

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/9/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

Writ Appeal No.1995 of 2018

1. The Collector
Krishnagiri
Krishnagiri District.
 2. The District Project Officer
Integrated Child Development Schemes
Krishnagiri
Krishnagiri District. ... Appellants
- Vs
- K. Krishnaveni Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court dated 6/7/2015 made in W.P.No.19677 of 2015.

Prayer in WP No.19677/2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified mandamus to call for the call for the records relating to the impugned order of the first respondent in Se.Mu.Na.Ka.No. 1492/A1/2014 dated 03.06.2015 and quash the same and direct the respondents to reinstate the petitioner in service with all consequential benefits.

For appellants ... Mr.A.Ansar
Government Advocate

For respondent ... Mr.K.Sankar Krishnan

J U D G M E N T

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Vide, proceedings No.1492/A1/2014, dated 3/6/2015, Collector, Krishnagiri District, removed the respondent, Anganvadi worker from service, on the grounds that a criminal case was registered against her, alleging that she had acted

against the Government rules and policy.

2. Being aggrieved by the removal, respondent has filed W.P.No.19677 of 2015, for the issuance of a writ of certiorarified mandamus, to quash the order passed by the Collector, Krishnagiri District, first respondent, in Se.Mu.Na.Ka.No.1492/A1/2014, dated 3/6/2015 and direct the respondents therein, to reinstate her in service, with all consequential benefits.

3. After hearing the learned counsel for the parties, by observing that merely because a criminal case was registered, respondent cannot be removed pending outcome of the criminal case, writ Court, vide, order, dated 6/7/2015, set aside the impugned order therein and directed reinstatement. Short order made in W.P.No.19677 of 2015, dated 6/7/2015, is re-produced.

"The petitioner is an Anganwadi worker. She is dismissed from service by the impugned order dated 3/6/2015 on the sole ground that a criminal case is pending against her. No Government employee could be dismissed from service on the ground that a criminal case is pending.

Either the Department can place the petitioner under suspension pending outcome of the criminal case or without awaiting for the outcome of the criminal case, the Department would proceed departmentally, and the employee could be imposed with punishment based on such departmental proceeding. But the Department cannot straight away dismiss an employee on the ground that a criminal case is pending. Hence, the impugned order is set aside. The writ petition is allowed and a direction is issued to reinstate the petitioner forthwith. However, this will not preclude the respondents from the placing the petitioner under suspension till the completion of criminal case or from taking Departmental action against the petitioner, if so advised. If the petitioner is placed under suspension pending outcome of the criminal case or pending the departmental enquiry, the petitioner shall be paid subsistence allowance, as per the Rules. No costs. Connected M.P is closed."

4. The said order is impugned in this appeal on the grounds inter alia that the respondent was involved in a criminal case in F.I.R.No.644 of 2014, on the file of Krishnagiri Town Police Station, under Sections 420, 465, 468 and Sections 5 and 7 of the Tamil Nadu Raffle Tickets Act, she was arrested by the Police and kept under custody, for three days and thereafter, suspended from service, on 19/9/2014. As per Government letter No.151/NMP1/2003-1, dated 11/8/2003, respondent/petitioner was

removed from service, on 3/6/2015.

5. On more than one occasion, the Hon'ble Supreme Court and this Court, held that the reasons are the heart beat of any decision. Reference can be made to few decisions.

6. In M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors. reported in 2008 (5) Supreme 281, the Hon'ble Supreme Court testing the correctness of an order passed by the Assistant Commissioner of Sales Tax against the assessment, at Paragraph 10, held as follows:

"10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless."

7. In Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others) reported in (2010) 9 SCC 496, wherein, the Hon'ble Supreme Court has considered a catena of decisions, which are extracted hereunder:

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262].

13. In Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380], this Court approvingly referred to the opinion of Lord Denning in R. v. Gaming Board for Great Britain, ex p Benaim [(1970) 2 QB 417] and quoted him as saying "that heresy was scotched in Ridge v. Baldwin [1974 AC 40]".

