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Post Decisional Hearing of Administrative Actions

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Abstract: The discharge of administrative discretionary powers needs for hearings, even before the administrative authorities. While hearing, the authorities are required to observe principles of natural justice in addition to the legislative mandates. Right to be heard forms a part of the package of principle of natural justice yet jeopardized in exceptional situations, which calls for the post-decisional hearing as a savior not to defunct the overall proceedings. The problem arises once the decision is taken and if the person at stake had already suffered due to the same. The courts had tried to strike a balance in this situation to cure the urgency of the decision-making right of the aggrieved to be heard before any detriment is caused to his interest.

Index Terms - Component, formatting, style, styling, insert.

I. Introduction

The Indian Legal Jurisprudence, in late 1970's witnessed the evolution and growth of a new dynamic concept named 'Post Decisional Hearing', where the principle of Natural Justice ought not to be followed in strict sense and have a flexible approach. *Audi alteram partem* is one of the core ingredient of Principles of Natural Justice. In present context, the principle is being followed but at a later stage. In many situations where providing pre decisional hearing becomes difficult than authorities may give an opportunity to be heard to other party after taking tentative decisions, this will be seen in compliance with the Rule of *audi alteram partem*. Pre-decisional hearing may be dispensed with in an emergency situation where immediate action is required to prevent some imminent danger or inquiry or hazard to paramount public interest. The principle of Natural Justice must be followed by administrative and Quasi Judicial Bodies also. Though Pre Decisional Hearing must be the rule and Post Decisional Hearing must only be applied in exceptional circumstances, it must be applied judiciously and only where it is necessary. Providing Opportunity to be heard is the basic right that should be present with every individual before passing an order. The concept of Post Decisional Hearing in India was introduced through the judicial decisions of the Supreme Court of India. After the evolution of this principle the court looked into the effectiveness of the same through various judgements. This submission focus upon cases where post decisional hearing are allowed and relevance and significance that has been gained by this principle in present time is enormous.

II. A right to be heard

Audi Alteram Partem

Audi Alteram Partem is a Latin expression well ingrained in the common law legal system translated in English means 'no one should be condemned unheard'. It is one of the three basic principles of natural justice; it has come a long way since it first found favour before the English Courts since the inception of the common law system. This concept led to the emergence of a legal right i.e. *right to be heard*. It can be said in this way, that whenever there is a case before a court of law or before any adjudicatory body for that matter such as Quasi-judicial authorities or tribunals, the accused and the respondent must have a right to be heard before the court. So the accused also has a right to know about the case which is made against him, the evidences which are going to use against him etc so that he also gets a chance to prove himself as

innocent. The rule of fair hearing is a code of procedure, and hence covers every stage through which an administrative adjudication passes, starting from notice to final determination.

Pre-decisional hearing

A hearing is a formal procedure that authorities must provide at the request of the claimant or his/her representative, as a matter right in accordance with the principle of Natural Justice. Its purpose is to allow the claimant to present testimony i.e. to present his version of facts and to argue for establishing the truth. A claimant or his/her representative can request a hearing at any time and on any issue, but in accordance with the procedural requirements. Hearing the parties involved at a stage before decision would support the adjudicatory authority to end with a reasoned decision.

The Supreme Court in *Ramseth vs. Collector of Dharbanga*¹ observed that there must be ever present to the mind of men, the fact that our laws of procedure are grounded on the principle of Natural Justice which require that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings which affect their lives and property should not continue in their absence and that they should not be precluded from participating in such proceedings.

Post-decisional hearing

The idea of Post Decision Hearing has been developed to maintain a balance between administrative efficiency and fairness to individuals. 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, as it 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 concerned. 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.

The courts had often observed that even in cases of urgency, the requirement to act fairly remains, so that the Court has to make an adjustment between the need of expedition and the need to give full opportunity to the party affected² by insisting upon minimal natural justice, such as a mere notice or a post-decisional hearing, wherever possible³, exemplifying further that where giving of such opportunity would not paralyse the administrative process⁴.

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 AlteramPartem* 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.

