

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16792 of 2016

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1. M/s Singh Security And Detective Services, a Proprietorship Firm, having its registered Head Office at Jamuna Prasad Building, Shivpuri Colony, Hinoo, Police Station-Doranda, Ranchi Jharkhand and its Patna Office at Flat no.301 & 302, 3rd Floor Brindwan Kunj, Exhibition Road, Police Station-Gandhi Maidan, District-Patna through its authorized representative Namely Mr. Dinesh Singh son of Late B. Singh, Presently residing at House of Mr. Abhay, Road No. 4, Patel Nagar, Police Station-Shastri Nagar, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Department of Excise, Prohibition and Registration, Patna
2. Bihar State Beverages Corporation Limited through its Managing Director, a Government of Bihar Undertaking, Vidyut Bhawan-II, 1st Floor, Jawaharlal Nehru Marg, Patna -800001
3. Mr. Mithilesh Mishra, The Managing Director, Bihar State Beverages Corporation Ltd. Vidyut Bhawan -II, 1st Floor Jawahar Lal Nehru Marg, Patna.
4. The General Manager, Bihar State Beverages Corporation Limited Vidyut Bhawan-II, 1st Floor, Jawaharlal Nehru Marg, Patna-800001
5. The General Manager, HR & Administrative, Bihar State Beverages Corporation Limited, Vidyut Bhawan-II, 1st Floor, Jawaharlal Nehru Marg, Patna-800001
6. M/s Intelligence Security of India through its authorized representative, GD-1, Namaskar Enclave 175a, Patliputra Colony, Patna-800013

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the Corporation : Mr. Vikash Kumar, Advocate.
For Respondent no.6 : Mr. Surendra Kumar Singh,
Mr. Avinash Shekhar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-05-2017

Heard the parties.

2. In the present writ petition, petitioner is challenging the action of the respondent by which he has been replaced by respondent no.6 for the purposes of deployment of guards.

3. An interlocutory application vide I.A. No.8559 of 2016



has been filed by which the petitioner has challenged the order vide letter no.2987 dated 21.9.2016 whereby the work order has been issued to the petitioner was cancelled and quashing of the decision dated 20.8.2016 of the Board of Directors whereby the decision was taken to allot work to the private respondent in place of petitioner.

4. The Bihar State Beverages Corporation Limited (in short BSBCL) has issued an advertisement vide Advertisement No. BSBCL/ HR & Admin/XXI-21/16-17/2386 dated 22.7.2016 invited application for providing Trained Security Guards. In pursuance thereof interested persons including petitioner and M/s Intelligence Security of India (Private Respondent) dropped sealed cover tender. Tender Committee opened the sealed cover tender of technical bid as well as financial bid, the petitioner was selected and the work was allotted to the present petitioner vide order dated 9.8.2016. In pursuance thereof the petitioner agency has deployed 96 Security Guards and 41 peons and it has been claimed by him that he has invested huge amount. On the complaint of respondent no.6 the matter was brought to Board of Directors for its post facto approval and Board of Directors in its meeting dated 9.8.2016 has cancelled the work order of the petitioner and allotted the work to Intelligence Security of India



(hereinafter mentioned as another Security Agency), respondent no.6 holding, respondent no.6 is L-I contractor and in pursuance thereof the work order was issued to respondent no.6 on 31.9.2016.

5. Learned counsel for the petitioner submits that petitioner has worked up-to 31.9.2016 and without giving any notice or show cause, the action of cancellation of work order has been taken which is completely illegal, arbitrary and not sustainable in law. In support of his submission he has placed reliance on the following judgments (i) (1994) 6 SCC 651 (ii) AIR 1981 Sc 136. He has further submitted that the Managing Director after due consideration and after taking legal opinion arrived to a finding that petitioner is the best suitable candidate for discharging the job but the Board of Director of Corporation without going into the details of the fact as well as without delving deep into nature of subject matter cancelled the allotment of work and substituted the work order in favour of respondent no.6. He has raised the question of law that before cancellation of the allotment of the work he should have been given notice or show cause, not following the same, violates the natural justice. He further submits that in view of work order allotted to the petitioner has created vested right in favour of the petitioner, cannot be taken



away without giving hearing, passed the adverse order as no adverse order can be passed behind his back.

