

## APPLICABILITY OF AUDI ALTERAM PARTEM IN ADMINISTRATIVE PROCEEDINGS

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### ABSTRACT

Rules of natural justice have developed with the expansion of civilisation and therefore the content therefrom is usually thought of as a correct live of the amount of civilisation and Rule of Law prevailing within the community. so as to guard himself against the excesses unionised power, man has continually appealed to somebody on the far side his own creation. Such somebody will solely be God and His law, natural law or construct, to that all temporal laws and actions should adapt. this is often the origin of the conception of natural justice. Natural justice implies fairness, reasonableness, equity and equality. Natural justice is that the conception of common law and it's the unwritten world counterpart of the yank 'procedural due process'. Natural justice represents higher procedural principles developed by judges which each body agency should follow in taking any call adversely moving the rights of a non-public individual. In India, the principles of natural justice area unit firmly grounded in Article fourteen and twenty one of the Constitution. Principles of natural justice area unit attracted whenever an individual suffers a civil consequence or a prejudice is caused to him in any body action. primarily there area unit 2 principles:

1. Nemo in propria cause judex, esse debet – nobody ought to be created a choose in his own cause, or the rule against bias.

2. Audi alteram partem – nobody ought to be condemned unheard.

This paper deals with the second principle of natural justice. Right of hearing i.e. audi alteram partem which means one shouldn't be condemned unheard.

**KEYWORDS** : Natural justice , consequences, constitution, principles , condemned .

## **INTRODUCTION**

The principle of audi alteram partem is that the basic conception of the principle of natural justice. The omnipotence inherent within the philosophy is that nobody ought to be condemned unheard. within the field of body action, this principle has been applied to make sure truthful play and justice to affected persons. Its application depends upon the factual matrix to enhance body potency, advantage and to give justice. The procedure adopted should be simply and truthful. The expression audi alteram partem [William Wade; Christopher Forsyth (2009), "Retention of Discretion", Administrative Law (10th ed.), Oxford: Oxford University Press, pp. 259–285 at 259, ISBN 978-0-19-923161] implies that an individual should run a chance to defend himself. This principle may be a trigonometric function qua non of each civilised society. Corollary deduced from this rule is qui a liquid statue rit, parte inaudita altera aequum licet dixerit, haud aequum facerit i.e. he United Nations agency shall decide something while not the opposite aspect having been detected though he might have same what's right won't have done what's right. The rule of hearing may be a code of procedure, Associate in Nursing thence covers each stage through that an body assessment passes, ranging from notice to final determination.

### **Aim of the Study:**

To analyse the applicability of Audi alteram partem in administrative proceedings and to study about the bias ness prevailing in the administrative proceedings.

## **HYPOTHESIS**

HO: The bias ness in administrative proceedings does not affects the principle of natural justice.

HA: The bias ness in administrative proceedings affects the principle of natural justice.

## **METHODOLOGY:-**

The research is followed descriptive, narrative methodologies for the study on applicability of audi alteram partem in administrative proceedings.

**DESCRIPTIVE METHOD:**

A descriptive approach to research is called as the foundation for research. The research is referred more descriptive information from books, articles, journals to gain more knowledge for the study on applicability of audi alteram partem in administrative proceedings.

**NARRATIVE APPROACH:** Narrative inquiry uses field text such as stories, journals, field notes, conversation, interview and life experience as units of analysis to research.

**RIGHT TO NOTICE:**

The term 'notice' originates from the Latin word 'notitia' which suggests 'being known'. Notice is that the beginning of any hearing. Unless someone is aware of the formulation of subject and problems concerned within the case, he cannot defend himself. A notice should be adequate and contain:

- 1) Time, place and nature of hearing,
- 2) Legal authority beneath that hearing is to be control,
- 3) Statement of specific charges (or grounds) and projected action (or grounds) that the person has got to meet.

The take a look at of adequacy of notice are whether or not it offers sufficient data and material thus on change the person involved to place up a good defence.