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4, Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

16. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669], the question of recording reasons came up for consideration in the

context of a refusal by Harinagar to transfer, without giving reasons, shares held by Shyam Sunder. Challenging such refusal, the transferee moved the High Court contending, inter alia, that the refusal is mala fide, arbitrary and capricious. The High Court rejected such pleas and the transferee was asked to file a suit. The transferee filed an appeal to the Central Government under Section 111(3) of the Companies Act, 1956 which was dismissed. Thereafter, the son of the original transferee filed another application for transfer of his shares which was similarly refused by the Company. On appeal, the Central Government quashed the resolution passed by the Company and directed the Company to register the transfer. However, in passing the said order, the Government did not give any reason. The Company challenged the said decision before this Court.

17. The other question which arose in Harinagar was whether the Central Government, in passing the appellate order acted as a tribunal and is amenable to Article 136 jurisdiction of this Court.

18. Even though in Harinagar the decision was administrative, this Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court. Such powers, this Court held, cannot be effectively exercised if reasons are not given by the Central Government in support of the order (AIR pp. 1678-79, para 23).

19. Again in *Bhagat Raja v. Union of India* [AIR 1967 SC 1606] the Constitution Bench of this Court examined the question whether the Central Government was bound to pass a speaking order while dismissing a revision and confirming the order of the State Government in the context of the Mines and Minerals (Development and Regulation) Act, 1957, and having regard to the provision of Rule 55 of the Mineral Concession Rules. The Constitution Bench held that in exercising its power of revision under the aforesaid Rule the Central Government acts in a quasi-judicial capacity (see AIR p. 1610, para 8). Where the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying any reason, this Court, exercising its jurisdiction under Article 136, may find it difficult to ascertain which are the grounds on which

the Central Government upheld the order of the State Government (see AIR p. 1610, para 9). Therefore, this Court insisted on reasons being given for the order.

20. In *Mahabir Prasad Santosh Kumar v. State of U.P.* [(1970) 1 SCC 764], while dealing with the U.P. Sugar Dealers' Licensing Order under which the licence was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one. This Court further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. (See SCC p. 768, para 7 : AIR p. 1304, para 7.)

21. In *Travancore Rayon Ltd. v. Union of India* [(1969) 3 SCC 868], the Court, dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excises and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power (see SCC p. 874, para 11 : AIR pp. 865-66, para 11).

22. In *Woolcombers of India Ltd. v. Workers Union* [(1974) 3 SCC 318] this Court while considering an award under Section 11 of the Industrial Disputes Act insisted on the need of giving reasons in support of conclusions in the award. The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The second principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well. The learned Judges said that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The third ground is that such awards are subject to Article 136 jurisdiction of this Court and in the absence of reasons, it is difficult for this Court to ascertain whether the decision is right or

wrong (see SCC pp. 320-21, para 5 : AIR p. 2761, para 5).

23. In *Union of India v. Mohan Lal Capoor* [(1973) 2 SCC 836] this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression "reasons for the proposed supersession" should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied to the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two (see SCC pp. 853-54, paras 27-28 : AIR pp. 97-98, paras 27-28).

24. In *Siemens Engg. and Mfg. Co. of India Ltd. v. Union of India* [(1976) 2 SCC 981], this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (see SCC p. 986, para 6 : AIR p. 1789, para 6).

25. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], which is a decision of great jurisprudential significance in our constitutional law, Beg, C.J. in a concurring but different opinion held that an order impounding a passport is a quasi-judicial decision (SCC p. 311, para 34 : AIR p. 612, para 34). The learned Chief Justice also held, when an administrative action involving any deprivation of or restriction on fundamental rights is taken, the authorities must see that justice is not only done but manifestly appears to be done as well. This principle would obviously demand disclosure of reasons for the decision.

