejudices will not be upheld by the Courts and the test of prejudice has been clearly applied.

The Supreme Court upheld this aspect in the case of Om Prakash Mann v. Director of Education (Basic) and others[6] and stated that it is well settled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of the principle of natural justice. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice.

These observations were made by the Supreme Court in the context of the termination of service of an employee who had been served with a chargesheet. While he participated in the proceedings without demur or protest, later he alleged that the chargesheet was vague and, therefore, he could not answer the chargesheet properly and hence, there was violation of principles of natural justice. The Court observed that he was estopped from raising such issue before the Court as he had filed a reply and participated in the proceedings.

[6] (2006) 7 SCC 558

CONCLUSION

The principles of natural justice have been codified in all our procedural systems. Inspite of such codification, sometimes there is confusion in the application. Any non-adherence to these broad principles which causes a prejudice to the party, makes the decision bad in law. Thus, despite the lengthy proceedings that each party must have gone through after spending lot of money and efforts, the final award or the judgement is set aside irrespective of the merits of the case. It would be beneficial for parties to always follow a proper and fair procedure for all transactions and possible disputes like:

A) Issuing a proper notice with all details to the other party.
B) Serving the notice properly to ensure that it is received by the other party.
C) Granting a proper and fair opportunity of hearing to the other party.
D) In case of any decisions, supplementing the decisions with cogent reasons.
E) Non-involvement of all interested parties in the decision-making process.

Each of us has a different perspective to every situation and thus understanding the perspective of another is very important before deciding on an issue.

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