A.F.R.

Neutral Citation No.-2024:AHC:3222

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No.1

Present:

THE HON'BLE JUSTICE SHEKHAR B. SARAF

WRIT TAX No. - 1507 of 2023

M/s EASTERN MACHINE BRICKS AND TILES INDUSTRIES
VS
STATE OF U.P. AND OTHERS

For the Petitioner	**:**	**Mr. Aloke Kumar, Advocate**
For the Respondents	**:**	**Mr. Arvind Kumar Mishra, Standing Counsel**

(Judgment dictated in open Court)

1. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by order dated September 14, 2021 passed by Assistant Commissioner, State Tax, Sector-2, Fatehpur under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") for the tax period 2018-19 and the appellate order dated October 5, 2023 passed by the Additional Commissioner, Grade-2, (Appeal)-III, State Tax, Prayagraj.

2. The first ground taken by the learned counsel for the petitioner is that the petitioner had cancelled its registration voluntarily on September 18, 2019, whereas the notice under Section 74 of the Act was given to it only by way of uploading the same on the web portal on a subsequent date. He submits that the notice, that has been issued, was issued in the year 2021 or in late December 2020 as the date fixed for hearing was January 12, 2021. He further submits that as the petitioner had already cancelled its registration voluntarily, it was not required to check the web portal. Further ground has also been taken by the learned counsel for the

petitioner with regard to the respondent No.3 proceeding on the basis of a Special Investigation Branch report (SIB report) behind the back of the petitioner without providing a copy of the same to the petitioner. He further states that the appellate authority also did not grant a second opportunity of hearing to the petitioner. He submits that the date fixed for hearing was August 22, 2023, on which date the petitioner could not appear. Subsequently, the appellate authority passed an order on October 5, 2023 dismissing the appeal of the petitioner on the ground that none appeared on behalf of the petitioner and reaffirming the order passed by Assistant Commissioner, State Tax/respondent No.3.

3. It is trite law that principles of *audi alteram partem* are required to be followed by the authority and giving a go by to the same results in violation of the principles of natural justice. One may examine the development of the law in relation to natural justice. The Division Bench of this Court in **S.R. Cold Storage v. Union of India and Others** reported in **2022 SCC online (All) 550; {[2022] 448 ITR 37 (All)}** held as follows:

> *"25. The first and foremost principle of natural justice is commonly known as audi alteram partem rule. 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 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. It is an approved rule of fair play.*
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> *26. The 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. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.*

> *27. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.*
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> *28. Natural justice has been variously defined by different judges, for instance a duty to act fairly, the substantial requirements of justice, the natural sense of what is right and wrong, fundamental justice and fair-play in action. Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" that is no man shall be a judge in his own cause. The second rule is "audi alteram partem", that is, "hear the other side". A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, i. e., "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". 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."*

4. The Supreme Court, in the celebrated constitutional judgment in **Mrs. Maneka Gandhi v. Union of India and another** reported in **(1978) 1 SCC 248**, while dealing with a challenge laid to an order by which a passport was impounded, expounded upon the significance of the principles of *audi alteram partem* to the doctrine of natural justice. Justice P.N. Bhagwati while authoring the judgment beautifully expounded the said principles as follows:

> *"14. .....But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances*

> *where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [(1949) 1 All ER 109] that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise."*

5. Subsequently, the Supreme Court, in **State of Kerala v. K.T. Shaduli Grocery Dealer Etc.** reported in **(1977) 2 SCC 777,** while dealing with the provision under the Kerala General Sales Tax Act, 1963, examined the principle of natural justice as follows:

> *"2. Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. It is true, as pointed out by this Court in Dhakeswari Cotton Mills Ltd. v. CIT [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that a taxing officer "is not fettered by technical rules of*

evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not a constant: they are not absolute and rigid rules having universal application. It was pointed out by this Court in Suresh Koshy George v. University of Kerala [AIR 1969 SC 198 : (1969) 1 SCR 317 : (1969) 1 SCJ 543] that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in Russel v. Duke of Norfolk [(1949) 1 All ER 109] :

> *"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."*

3. One of the rules which constitutes a part of the principles of natural justice is the rule of audi alteram partem which requires that no man should be condemned unheard. It is indeed a requirement of the duty to act fairly which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties because as pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] "the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice" and justice, in a society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions. This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed

> *connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of audi alteram partem requires that a particular specified procedure is to be followed. It may be that in a given case the rule of audi alteram partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on facts and circumstances of each case."*

6. Justice P.N. Bhagwati further expounded on the necessity of disclosing to the assessee the information relied upon by the authorities. The relevant extract is provided below:

> *"12. This Court further fully approved of the four propositions laid down by the Lahore High Court in Seth Gurmukh Singh v. Commissioner of Income Tax [(1944) 12 ITR 393 (Lahore HC)]. This Court was of the opinion that the Taxing Authorities had violated certain fundamental rules of natural justice in that they did not disclose to the assessee the information supplied to it by the departmental representatives. This case was relied upon by this Court in a later decision in Raghubar Mandal Harihar Mandal's case (supra) where it reiterated the decision of this Court in Dhakeswari Cotton Mills Ltd.'s case (supra), and while further endorsing the decision of the Lahore High Court in Seth Gurmukh Singh's case pointed out the rules laid down by the Lahore High Court for proceeding under sub-section (3) of Section 23 of the Income-tax Act and observed as follows:*
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> > *"The rules laid down in that decision were these: (1) While proceeding under sub-section (3) of section 23 of the Income-tax Act, the Income-tax Officer is not bound to rely on such evidence produced by the assessee as he considers to be false; (2) if he proposes to make an estimate in disregard of the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going*