26. Y.V. Chandrachud, J. (as His Lordship then was) in a concurring but a separate opinion in *Maneka Gandhi* also held that refusal to disclose reasons for impounding a passport is an exercise of an exceptional nature and is to be done very sparingly and only when it is fully justified by the exigencies of an uncommon situation. The learned Judge further held that law

cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny. (See SCC p. 317, para 39 : AIR p. 613, para 39.)

27. In *Rama Varma Bharathan Thampuram v. State of Kerala* [(1979) 4 SCC 782] V.R. Krishna Iyer, J. speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. The learned Judge held that natural justice requires reasons to be written for the conclusions made (see SCC p. 788, para 14 : AIR p. 1922, para 14).

28. In *Gurdial Singh Fijji v. State of Punjab* [(1979) 2 SCC 368] this Court, dealing with a service matter, relying on the ratio in *Capoor*, held that "rubber-stamp reason" is not enough and virtually quoted the observation in *Capoor* to the extent that: (*Capoor* case, SCC p. 854, para 28)

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

29. In a Constitution Bench decision of this Court in *H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.* [(1979) 4 SCC 642]. while giving the majority judgment Y.V. Chandrachud, C.J. referred to (SCC p. 658, para 29) *Broom's Legal Maxims* (1939 Edn., p. 97) where the principle in Latin runs as follows:

"*Cessante ratione legis cessat ipsa lex.*"

30. The English version of the said principle given by the Chief Justice is that: (*H.H. Shri Swamiji* case, SCC p. 658, para 29)

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

31. In *Bombay Oil Industries (P) Ltd. v. Union of India* [(1984) 1 SCC 141], this Court held that while disposing of applications under the Monopolies and Restrictive Trade Practices Act the duty of the Government is to give reasons for its order. This Court made it very clear that the faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well-considered orders. In saying so, this Court relied on its previous decisions in *Capoor* and

Siemens Engg. discussed above.

32. In *Ram Chander v. Union of India* [(1986) 3 SCC 103], this Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of requirement of Rule 22(2) of the aforesaid Rules. This Court held that the word "consider" occurring in Rule 22(2) must mean that the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasised that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision (SCC pp. 106-07, para 4 : AIR p. 1176, para 4).

33. In *Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.* [(1990) 3 SCC 280] a three-Judge Bench of this Court held that in the present day set-up judicial review of administrative action has become expansive and is becoming wider day by day and the State has to justify its action in various fields of public law. All these necessitate recording of reason for executive actions including the rejection of the highest offer. This Court held that disclosure of reasons in matters of such rejection provides an opportunity for an objective review both by superior administrative heads and for judicial process and opined that such reasons should be communicated unless there are specific justifications for not doing so (see SCC pp. 284-85, para 10).

34. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi* [(1991) 2 SCC 716], this Court held that even in domestic enquiry if the facts are not in dispute non-recording of reason may not be violative of the principles of natural justice but where facts are disputed necessarily the authority or the enquiry officer, on consideration of the materials on record, should record reasons in support of the conclusion reached (see SCC pp. 738-39, para 22).

35. In *M.L. Jaggi v. MTNL* [(1996) 3 SCC 119], this Court dealt with an award under Section 7 of the Telegraph Act and held that since the said award affects public interest, reasons must be recorded in the award. It was also held that such reasons are to be recorded so that it enables the High Court to exercise its power of judicial review on the validity of the award. (See SCC p. 123, para 8.)

36. In Charan Singh v. Healing Touch Hospital [(2000) 7 SCC 668] a three-Judge Bench of this Court, dealing with a grievance under the CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. This Court held that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is "too obvious to be reiterated and needs no emphasising". (See SCC p. 673, para 11 : AIR p. 3141, para 11 of the Report.)