6. Respondent no.6 has filed his counter affidavit where it has been stated that when the work was allotted to the petitioner he raised a grievance and filed a complaint, even legal notice was given claiming that respondent no.6 was/is the L-I candidate and without any reason the petitioner has been granted the work order. He has further submitted that there is no such condition attached to NIT, which stipulates the service charge should not be quoted less than 1% and further stated that respondent Corporation in past has allotted the work to those who had quoted less than 1% of service charge.

7. Learned counsel for respondent no.6 has submitted that there is no guideline for quotation of certain percentage of service charge, if argument of petitioner is accepted, in case of partnership firm, there cannot be less than 1% of service charge and in the Company service charge would not be less than 2% in such circumstance the Company would never compete, as always 2% service charge is in higher side than to 1% as comparison is always to be made in service charge as all other charges are fixed, work order is issued on the comparison of service charge furnished by contestant. He has further submitted that admittedly



respondent no.6 is lowest tenderer, petitioner cannot make complain that he was not given hearing, in view of fact that even opportunity of hearing would not change the situation. He further submitted that natural justice is not an unruly horse and the same cannot be put to straitjacket formula, as natural justice dependent on his own fact and circumstance of each case if chance of giving hearing would be useless formality to again asking the authority to give hearing as in the present case the selection of petitioner was admittedly made applying wrong scale and method of selection, and it would be useless formality to remand back the matter for an opportunity of hearing, in support of submission placed reliance on the following judgments: (i) Jagdish Mandal v. State of Orissa and others, reported in (2007) 14 SCC 517, para 22 (ii) Aligarh Muslim University and others v. Mansoor Ali Khan, reported in (2000)7 SCC 529 para 21 to 25. He has further submitted that those persons who have been deputed by the petitioner have been still continuing in their work as they have not been removed so there is no financial loss to the petitioner.

8. Learned counsel for respondent no.6 submits that as in the NIT no condition has been attached in not quoting service charge less than 1% as well as with respect to judging financial viability in case of quoting less then 1% service charge and justifiability



is not required to be looked into by the Managing Director in the event there is no such stipulation in the NIT, in such circumstance, the Managing Director was not required to take into consideration of quotation of service charge less than 1% would cause erosion in the salary of worker is outside the purview of finalizing work order. It has further been argued that, before opening the tender, Corporation did not inform, the minimum quotation of service charge will not be less than 1%. He has placed reliance on judgment of the Hon'ble Supreme Court in the case of Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. and others, reported in (1997) 1 SCC 53.

9. In the present case the basic question has been raised, the action of the authority, canceling the award is per se illegal as in exercise of power by Board of Director, before rescinding the award, primarily it was required to follow the natural justice even to the minimum level by giving show cause notice and seek explanation. In the present case the petitioner has been deprived at basic minimum procedure fairness to follow the natural justice whereas the respondent no.6 has taken a plea that as the petitioner was wrongly selected as he was not a L-I candidate leaving private respondent who was L-I, selected him illegally allotted the work. was per se in wrong exercise of power by the



Managing Director and that has been corrected by the Board of Director and it will not be a proper for this Court to exercise judicial review in interfering with impugned action in view of the admitted fact even the remand of the matter it will not change scenario and would not cause any prejudice in any manner to the petitioner in this peculiar facts and circumstances. Further said that if this Court quashes the allotment of the private respondent and remands back the matter fresh consideration will be futile exercise of power and is useless formality to interfere by the Board of Director, will revive again the illegal order.