However, the necessity of notice won't be insisted upon as a mere technical formality, once the involved party clearly is aware of the case against him, and isn't thereby prejudiced in any manner in golf shot up a good defence. so in *Keshav Mills Co. V Union of Bharat*, the court failed to quash the order of the go taking on the mill for a amount of five years on the technical ground that the appellants weren't issued notice before this action was taken, because, at associate degree earlier stage, a complete hearing had already been given and there was nothing additional that the appellant needed to grasp. [ Peter Cane (2004), "Making Decisions and Rules", *Administrative Law*(4th ed.), Oxford: Oxford University Press, pp. 192–220 at 192, ISBN 978-0-19-926898-6]. Similarly, in geographical region *State monetary corporation . V Suvarna Board Mill*, the court control that a notice business upon the party to repay dues among fifteen days failing that manufactory would be appropriated is sufficient for taking on the manufactory associate degreed no contemporary notice is needed for demolition an unauthorised structure once notice for removing such structure has already been given. Where a statute expressly provides that a notice should be, failure to present notice makes the act void. Article twenty two of Constitution needs that defend should be equipped the grounds of detention and if the grounds or imprecise, the

detention order is also quashed by the court. The grounds given in notice on that the action is projected to be taken should be clear, specific and unambiguous. A notice is imprecise if it just mentions the fees while not mentioning the action projected to be taken.

### **RIGHT TO GRASP THE PROOF AGAINST HIM**

Every person before associate degree body authority sweat judgment powers has the proper to grasp the proof to be used against him. This principle was firmly established in Dhakeshwari Cotton Mills Ltd V. Cit. during this case the proceeding tax judicature failed to disclose the knowledge provided thereto by the department. The SC control that the assess wasn't given hearing. However, the provision of adverse material, unless the law otherwise provides, in original kind isn't necessary. it's sufficient if the outline of the contents of the fabric is provided provides it's not dishonest . someone is also allowed to examine a file and take notes. no matter mode is employed, the basic remains an equivalent that nothing ought to be used against the person that has not been dropped at his notice.

#### **1. RIGHT TO CASE AND PROOF:**

This can be done through writing or orally. The courts square measure unanimous on the purpose that oral/personal hearing isn't associate integral a part of hearing unless circumstances thus exceptional that while not oral hearing an individual cannot place up a good defence. Therefore, wherever complicated legal and technical queries square measure concerned or wherever the stakes square measure terribly high, oral hearing shall become a vicinity of hearing. Thus, within the absence of a statutory demand for oral hearing courts can decide the matter taking into thought the facts and circumstances of each case. [WADE, H W R, 1982: Administrative law. fifth edition. Oxford. Clarence press] .In Union of Asian country V. J. P. Mitter the court refused to quash the order of the President of Asian country in an exceedingly dispute with reference to the age of state supreme court choose on the bottom that the President failed to grant oral hearing even for the asking. The court was of the read that once the person has been given a chance to submit his case in writing, there's no violation of the principles of natural justice if oral hearing isn't granted. The administrative authority should any give full chance to gift proof – testimonial or documentary. In Dwarkeshwari Cotton Mills Ltd. V. Cit, the SC quashed the choice of the executive authority on the bottom that not permitting the assess to supply material proof violates the rule of hearing.

**TO REBUT ADVERSE PROOF:**

This right presupposes that the person has been advised concerning the proof against him. the chance to rebut proof essentially involves thought of 2 factors-

Cross-examination- it's the foremost powerful weapon to elicit and establish truth. However, the courts don't implement interrogatory in body judgment unless the circumstances square measure such within the absence of it the person cannot place a good defence. The SC in *City Space Committee V. Jagdish Prasad*, the department submitted the charge-sheet, got an evidence and thenceforth straightaway passed the dismissal order. The court quashed the order holding that the rule of hearing includes a chance cross-examine the witnesses and to steer evidences. However, in *Exeter* meant proceedings and proceedings before customs authorities to work out whether or not merchandise square measure black or not the correct of interrogatory was control to not be a vicinity of natural justice. On the grounds of usefulness additionally chance of interrogatory could also be disallowed. In *Hira Nath Mishra V. Principal, Rajendra Medical faculty*, the SC rejected the rivalry of the appellants that they weren't allowed to cross-examine the lady students on the bottom that if it had been allowed no lady would act to grant proof, and any that it might not be doable for the school authorities to shield lady students outside the school premises. Legal Representation ordinarily illustration through a professional person in any body continuing isn't thought of an essential a part of the rule of natural justice as oral hearing isn't enclosed within the minima of hearing. [WALKER, R 1985: *Doing Research. A handbook for teachers*. London: Methuen.] This denial of delegacy is even on the bottom that lawyers tend to complicate matters, prolong the proceedings and destroy the essential informality of the proceedings. it's any even on the bottom that illustration through a professional person of selection would offer a foothold to the made over the poor who cannot afford an honest professional person. It is relevant to notice at this stage that the SC in *M.H. Hoskot V. State of geographical area*, whereas importation the conception of 'fair procedure' in Article twenty one of the Constitution control that the correct to private liberty implies provision by the State of free legal service to a unfortunate person who is needy or otherwise disabled from securing legal help wherever the ends of justice need such service. In *Khatri V. State of state*, the SC any dominated that the State is constitutionally certain to give legal aid to the poor or needy defendant not solely at the stage of trial however at the time of remand additionally. Such right can not be denied on the bottom of economic constraints or body inability or that the defendant failed to elicit it. [BAXTER, L 1991: *Administrative law*. Third edition. Cape Town. Juta.] The SC stressed that it's the duty of the leader to tell the defendant of such right. In the same manner in *Nalini Satpathy V. P.L. Dani*, the court control that the defendant should be allowed delegacy throughout protective interrogation and therefore the police should sit