III. Development of Jurisprudence through Judicial Pronouncements

The concept of post-decisional hearing, though jurisprudentially developed, has been resorted frequently; and there are only a few cases which can be cited to extract the concept and its jurisprudence. The Supreme Court has recognized the concept of Post Decision Hearing in many of its judgements. There are no strict principles related to whether Post Decision Hearing is an adequate means to justify and satisfy the rule of *Audi AlteramPartem*, it depends on the dimensions and facts of every case.

The idea of post decisional hearing has been developed by the SC in *Maneka Gandhi Vs. UOI* to maintain the balance between administrative efficiency and fairness to the individual.

¹ AIR 155 PAT 345

² *Wiseman v. Borneman*, (1971) A.C. 297.

³ *Mohinder v. Chief Election Commissioner*, 1978 S.C. 851, para91.

⁴ *State of Punjab v. Gurdial*, 1980 S.C.319.

Maneka Gandhi v. Union of India⁵

Facts: A was a journalist the Regional Passport Office; Delhi provided notice to A to submit her 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 and that her passport was impounded 'in the public interest' by an order dated 02.07.1977. A immediately asked the Passport Office to furnish the grounds on which her passport is impounded upon as provided under Section 10(5), the Govt. declined to furnish her the reasons for its decision. She filed a petition before the SC under article 32 challenging the validity of the impoundment order and that she was not given any pre-decisional notice and hearing.

Issues: Whether the Section 10(3)(c) of the Passport Act, 1967 violates the Fundamental Right provided under Article 14, 19(1)(a) or (g)? Does Freedom of Speech and Expression confined to Indian Territory or it extends to foreign land also? Whether the order passed by the Government intravires to Section 10(3)(c)? Should the Government abide by the Principle of Natural Justice and give the opportunity to the petitioner to be heard?

Contentions of the parties:

1. Petitioners

- With regard to the violation of Article 14 of Indian Constitution while applying Section 10(3)(c) of the Passport Act, 1967, the arbitrariness and vagueness of the phrase "in the interest of general public" mentioned in section 10(3)(c) leads to excessive, unguided and unfettered power to the authorities, there exists no reasonable ground to make such an order.
- That no opportunity to be heard was provided by the Government before passing this order under Section 10(3)(c), which violates the fundamental rule of Natural Justice, therefore the order should be made null and void.
- That her Right to Life is being violated by not allowing her to visit foreign country.
- That she is a journalist and for her professional work she had to visit foreign nation but through the order made by the Government her Right to free speech and expression and practice any profession provided under Article 19(1)(a) and (g) respectively is violated through this order, and therefore it must be struck down by the court.

2. Respondents

- Regarding the violation of Article 19, Article 19 only provides the rights within the Indian Territory; it cannot be comprehended with right to go abroad and hence the order cannot be stated as violation of Fundamental Right as provided under Article 19. Right to go abroad was not connected integrally with freedom of speech and expression.
- The Attorney General urged that Rule of Audi Alteram Partem must be excluded in the following case, as the purpose for which the passport was to be impounded may be frustrated. The holder of passport may leave the country; therefore *audi alteram partem* rule cannot in all fairness be applied while impounding a passport.
- The ground on which the Government issued the order for the impoundment of passport was the fear that the petitioner may leave the country.

Decision: The SC held that though the impoundment of the passport was an administrative action yet the rule of fair hearing is attracted by the necessary implication and it would not be fair to exclude the application of this cardinal rule on the ground of administrative convenience. The court did not outright quash the order and allowed the return of the passport because of the special socio-political factors attending the case. The technique of post decisional hearing was developed in order to balance these factors against the requirements of law, justice and fairness. The court stressed that a fair opportunity of being heard following immediately the order impounding the passport would satisfy the mandate of natural justice.

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

⁵ 1978 SCR (2) 621

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 Post decisional hearing was evolved.

Swadeshi Cotton Mills v. Union of India⁶

Facts: Swadeshi Cotton Mills was taken over by the Government through the Industries (Development and Regulation) Act, 1951 on the ground that the articles produced in the industries will be drastically reduced and immediate action is required to protect the production. 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 Company than filed a revision petition before Supreme Court.