10. Before arriving to a correct decision it will be appropriate to consider whether it was necessary to follow the bare minimum level of natural justice. The law of audi alteram partem is not only applicable to quasi judicial proceeding but also has been extended to the administrative action having civil consequences and causing prejudice to the person affected from the outcome of the decision. It is also known principle of law that natural justice cannot be put cast iron but must have flexibility in applicability and natural justice cannot be applied in fixed formula but it does apply according to the nature of proceeding and its own facts and circumstances. It all depends upon the kind of functions performed and to what extent a person is



likely to be affected. The manner and degree to follow the principle of natural justice is dependent upon the nature of proceeding and event of exercise of jurisdiction, particular event will decide the manner and degree to follow the natural justice. In some cases show cause itself will be sufficient but in certain events the Court would ensure to allow the person to make representation, oral hearing and in some cases the examination of witnesses and their cross examination will be essential part of natural justice. It is also a fact that to follow the natural justice is part of fairness in action, insures transparency in decision making process is to be followed in exercising the administrative and quasi judicial proceeding. Failure to follow of natural justice, its ultimate affect to be adjudged on the touch stone of the prejudice to the person who claims to have been affected by the action of the authority. It is also ingrained in the constitutional law that right of hearing is necessary concomitant of natural justice is a valuable right of party affected. Denial of such right is serious breach of human right is fundamental of procedure to be followed before the adverse order against the person is passed. Denial to follow natural justice results into arbitrary exercise of power. The natural justice can be excluded by insertion of statutory provision, unless the application of natural justice has



been excluded expressly, authority must adhere to extend the benefit of natural justice which protect right to before taking any adverse decision. Following the natural justice is become a part of transparency in action by decision maker. If in the administrative authority or quasi judicial authority fails to follow the principles of natural justice, the action will be treated to have been unfairly taken and is an arbitrary action.

11. The Speeches in *Ridge v. Baldwin* (1964) AC 40 indicate how much the right of hearing is valuable where it has been held that breach of natural justice itself causes prejudice and no other defects need to be proved. In the case of *S.L. Kapoor v Jagmohan and others*, reported in AIR 1981 SC 136, the Municipal Council of New Delhi was dissolved and superseded by the Lt. Governor. The New Delhi Municipal Committee was never put on notice of any action, thereby violated the natural justice, as it causes, civil consequences. In that judgment the Court has held that non-observance of natural justice is itself cause prejudice to any man and proof of prejudice is not necessary. The Court has further held that where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to



observe natural justice but because Courts do not issue futile writs. It will be relevant to quote relevant portion of paragraph 24 of the aforesaid judgment:

24.....In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. 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. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.”

12. In the case of Aligarh Muslim University and others v. Mansoor Ali Khan, reported in AIR 2000 SC 2783 question of applicability of natural justice came where the view has been taken the natural justice is essential element in exercise of



administrative action as fairness and transparency is a part of Article 14 of the Constitution of India but even in case of violation of natural justice which requires correctness of action by quashing offending order remanding back the matter will not change the situation rather it will be a useless formality, has not caused any prejudice will not vitiate the action. In this case also the crux of the judgments repeats, the natural justice is a necessity and proper procedure to be followed before taking a decision, giving fair hearing to the person who is adversely affected. In this judgment, the principle of useless formality has been developed on the theory that interference will not change situation is based upon its peculiar facts and circumstances. The Court has arrived to a finding that even in case of remanding back the matter and the situation is going to be changed. It will be relevant to quote paragraph 22 to 25 of the aforesaid judgment:

“22. Chinnappa Reddy, J. in S.L.Kapoor's case, laid two exceptions (at p.395) namely, " if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted



or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

23. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi Vs. State Bank of India (1984(1) SCC 43), Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting Wade Administrative Law, (5th Ed.PP.472-475) as follows: (para 31) "...it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extentThere must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the



same view have been exhaustively referred to in State Bank of Patiala Vs. S.K. Sharma (1996(3) SCC 364). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh Vs. State of M.P. (1996(5) SCC 460).

24. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the



ultimate analysis, it may depend on the facts of a particular case.

25. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in S.C. Kapoor Vs. Jagmohan, namely, that on the admitted or indisputable facts - only one view is possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued.”