up for an affordable time for the arrival of a professional person. However, the Court that took the correct step, failed to take an extended stride in holding that the State should give a professional person if the defendant is needy. The observation of the Court may somewhat be inducted within the administration. within the space of criminal justice the CPC currently provides for legal aid to the defendant.

**NO PROOF OUGHT TO BE TAKEN AT THE REAR OF THE OPPOSITE PARTY:**

The ex party proof taken within the absence of the opposite party violates the principle of hearing was mentioned by the court in *Errington V. Minister of Health*. The facts were that in 1933 Jarrow Corporation passed a clearance order for the demolition of bound buildings found unfit for human habitation and submitted identical for the confirmation of the minister of health. a probe was command and also the house owners of the building got a hearing. thenceforth some officers of the ministry once more visited the place and picked up proof however the house owners weren't conversant regarding the visit. The clearance order was confirmed by the minister once taking under consideration the facts therefore-collected. [WIECHERS, M 1990: Administrative law.Pretoria.Butterworths. ] On challenge, the clearance order was quashed by the court and one in every of the grounds for therefore deciding was that the ex party statements taken within the absence of the opposite party, while not affording a chance to rebut, is against the recognised principles of natural justice.

The decision doesn't imply that body agencies cannot get data within the manner they think about best. the most thrust of *Errington* case is that no matter data is obtained by the executive authority should be disclosed to the opposite party and also the chance to rebut it should be provided.The SC reiterated this position in *Hira Nath Mishra V. Principle, Rajendra Medical faculty*. during this case thirty six ladies of a medical faculty filed a report with the Principle concerning misbehaviour of the boys within the girl's hostel. The enquiry committee appointed by the Principle recorded the statements of the women, however within the absence of the appellants. The appellants were conjointly known by the women through the images. [Audi Alteram Partem – Exclusion in Special Circumstances , R.L . Narasimhan . ]The committee found the appellants guilty associate degreed consequently an expulsion order was served on them. The order of expulsion was challenged before the SC and one in every of the grounds of challenge was that the proof was taken behind their backs. The court rejected the rivalry holding that the women wouldn't have ventured to form the statements within the presence of the appellants except at a good risk of paying back and harassment. during this case, no matter proof was collected behind

their backs of the appellants was dropped at their notice and that they were given a chance to rebut the proof.

### **REASONED CALL**

In India, within the absence of any explicit statutory demand, there's no general demand for body agencies to administer reasons for his or her selections. However, if the statute below that the agency is functioning needs reasoned selections, courts contemplate it obligatory for the executive agency to administer reasons that mustn't be simply 'rubber-stamp' reasons however a quick, clear statement providing the link between the fabric on that bound conclusions ar primarily based and also the actual conclusions. In *M.J.Sivani V. State of province* the Court reiterated that once the principles direct recording of reasons it's a circular function qua non and a condition precedent for a legitimate order. applicable transient reasons, although not sort of a judgment, ar necessary for a legitimate order. unremarkably they need to be communicated to the affected party so he could have a chance to own them tested within the applicable forum. [VAN WYK,JG 1991: The law of education for the teacher.Second edition.Pretoria.Academia ]associate degree body order itself could contain reasons or the file could disclose reasons to hit the choice showing application of mind to the facts in issue.