Issues: Can Pre Decisional Hearing be excluded if the act expressly mentions about providing Post Decisional Hearing? Whether it was necessary to observe the rules of Natural Justice before issuing the order by the Government?

Contentions of parties:

1. Petitioners

- The legislative intention to exclude pre decisional hearing cannot be inferred only because section 18(F)⁷ provides for Post Decisional Hearing. No specific provision exists in the Act which expressly or has inevitable implication as to the exclusion of Pre-decisional Hearing.
- Section 18(F) cannot be a substitute for pre decisional hearing. The effect and operation of Post decisional hearing is prospective and not retrospective. Therefore post decisional hearing is not an adequate substitute to pre decisional hearing.
- Section 18AA(a)⁸ provides for a word 'immediate'. That the word immediate has been incorporated with regard to the investigation, any action may be taken by the authorities without any investigation but this does not exclude the principle of *audi alteram partem*. The counsel argued that Immediacy does not exclude a duty to act fairly because even an emergent situation can co-exist with the canons of natural justice.

2. Respondents

- The Union of India argued that principle of Natural Justice has been incorporated in Section 18(F) by providing for Post Decisional Hearing. Even by providing opportunity to be heard the effect on the government order would have been same as they had relied on the balance sheet and other accounts of the Company.
- That an aggrieved party can file an application to cancel the order under Section 18(F).
- In an immediate situation the act provides the power to the government to issue order, and in this matter as the production was declining at a greater pace therefore the government issued the order

⁶ 1981 SCR (2) 533

⁷ Section 18F. Industries (Development and Regulation) Act, 1951: **Power of Central Government to cancel notified order under section 18A.**—If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under section 18A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

⁸ 18AA. Industries (Development and Regulation) Act, 1951: **Power to take over industrial undertakings without investigation under certain circumstances.**—

(1) Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that—

(a) the persons in charge of such industrial undertaking have, by reckless investments or creation of incumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation;

regarding the management of the Company and therefore an opportunity to be heard was not provided to the Company due to the urgency and taking appropriate actions immediately.

Decision: 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. Pre-decisional hearing may be dispensed with in an emergent situation where immediate action is required to prevent some imminent danger or injury or hazard to paramount public interest. Mere urgency is, however, no reason for exclusion of *audi alteram partem* rule. The phrase in Section 18AA(a) 'immediate action is necessary', court held that this phrase is used with regard to 'without proper investigation' mentioned under section 15 and it does not extend to excluding the principle of natural justice. 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. Post decisional hearing does not exclude the rule of pre decisional hearing unless specifically prescribed by the act. . Where pre-decisional hearing is dispensed with, there must be a provision for post-decisional remedial hearing and in this case the Government has violated the Principle of Natural Justice by not providing an opportunity to be heard.

K.I.Shephard v. Union of India⁹

Facts: The Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank were amalgamated with Punjab National Bank, Canara Bank, State Bank of India respectively in terms of separate schemes drawn under the Banking Regulation Act, 1949. 125 employees of the transferor banks were excluded from their employment by the transferee banks without providing any justification and neither gave the employees the opportunity to respond.

The employees approached the High Court for relief, a single judge bench provided a partial relief, and a subsequent writ petition by the transferee bank was rejected by the Division Bank. The Single judge of Kerala had proposed the post amalgamation hearing to the hearings later vacated by the divisional bench. Finally the petition was filed in the Apex Court.

Issues: The interpretation of Section 45 of Banking Regulation Act, 1949, providing for the amalgamation of the banks and the procedure that must be followed. It noticeably provides with the continuation of the employees in the transferee bank with the same terms and conditions of services which were present in their previous employment.

Contentions of the parties:

1. Petitioners

- Section 45(6)(a) of Banking Regulation Act, 1949, contemplates the employees to be specifically named in the draft scheme, which shows the intention of the legislature.
- Under Section 45, the employees of transferor bank are insured with the same terms and conditions of the services to be continued by the transferee bank. And in the present case, the employees are denied with this proposition.
- Infraction and non compliance with the Natural justice and not being given an opportunity to be heard was the main contention of the petitioners.