13. In the case of, Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others, reported in (2015) 8 SCC 519 the Court has dealt with different aspects and facets of natural justice and it has been held that natural justice cannot be applied in a caste iron but it will have liquidity in its application to own facts and circumstances. It will be relevant to quote paragraph nos. 20, 21, 22, 23, 24, 25, 26, 27, 28, 38, 39 and 40 of the aforesaid judgment:

“20. Natural justice is an expression of English Common Law. Natural justice is not a single theory – it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called 'naturalist' approach to the phrase



'natural justice' and is related to 'moral naturalism'. Moral naturalism captures the essence of commonsense morality – that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must given to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo iudex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a



third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'.

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's 'Arthashastra'. This Court in the case of Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.[4] explained the Indian origin of these principles in the following words:

“Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam – and of Kautilya's Arthashastra – the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary



chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system”.

23. Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it 'jura naturalia', i.e. natural law.

24. The principles have sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

25. This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as 'hearing the other side'. Prof. D.J. Galligan[5] attempts to provide what he calls 'a general theory of fair treatment' by exploring what it



is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasizing that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham[6], who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

“On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time



to time by the law makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved.” Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject matter of fair treatment. However, that aspect need not be dilated upon.

26. Allan, on the other hand, justifies the procedural fairness by following the aforesaid principles of natural justice as rooted in rule of law leading to good governance. He supports Galligan in this respect and goes to the extent by saying that it is same as ensuring dignity of individuals, in respect of whom or against whom the decision is taken, in the following words:

“The instrumental value of procedures should not be underestimated; the accurate application of authoritative standards is, as Galligan clearly explains, an important aspect of treating someone with respect. But procedures also have intrinsic value in acknowledging a person's



right to understand his treatment, and thereby to determine his response as a conscientious citizen, willing to make reasonable sacrifices for the public good. If obedience to law ideally entails a recognition of its morally obligatory character, there must be suitable opportunities to test its moral credentials. Procedures may also be thought to have intrinsic value in so far as they constitute a fair balance between the demands of accuracy and other social needs: where the moral harm entailed by erroneous decisions is reasonably assessed and fairly distributed, procedures express society's commitment to equal concern and respect for all."

27. *It, thus, cannot be denied that principles of natural justice are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.*

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.

38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-



fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it



is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation[20], who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'. Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority[21] that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.'"

14. So the principle is culled out that any administrative or quasi judicial body before taking any adverse decision must follow the natural justice giving notice to the person affected. The exceptions to follow natural justice in a case specific denial of such right by insertion in the rule governing the field and failure to follow natural justice will not cause any prejudice as well as it will be proved to be futile and useless formality in its facts and circumstances but normal circumstances natural justice



is must to be followed before passing adverse order.

15. Present matter is commercial in nature. Admittedly the work was allotted to the petitioner for supplying certain number of person for security, the Managing Director after taking facts and circumstances, taking legal opinion arrived to a finding that petitioner was best suited for execution of work and later on it has been turned turtle by Board of Director without giving notice to the petitioner is arbitrary exercise of power. In awarding the contract the State has right to refuse the lowest or any other tender in exercise of getting best person or best quotation and power to choose is not exercise for any collateral purposes or infringement of Article 14 of the Constitution of India. The limited jurisdiction has been provided to interfere in the contract matter but it has been held in the case of Jagdish Mandal (supra) that fairness is a part of proper exercise of administrative action. Action should not be suffered from arbitrariness, irrational, unreasonableness, bias and mala fide behaviour, failure to follow natural justice can fairly be recorded the arbitrary and unreasonableness exercise of power. The Government has freedom in the contractual matters, fair play in joint is necessary concomitant for administrative function. It is not necessary to place reliance on plethora of the judgment in the matter of



selection of best candidate which is the basic idea of commercial jurisprudential value as in the present case the Board of Director has taken an adverse decision against the petitioner without following the natural justice and as such the action of the Board of Director is completely illegal and not sustainable and accordingly action of the Board of Director is held to be illegal and the same is set aside but it will be automatic revival of the contract of the petitioner. This Court directs the Board of Director to give an opportunity of hearing, seek his explanation and after fair consideration take decision with respect to allotment of the contract to the petitioner.

16. With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.5.2017
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