### **CONCEPT OF POST DECISIONAL HEARING**

The idea of post-decisional hearing has been developed to keep up a balance between body potency and fairness to the individual. The harmonising tool was developed by the SC in *Maneka Gandhi V. Union of Asian country*. during this case the passport dated Gregorian calendar month one, 1976 of the petitioner, a journalist, was impounded 'in the general public interest' by Associate in Nursing order dated July a pair of, 1977 and therefore the government having declined to furnish her the explanations for its call she filed a petition before the SC beneath Article thirty two difficult the validity of the impoundment order. the govt. conjointly didn't provide her any pre-decisional notice and hearing. one in every of the contentions of the govt. was that the rule of audi alteram partem should be control to be excluded as a result of it's going to have annoyed the terribly purpose of impoundment the passport. Rejecting the competition the court justly control that tho' impoundment of the passport was Associate in Nursing body action nonetheless the rule of hearing is attracted by necessary implication and it'd not be honest to exclude the appliance of this cardinal rule on the bottom of body convenience.On the contrary the technique of post decisional hearing was developed so as to balance the factors against the clear demand of law, justice and fairness. The court stressed that a good chance of being detected

following like a shot the order impoundment the passport would satisfy the mandate of natural justice. The same technique of substantiating void body call by post-decisional hearing was adopted in *Swadeshi Cotton Mills V. Union of Asian country*. The court valid the order of the govt. for taking up the management of the corporate that had been passed in violation of the audi alteram partem rule and that was found to possess been attracted by necessary implication as a result of the govt. had in agreement to relinquish post-decisional hearing. *K.I. Shephard V. Union of Asian country* conjointly reflects the thought method of the very best bench on this necessary issue. during this case the terms of the theme drawn beneath section forty five of the banking regulation act, 1949 3 erstwhile banks had been amalgamated. consistent to the theme, sure staff of the amalgamated banks were excluded from the utilisation and their services weren't taken. Some excluded staff filed writs before the state supreme court beneath Article 226 for relief. The one decide granted partial relief by proposing post-decisional hearing. On attractiveness the Division Bench discharged the official document petitions. a number of the excluded staff then filed the official document petition directly within the Supreme Court.

[ Audi alteram partem Rule: Exclusion in Special Circumstances By Justice R.L.Narasimhan, Member, Union Law Commission, New Delhi Cite as : (1971) 1 SCC (Jour) 3 ] permitting the writs the Court control that post-decisional hearing wouldn't do justice during this case particularly wherever the traditional rule of hearing ought to apply. The court got wind that there's no justification to throw an individual out of the utilisation and so provide him a chance of illustration once the necessity is that he ought to have a chance as a condition precedent to action. The Court determined that it's a typical expertise that when a choice is taken there's a bent to uphold it and therefore the illustration might not yield any fruitful result. Therefore, even in cases of aborning things pre-decisional hearing is important which can not be Associate in Nursing elaborate one, particularly in cases wherever the action has grave consequences love loss of resource. Justifying the concept of post-decisional hearing, academic Delaware Smith writes: "can the absence of a hearing before a call is formed be adequately remunerated for by a hearing ex post facto? a previous hearing could also be higher than a afterwards hearing however a afterwards hearing is best than no hearing at all; Associate in Nursing in some cases courts have control that statutory provision for an body attractiveness or maybe full review on deserves is ample to negative the existence of any in explicit duty to listen to before the initial decision is formed. The approach could also be acceptable wherever the initial call doesn't cause serious damage to the person affected, or wherever there's conjointly a predominate would like for prompt action, or wherever it's unfeasible to afford antecedent hearings. [Audi Alteram partem in criminal proceedings , Stefano Ruggeri .]The Supreme Court in *H.L.Trehan V. Union of Asian*



country observed: “in our opinion, the post-decisional chance of hearing doesn't sub-serve the principles of natural justice. The authority that embarks upon a post-decisional hearing can ordinarily proceed with a closed mind and there's hardly any likelihood of obtaining a correct thought of the illustration at such a post-decisional chance.” therefore in each case wherever the pre-decisional hearing is secure post-decisional hearing won't validate the action except in each exceptional circumstances

### **CONCLUSION :**

Audi alteram partem may be a wide conception than what it looks to be. it's one in every of the cardinal principles of the principles of natural justice rather it'd be unwarranted to rely on natural justice while noticing under consideration the conception of audi alteram partem. It mean right to hearing. This phrase tho' sounds easy however it embraces in itself the complete story of justice right from causing notice to post decisional hearing. Though, there area unit sure exceptions wherever this principle isn't followed. on the other hand these exceptions even have to be even. There needs to be a rational behind skipping this terribly conception that forms the terribly basis of the justice. Then the queries arises wherever to skip and wherever not to? there's no straight jacket formula to calculate this. It rather depends on the various facts and circumstances of the case. The presiding decide ought to balance the gravity of the facts and circumstances of each the parties. But yes, we are able to conclude observing the on top of cases that audi alteram partem i.e. right to hearing may be a general conception, Associate in skipping this can be an exception.

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