2. Respondents

- It was stated on the behalf of RBI, in the matter of legislative actions it is not mandatory to abide by the principles of natural justice. As the Act was prepared by the legislature and for the sanctioning of the scheme prepared by RBI, it needs to be put forward to the Central Government. The order issued by the Central Government needs to be placed before the parliament. Therefore it was completely a legislative process and need not follow the principle of natural justice. They carried forward this argument by stating the applicability of natural justice in only judicial and quasi judicial functions. Legislative and administrative functions must be kept outside the purview of natural

⁹ (1987) 4 SCC 431

justice. And it is well settled principle that natural justice shall not be employed in the matter of legislative actions.

- That it was not necessary to include the names of the employees excluded from the employment in the draft scheme and the names could be incorporated in a later stage after the scrutinizing done by RBI.
- There is no specific provision mentioned in the Act which provides the right to be heard to the employees.

Decision: The court allowing the appeal ordered the bank to reinstate the employees, comprehensively interpreted Section 45 and noted the intent of the legislatures behind this provision. Court further held that only by presenting the order by the Central Government in the parliament will not be termed as legislative function. In the Act it is provided the drafting of scheme will be executed by the Reserve Bank of India, therefore it is rather an administrative or executive function. Court interpreted the intention of the legislatures in the procedure regarding drafting of scheme and concluded that it was necessary for RBI to name the employees which needs to be terminated from the services in the initial stage of scheme drafting. While refusing the contention that in the process of executive function, principle of natural justice can be waived, Supreme Court relied on the few Judgement mainly *State of Orissa v. Dr. Binapani Dei & Ors.*¹⁰, which clearly provides that any administrative order which involves civil consequences must abide by the principle of natural justice. Another case *A.K Kraipak & ors. v. Union of India & ors.*¹¹ professing the applicability of natural justice in administrative functions. The court reiterated that if the objective of Natural Justice is to protect the individuals from unjust than it must compulsorily be applied to the administrative functions as well. On the basis of these authority's court held that any administrative functions performed by the executive are under the ambit of Principle of Natural Justice. Court was against the concept of providing Post Decision (amalgamation) Hearing proposed by the Single judge bench of the High Court. While addressing this issue it was observed that Post Decisional Hearing in this case will not serve its purpose. Employees those who were sacked had been drastically been affected by this decision, it had a negative effect on their livelihood. And giving them opportunity after taking the decision will not serve its fruitful purpose as the authorities would also move with a closed mind setup. Therefore, there is no justification to provide Post Decisional Hearing, and doing so will not fulfil the principle of Natural Justice.

H.L.Treahan v. Union of India¹²

Facts: Caltex Oil Refinery (India) Ltd. was acquired by the Central Government through Section 3 of The Caltex (Acquisition of Shares of Caltex Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd) Act, 1977 which provides for the acquisition of the shares of CORIL. According to the said section all the shares in the company were owned by the Central Government. The chairman issued a circular stating that perquisites admissible to the management staff of CORIL would be rationalized in the manner prescribed in the said circular. And subsequently CORIL was amalgamated with Hindustan Petroleum Corporation Ltd. The employees challenged this circular before the High Court as they were not given the opportunity to present their opinions neither the chairperson before issuing the circular consulted and heard the employees.

Issues: whether post decisional hearing should be done to redress the miseries of the employees.

Contentions by the parties:

1. Petitioner

- The notification issued by the Central Government regarding the management of CORIL was ultra vires to Section 9(1)¹³.
- The violation of Article 14, 19 and 31 of Indian Constitution through Section 11(1) and therefore this provision must be struck down.

¹⁰ 1967 2 SCR 625

¹¹ 1970 1 SCR 457

¹² (1989) 1 SCC 764

¹³ Section 9 of the Act provides that the Central Government may by a notification direct that the right, title and interest and the liabilities of Caltex (India) Ltd. in relation to any of its Undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government Company either on the date of the notification or on such earlier or later date not being a date earlier than the appointed day, as may be specified in the notification.

- Section 11(1)¹⁴ provides the officer with an arbitrary power to alter the terms and conditions of the service or employment.
- The officials had not provided them the opportunity to present their views and therefore, this evidently shows the violation of Principle of Natural Justice.