37. Only in cases of Court Martial, this Court struck a different note in two of its Constitution Bench decisions, the first of which was rendered in Som Datt Datta v. Union of India [AIR 1969 SC 414] where Ramaswami, J. delivering the judgment for the unanimous Constitution Bench held that provisions of Sections 164 and 165 of the Army Act do not require an order confirming proceedings of Court Martial to be supported by reasons. This Court held that an order confirming such proceedings does not become illegal if it does not record reasons. (AIR pp. 421-22, para 10 of the Report.)

38. About two decades thereafter, a similar question cropped up before this Court in S.N. Mukherjee v. Union of India [(1990) 4 SCC 594]. A unanimous Constitution Bench speaking through S.C. Agrawal, J. confirmed its earlier decision in Som Datt in S.N. Mukherjee case, SCC p. 619, para 47 : AIR para 47 at p. 2000 of the Report and held that reasons are not required to be recorded for an order confirming the finding and sentence recorded by the Court Martial.

39. It must be remembered in this connection that the court martial as a proceeding is sui generis in nature and the Court of Court Martial is different, being called a court of honour and the proceedings therein are slightly different from other proceedings. About the nature of Court Martial and its proceedings the observations of Winthrop in Military Law and Precedents are very pertinent and are extracted hereinbelow:

"Not belonging to the judicial branch of the Government, it follows that Courts Martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilised under his orders or those of his authorised military representatives."

40. Our Constitution also deals with court-martial proceedings differently as is clear from Articles 33, 136(2) and 227(4) of the Constitution.

41. In England there was no common law duty of recording of reasons. In *Stefan v. General Medical Council* [(1999) 1 WLR 1293 (PC)] it has been held: (WLR p. 1300)

the established position of the common law is that there is no general duty imposed on our decision makers to record reasons.

It has been acknowledged in the Justice Report, Administration Under Law (1971) at p. 23 that:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."

42. Even then in *R. v. Civil Service Appeal Board, ex p Cunningham* [(1991) 4 All ER 310 (CA)], Lord Donaldson, Master of Rolls, opined very strongly in favour of disclosing of reasons in a case where the Court is acting in its discretion. The learned Master of Rolls said: (All ER p. 317)

"... it is a corollary of the discretion conferred upon the Board that it is their duty to set out their reasoning in sufficient form to show the principles on which they have proceeded. Adopting Lord Lane, C.J.'s observations [in *R. v. Immigration Appeal Tribunal, ex p Khan (Mahmud)* [1983 (2) ALL ER 420 (CA)] All ER at p. 423, QB at pp. 794-95], the reasons for the lower amount is not obvious. Mr Cunningham is entitled to know, either expressly or inferentially stated, what it was to which the Board were addressing their mind in arriving at their conclusion. It must be obvious to the Board that Mr Cunningham is left with a burning sense of grievance. They should be sensitive to the fact that he is left with a real feeling of injustice, that having been found to have been unfairly dismissed, he has been deprived of his just desserts (as he sees them).'"

43. The learned Master of Rolls further clarified by saying: (Civil Service Appeal Board case [(1991) 4 All. ER 310 (Ca), All ER p. 317)

"... '... Thus, in the particular circumstances of this case, and without wishing to establish any precedent whatsoever, I am prepared to spell out an obligation on this Board to give succinct reasons, if only to put the mind of Mr Cunningham at rest. I would therefore allow this application.' "

44. But, however, the present trend of the law has been towards an increasing recognition of the duty of court to give reasons (see North Range Shipping Ltd. v. Seatrans Shipping Corpn. [(2002) 1 WLR 2397). It has been acknowledged that this trend is consistent with the development towards openness in the Government and judicial administration.

45. In English v. Emery Reimbold and Strick Ltd. [(2002) 1 WLR 2409]. It has been held that justice will not be done if it is not apparent to the parties why one has won and the other has lost. The House of Lords in Cullen v. Chief Constable of the Royal Ulster Constabulary [(2003) 1 WLR 1763], Lord Bingham of Cornhill and Lord Steyn, on the requirement of reason held: (WLR p. 1769, para 7)

"7. ... First, they impose a discipline ... which may contribute to such refusals being considered with care. Secondly, reasons encourage transparency ... Thirdly, they assist the courts in performing their supervisory function if judicial review proceedings are launched."

