

10-12.

[1]

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7809/2009

ANIL KUMAR Petitioner

Through : Mr. C. Mohan Rao, Adv.

versus

DDA Respondent

Through : Ms. Manika Tripathy Pandey and
Mr. K.K. Pillai, Advs.

[2]

+ W.P.(C) 7810/2009

GURMUKH SINGH ARORA Petitioner

Through : Mr. C. Mohan Rao, Adv.

versus

DDA Respondent

Through : Ms. Manisha Tyagi, Adv.

[3]

+ W.P.(C) 7812/2009

BHARAT BHUSHAN Petitioner

Through : Mr. C. Mohan Rao, Adv.

versus

DDA Respondent

Through : Mr. C.S. Chauhan, Adv. for Ms.
Rajdipa Behura, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

ORDER

% **26.11.2009**

G.S. SISTANI, J. (ORAL)

1. With the consent of the parties, writ petitions are taken up for final hearing and disposal.

WP(C)No.7809,7810 & 7812-2009

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2. The facts in the above three cases are identical and, thus, the same are being disposed of by the common order.
 3. For the sake of convenience, facts in WP(C)No.7809/2009 are being noticed. Petitioner deposited the registration amount in the sum of Rs.7,500/- on 08.10.1996 for allotment of Type 'A' Category House pursuant to a scheme announced by the DDA in the year 1996, known as "*Expandable Housing Scheme*". On 01.09.1998, the petitioners were issued a demand-cum-allotment letter in respect of House No.22, Pocket 16, Sector 22, Rohini, New Delhi, at a disposal cost of Rs.4,46,000/-. As the houses were already constructed and were available, the DDA invited applications for allotment of houses.
 4. It is contended by learned counsel for the petitioners that the delay was totally attributed to the DDA which resulted in increase of cost.
 5. Aggrieved by this action of the DDA, the petitioners filed a writ petition, *inter alia*, seeking an order to quash the allotment-cum-demand letter and further sought a direction to the DDA to charge the rate, as per their brochure. Besides the petitioners, large number of similarly situated persons also approached this Court. On 27.11.2003, a Single Judge of this Court while rejecting the prayer with regard to the disposal cost disposed of a batch of writ petitions (CWP No.2142/1999, CWP No.2143/1999 and CWP No.2142/1999). The Court, however, permitted the petitioners to pay interest at the rate of 12%, per annum, on 50 % of the amount from the date of allotment-cum-demand and at 100% of the amount from the date amenities were made available. The Court also permitted the petitioners to opt within a period of 45 days for payment on the basis of current cost to avail the offer. The DDA did not issue fresh demand-cum-allotment letters in terms of the judgment of this Court and only 14 allottees opted for allotment on current cost basis within 45 days.

6. Learned counsel for the petitioners contend that the petitioners and approximately 71 other applicants opted for allotment at current cost basis after 45 days. Subsequently, the demand-cum-allotment letters were issued including to the petitioners. In the year 2007, 18 writ petitions were filed challenging the issuance of demand-cum-allotment letter as arbitrary, which were disposed of by an order of this Court dated 19.03.2008 directing the respondent DDA to issue demand-cum-allotment letters to the petitioners on the basis of calculation sheet which were given in Court and further directed that the petitioners were liable to pay interest at the rate of 12 % till the date when the demand-cum-allotment letter is issued.
7. Learned counsel for the petitioners submit that despite the petitioners being identically placed, as the petitioners in the CWP No.3257/2007, and also covered in fact and in law by the order dated 19.03.2008 passed by this Court, the petitioners were not issued demand-cum-allotment letters. Aggrieved by this action of the DDA, present petitions have been filed.
8. Learned counsel for the respondents – DDA have opposed these petitions on the ground that the case of the petitioners was not considered as the representations/applications received by them, did not seem to be genuine and none of these applications were signed by the allottees. Thus, the DDA did not deem it proper to consider these applications and the same stand rejected on this ground alone. The stand taken by the DDA in paragraph 10 of the counter affidavit is reproduced below:

"10. That in reply to paras 10-11 of the petition it is submitted that some representations/applications were received from the affected petitioners of EHS cases including the petitioner therein. On perusal of the same, it was observed that none of these applications were having the signature of allottee. It appeared that instead of petitioners, the property dealers had filed all these applications. Therefore, the same were not considered and the competent authority rejected the case vide orders dated 15.7.06 from Sl. No. 5 to 20, 46,

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55 to 71 (the name of Shri Anil Kumar appears at Sl. No.61.)"