2. Respondents

- No prejudicial alternation was made in the terms and conditions of their service.
- The petitioner in their contentions has not been able to provide with the clause which indicates that the circular is detriment to their current employment.
- An opportunity of hearing was provided to employees after the circular was issued.

Decision: The Court held that "In our opinion, the post decisional opportunity of hearing does not sub serve the rules of natural justice. The authority who embarks upon a post-decisional hearing will normally proceed with a closed mind and there is hardly any chance of getting proper consideration of the representation at such a post decisional hearing." Thus in every case where pre-decisional hearing is warranted, post-decisional hearing will not validate the action except in very exceptional circumstances. Conclusion It can be concluded that pre-decisional hearing is the standard norm of rule of audi alteram partem. But post-decisional hearing at least affords an opportunity to the aggrieved person and is better than no hearing at all. However, post-decisional hearing should be an exception rather than rule. It is acceptable in the following situations: _

1. Where the original decision does not cause any prejudice or detriment to the person affected;
2. Where there is urgent need for prompt action;
3. Where it is impracticable to afford pre-decisional hearing. The decision of excluding pre-decisional hearing is justifiable.

Canara Bank v. V. K. Awasthy¹⁵

Facts: A show cause notice was issued for not working at the Branch where he was originally posted and was living at some other place, the notice was served on him and 15 day's time was granted for the purpose of filing response and his termination order was passed. Kerala High Court held that respondent's dismissal from service was in violation of the principles of natural justice and appeal went to the Supreme Court. It was held that the order was passed without proper application of mind regarding the findings recorded by the Disciplinary Authority on the basis of report of the enquiry officer, and relating to imposition of punishment. Therefore, High Court permitted the respondent - writ petitioner to make a detailed representation to the Disciplinary Authority in respect of the enquiry proceedings and findings, which have to be done within a stipulated time and directions were given to the Disciplinary Authority to consider the submission and pass a fresh order. High Court also directed that the period during which respondent was out of service was to be treated as period under suspension.

Issues: Whether dismissal of the employee was valid or not.

Contentions of the parties:

1. Petitioners

- Proper notice was served on respondent on 6.8.1992 and 15 days, time was granted for the purpose of filing response. Order was passed on 17.8.1992. Even then the respondent-employee preferred an appeal before the prescribed Appeal. There was no violation of natural justice.
- In the Memorandum of Appeal, before High Court there was no stand taken that there was any prejudice caused to the respondent on account of the fact that the order was passed prior to the expiry of the indicated period.
- He was given personal hearing by the Appellate Authority. Before him also no such stand was taken and no plea regarding any prejudice was raised.

¹⁴ Section 11(2) of the Act comprehensively states that any employee who was appointed before the appointed day.

¹⁵ 2005(6) SCC 231.

2. Respondent

Merely because no specific ground regarding prejudice was taken either in the Memorandum of Appeal or at the time of personal hearing that does not cure the fatal defect of violation of principles of natural justice.

Decision: It was held by the Supreme Court that the quantum of punishment i.e. dismissal from service was disproportionate to the misconduct proved. It was however, held that no prejudice was caused to the writ petitioner and there was no violation of principles of natural justice and the order of dismissal as passed by the Appellant-Bank does not suffer from any infirmity. Appeal was accordingly allowed. The respondent employee had the opportunity of raising the question about passing of dismissal order before the prescribed period but he did not raise it and the decision of the court, due to it, sets on the right path. One cannot say that the court was arbitrary in performing its business. It was mistake on the part of the respondent and it was committed even when he was given an opportunity of personal hearing.

IV. Audi Alteram Partem vis a vis Post Decisional Hearing

The rule of *Audi Alteram Partem* is excluded from the purview of post decisional hearing or it could be said that it is an exception of *audi alteram partem* but as soon as order is made, a fair opportunity of being heard should be provided to the person in order to follow the above said rule of Natural justice. This post decisional hearing cannot be treated as substitute of pre decisional hearing, the reason being that for the aggrieved person, pre decisional hearing affords such better safeguards.

It depends upon facts and circumstances of the each and there have been many instances where court have permitted a post decisional hearing as pre decisional hearing did not appear to be practice, and where courts have refused to accept post decisional hearing where pre decisional hearing could have been possible but not provided.