> *to found that estimate; (3) he is not however debarred from relying on private sources of information, which sources he may not disclose to the assessee at all; and (4) in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible."*
>
> *It will thus be noticed that this Court clearly laid down that while the Income-tax Officer was not debarred from relying on any material against the assessee, justice and fair-play demanded that the sources of information relied upon by the Income-tax Officer must be disclosed to the assessee so that he is in a position to rebut the same and an opportunity should be given to the assessee to meet the effect the aforesaid information."*

7. Going forward, the Supreme Court in **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others** reported in **(2015) 8 SCC 519** outlined the fundamental importance of providing an opportunity for hearing before making any decision, and characterized it as a basic requirement in any legal proceedings. The Supreme Court further propounded that compliance with principles of natural justice is an implied mandatory requirement, and non-observance of these principles can invalidate the exercise of power. Relevant paragraphs have been extracted below:

> *28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is*

important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

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30. Wade [Administrative Law (1977) 395] also emphasises that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.

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35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak v. Union of India; [(1969) 2 SCC 262] that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In Maneka Gandhi v. Union of India; [(1978) 1 SCC 248] also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In Maharashtra State Financial Corporation v. Suvarna Board Mills; [(1994) 5 SCC 566] , this aspect was explained in the following manner :

> *"3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straitjacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of*

> *which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of the case."*

8. One may further refer to the recent judgment of the Supreme Court in **Madhyamam Broadcasting Limited v. Union of India and others** reported in **ILR 2023 (2) Kerala 545; (2023 SCC OnLine 366)** wherein the Supreme court highlighted that the principles of natural justice of which audi alteram partem is a part, guarantee a reasonable procedure which is a requirement entrenched in Articles 14, 19 and 21 of the Constitution of India. Chief Justice Dr. D.Y. Chandrachud while authoring the judgment has succinctly examined the principles of natural justice and after examining the Supreme Court's ratio in umpteen cases has penned the relevant paragraph which is extracted below:

> *"47. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case [See S.L. Kapoor v. Jagmohan; (1980) 4 SCC 379 "<u>The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary</u>"; also see Swadeshi Cotton Mills v. Union of India; A.I.R. 1981 S.C. 818]. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds [See Olga Tellis v. Bombay Municipal Corporation: (1985) 3 SCC 545; C.B.*

Gautam v. Union of India:(1993) 1 SCC 78; Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I: (2008) 14 SCC 151 and Kesar Enterprises v. State of Uttar Pradesh: (2011) 13 SCC 733]. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing."

9. Chief Justice Dr. D.Y. Chandrachud has further elaborated on the principles of natural justice in **State Bank of India and others v. Rajesh Agarwal and others** reported in **(2023) 6 SCC 1**. The relevant paragraph is delineated below:

"36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which

> *means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power."*

10. The common thread that runs across these judgments is that although the principle of audi alteram partem can evolve itself given the facts and circumstances of each case, its significance and applicability is universal. Audi alteram partem, which is a part of the doctrine of natural justice, finds its roots primarily in the constitutionally guaranteed ideal of equality. This principle ensures that no one is condemned, penalized, or deprived of their rights without a fair and reasonable opportunity of hearing. It acts as a safeguard against arbitrary decision-making, upholding the principle of due process while also providing a crucial foundation for just and equitable legal or administrative proceedings.

11. Furthermore, the significance of the principal of audi alteram partem is deeply entrenched in the foundational tenets of natural justice. The phrase, denoting "hear the other side," is emblematic of the sacrosanct right vested in individuals to be accorded a fair and impartial hearing before the adjudication of their rights or interests. This cardinal principle operates as a bulwark against arbitrariness and the capricious exercise of authority, mandating that decisions be reached only subsequent to a comprehensive and equitable deliberation of all relevant contentions. It is, in essence, the sine qua non of due process, standing as an unwavering sentinel against the potential tyranny of unchecked power. The judicious application of audi alteram partem not only upholds the sanctity of individual freedom but also fortifies the integrity of legal proceedings, fostering a milieu where justice is not merely meted out, but is perceived to be done through a conscientious consideration of diverse and adversarial perspectives.

12. In the present case, when the petitioner had cancelled its registration in the year 2019, a proper notice was required to be issued to it under Section 74 of the Act at its address. However, the authorities simply uploaded the Section 74 show cause notice on the web portal inspite of knowing that the petitioner had already cancelled its registration prior to the date of issuance of the show cause notice. This action clearly prevented the petitioner from appearing in the hearing in the original proceeding under Section 74 of the Act that was accordingly passed ex parte. Moreover, it was incumbent upon the authorities to provide the copies of materials being relied upon by them (SIB report, in this case) to the petitioner/assessee so as to enable him to deal with the same. In my view, any action that proceeds without proper intimation and service of the show cause notice to the petitioner is vitiated and bad in law, and is, accordingly required to be quashed and set aside.

13. In light of the above, the impugned orders dated September 14, 2021 and October 5, 2023 are quashed and set aside with a direction upon respondent No.3 to grant an opportunity of hearing to the petitioner on January 30, 2024 at 11.00 AM, and after hearing the petitioner, pass a reasoned order within two weeks from the date of hearing. It is expected that no unnecessary adjournments shall be granted by the authority concerned. The authority is also directed to provide a copy of the SIB report to the petitioner within a week from date.

14. With the above directions, the writ petition is allowed.

Order Date :- 08.01.2024
Kuldeep

(Shekhar B. Saraf,J.)