9. Learned counsel for the petitioners submit that neither any show cause notice was issued to the petitioners nor any opportunity of hearing was granted to the petitioners to enable them to clear the doubts of the DDA.
10. The petitioners have been locked in a legal battle against the DDA since the year 1998 when the first demand-cum-allotment letter was issued. Today, it is not disputed that before rejecting the applications of the petitioners, the petitioners were neither issued any show cause notice nor asked to remain present along with supporting documents in support of their identification. It is not disputed that the petitioners had filed the earlier writ petitions, which were disposed of by an order of this Court dated 27.11.2003.
11. Learned counsel for the petitioners submit that the same very issue was considered by this Court in WP(C)No.3257/2007 and other connected matters on 19.03.2008. While disposing of these connected matters, this Court had issued the following directions:

"8. In view of the above facts and the statements made by learned counsel for the parties, the following directions are issued:

- (i) *DDA will make calculation and issue demand cum allotment letters to the petitioners on the basis of calculation sheet shown in the Court today, within 30 days. The petitioners will be liable to pay interest @ 12% till the date when demand cum allotment letter is issued and payment will be made in terms of the payment.*
- (ii) *DDA will be entitled to verify and examine genuineness of the case of the petitioners."*

12. Learned counsel for the petitioners submit that second direction, which was issued as similar objection with regard to genuineness was raised by the DDA was in the light of very same objection, which was raised by the DDA. In the light of this objection, this Court had directed that the DDA would be entitled to verify and examine the genuineness of the case of the petitioners. Counsel further submit that valuable rights of the petitioners could not have been determined by the respondents unilaterally without issuing a show cause notice and without granting a hearing in the matter.
13. In the case of **Canara Bank and Others v. Debasis Das and Others**, reported at (2003) 4 SCC 557, the Supreme Court of India has held that:

“13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant’s defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what 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 apprise the party determinatively of 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 such 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. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time.

When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*² the principle was thus stated: (ER p. 420)

§571 "[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?' "

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

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.

17. What is meant by the term "principles of natural justice" is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. v. Local Govt. Board*³ (KB at p. 199) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Spackman*⁴ Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard.

18. Lord Wright referred to the leading cases on the subject. The most important of them is *Board of Education v. Rice*⁵ where Lord Loreburn, L.C. observed as follows: (All ER p. 38 C-F)

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. ... The Board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from their determination, either upon law or upon fact. But if the court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required

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by the Act to determine, then there is a remedy by mandamus and certiorari."

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that "the Board can obtain information in any way they ⁵⁷²think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, L.O. in *Spackman v. Plumstead District Board of Works*⁶ where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oftquoted phrase "justice should not only be done, but should be seen to be done".

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. 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.

20. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew v. Drew and Leburu*⁷ (Macq at p. 8), Lord Cranworth defined it as "universal justice". In *James Dunbar Smith v. Her Majesty the Queen*⁸ (AC at p. 623) Sir Robert P. Collier,

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speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice", while in *Arthur John Spackman v. Plumstead District Board of Works*⁶ (AC at p. 240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In *Vionet v. Barrett*⁹ (LJRD at p.

41), Lord Esher, M.R. defined natural justice as "the natural sense of what is right and wrong". While, however, deciding *Hookings v. Smethwick Local Board of Health*¹⁰ Lord Esher, M.R. instead of using the definition given earlier by him in *Vionet* case⁹ chose to define natural justice as "fundamental justice". In *Ridge v. Baldwin*¹¹ (QB at p.

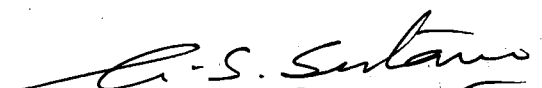
578), Harman, L.J., in the Court of Appeal countered natural justice with "fair play in action", a phrase favoured by Bhagwati, J. in *Maneka Gandhi v. Union of India*¹². In *H.K. (An Infant), Re*¹³ (QB at p. 630), Lord Parker, C.J. preferred to describe natural justice as "a duty to act fairly". In *Fairmount Investments Ltd. v. Secy. of State for Environment*¹⁴ Lord Russell of Killowen somewhat picturesquely described natural justice as "a fair crack of the whip" while Geoffrey Lane, L.J. in *R. v. Secy. of State for Home Affairs, ex p Hosenball*¹⁵ preferred the homely phrase "common fairness".

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? 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" as stated in Earl of Derby's case¹⁶ that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" 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 ⁵⁷⁴right" [see Boswel's case¹⁷ (Co Rep at p.

52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

14. I have heard learned counsel for the parties. Taking into consideration the facts of this case and applying the principles laid down, I find force in the submission made by counsel for the petitioner. In **Canara Bank and Others** (*supra*) the petitioners have been agitating their rights from the year 1998, and at this crucial juncture, when all issues stood resolved, it is not open to the DDA to reject the case of the petitioners on the ground that their identity are in doubt without following the principles of natural justice and issuance of show cause notice. This Court while disposing of Writ Petition 3257/2007 and other connected matters issued necessary directions by which DDA was entitled to verify and examine the genuineness of the case of the petitioners. Nothing has been produced on record to satisfy this court how the genuineness of the petitioners was ascertained. It is for this reason that courts have laid stress that there must be protection of the rights of the individual which cannot be determined by any arbitrary procedure which may be adopted. The petitioners could not have been condemned unheard. Consequently, the petitioners must succeed since the only ground taken by the DDA for not issuing the demand-cum-allotment letter is the identity of the petitioner. The petitioners shall appear before the Deputy Director (Housing), DDA on 14.01.2010 at 2.30 p.m., in person, along with all original supporting documents along with proof of identity. Once the DDA is satisfied about the genuineness of the petitioners, the demand-cum-allotment letters shall be issued to them in accordance with law.

15. Petition as well as all pending applications stand disposed of.


G.S. SISTANI, J.

November 26, 2009
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