A post decisional hearing is less effective than a pre decisional hearing and it has pointed out by the court itself that once a decision has been taken by an authority, its natural tendency would be to support the same or not obviate from former order and representation against it may not really prove any fruitful result. Post decisional hearing is not adequate in dismissal case where the consequence to the concerned person is very serious.

As in *K.I. Shephard v. Union of India*¹⁶, there was no reason that, why they did not conduct a pre decisional hearing, therefore, a clear cut case of infringement of natural justice came before the court and recourse to correct the flaw in proceeding was not allowed i.e. plea to conduct post decisional hearing was rejected.

On the other hand, before making a notification to declare an organization as a terrorist organization, there is no provision for pre decisional hearing. But this cannot be considered as a violation of principle of Audi Alteram Partem because in the peculiar background of terrorism, it may be necessary for the Central Government to declare an organization as terrorist organization even without hearing such organization. Under section 19 of the Prevention of Terrorism Act, 2002 (POTA) the aggrieved party can approach the central government itself for reviewing its decision. The post decisional remedy provided under POTA, 2002 satisfies the Audi Alteram Partem requirements in the matter of declaring an organization as a terrorist organization. Therefore, the absence of pre decisional hearing cannot be treated as a ground for declaring Section 18 of POTA, 2002 as invalid.

Whenever an opportunity for pre decisional hearing is not provided and interim orders are passed by the court in a case, then in such cases, there is always scope of post decisional hearing in order to justify natural justice. If there is any ex-parte order passed by the court then aggrieved party can always make its representation before the court before the final decision. As a general rule, thus, Audi Alteram Partem should be followed by affording pre decisional hearing, but not in absence of pre decisional hearing.

In *Olga Tellis case*¹⁷, Commissioner was empowered by the statute to remove the construction without notice but Supreme Court read the Audi Alteram Partem rule “as containing command not to issue notice before the removal of construction is encroachment, make the law invalid”. However, it makes principle of natural justice violated and therefore, invalid. An opportunity of pre decisional hearing was not provided by

¹⁶ Supra note 7.

¹⁷ *Olga Tellis v. Bombay Municipal Corporation*, AIR1986SC180

the Bombay Municipal Corpn. And such law passed by the legislature i.e. power to remove construction without notice is violation of rule of natural justice because injustice would have done with plaintiff before he could say anything in his defence.

In *Institute of Chartered Accountants of India v. L.K.Ratna*¹⁸, it was contended that even if the hearing has not given at the initial stage, a right on appeal has been conferred on such member and the member can avail himself on such an opportunity of being heard at the appellate stage But the Supreme Court Observed that “there are cases where injury is caused as soon as it is made and that injury is not capable of being entirely erased when the error is corrected on subsequent appeal.” Thus, there is need to ensure that there is no breach of fundamental procedure in the original proceedings.

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’.

V. Conclusion

Pre-decisional hearing is the standard norm of rule of *audi alteram partem*. But post-decisional hearing at least affords an opportunity to the aggrieved person and is better than no hearing at all. It could be established as rule that post decisional hearing is valid only when pre decisional hearing is not possible after considering the nature of the case and prevailing circumstances but if it is possible to conduct pre decisional hearing then opportunity should be provided to the party to present their defence for doing justice. Post decisional hearing is also valid when the harm caused due to lack of opportunity to defend at preliminary stage can compensated at post decisional shearing stage. The judicial precedents are trend setter that post decisional hearing has to be applied whenever it is necessary and considering nature of the case. In application of this doctrine, the motive of the court is to do justice with the parties to the suit. No party should suffer any sort of loss due to it.

Hence, Hypothesis that Post decisional hearing is an escape to the rule of *audi alteram partem* stands disproved to the fact that right to be heard is provided in both the cases whether it is pre-decisional or post decisional hearing and that post decisional hearing is only provided where there is no possibility of pre-decisional hearing and also sometimes, even after pre-decisional hearing a second chance to meet the ends of justice. Pre-decisional and post decisional hearing are not alternate rather complementary to achieve the object of *audi alteram partem*.

¹⁸ (1986) 4 SCC 537