46. The position in the United States has been indicated by this Court in S.N. Mukherjee in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In S.N. Mukherjee this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn. [87 L Ed. 626] and Dunlop v. Bachowski [44 L Ed 2d 377] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader

scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

8. Order of removal of the respondent, involves civil consequences and therefore, the procedure contemplated ought to have been followed. The nature and extent of adhering to the principles of natural justice depends upon facts and circumstances of a given case, but at the same time, it is also a well accepted principle of law that principles of natural justice can be read into a provision, unless applicability of such principles of natural justice is expressly or impliedly excluded.

(i) In State of Orissa Vs. Binapani Dei & Ors., (1967 AIR 1269, = 1967 SCR (2) 625), the distinction between quasi-judicial and administrative decision was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

(ii) It is trite that rules of "natural justice" are not embodied rules. Also, the phrase "natural justice" is also not capable of a comprehensive definition. Audi alteram partem is only to check the arbitrary exercise of power. The principle implies a duty to act fairly. The Hon'ble Supreme Court in A.K. Kraipak & Ors. Vs. Union of India & Ors., (1969 (2) SCC 262), observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but

supplement it.

(iii). In Canara Bank Vs. V.K. Awasthy, reported in 2005 (6) SCC 321 = AIR 2005 SC 2090 = 2005 (3) SCR 81, it has been held as follows:-

"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 fact 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. 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."

(iv) In M/s. Sahara India (Firm), Lucknow vs Commissioner Of Income, reported in 2008 (14) SCC 151, the Hon'ble Supreme Court held as follows:-

"15. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

(v) In Automotive Tyre Manufacturers Assn. v. Designated Authority, reported in (2011) 2 SCC 258, the Hon'ble Supreme Court held as follows:-

"80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which

obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application."

9. On the aspect of natural justice, it is worthwhile to consider few decisions:

i) In S.L.Kapoor vs. Jagmohan and others reported in (1980) 4 SCC 379, the Hon'ble Supreme Court at para 7, held as under:

7. The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of 'administrative action'. Now, from the time of the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Devi & Ors. "even an administrative order which involves civil consequences.... must be made consistently with the rules of natural justice". What are civil consequences? The question was posed and answered by this Court in Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors. Krishna Iyer J., speaking for the Constitution Bench said (at p. 308-309):

"But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequence' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence".

ii) In Neelima Misra vs. Harinder Kaur Paintal and Others reported in (1990) 2 SCC 746, the Hon'ble Supreme Court at paragraphs 19 to 23 held as under:

19.....Before we consider the correctness of the proposition laid down by the High Court we must, at the expense of some space, analyse the distinctions between quasi-judicial and administrative functions. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation. the decision is called 'purely administrative' and there is no third category. This is what was meant by Lord Reid in Ridge v. Baldwin, [1963] 2 All E.R. 66,

75-76:

"In cases of the kind with which I have been dealing the Board of Works was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated-something analogous to a judge's duty in imposing a penalty "

"So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character the principles of natural justice. Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply in much the same way "

20. Subba Rao, J., as he then was, speaking for this Court in *G. Nageshwara Rao v. Andhra Pradesh State Transport Corporation*, [1959] 1 SCR 319 put it on a different emphasis (at 353):

"The concept of a quasi-judicial act implies that the act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power "

21. Prof. Wade says

"A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice." (Administrative Law by H.W.R. Wade 6th Ed. p. 46-47).

22. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi alteram partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now

not in dispute. is that the person concerned must be informed of the case against him and the evidence support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. Ridge v. Baldwin, (supra) and State of Orissa v. Dr. Binapani Dei & Ors., [1967] 2 SCR 625.

23. The shift now is to a broader notion of "fairness" of "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: Keshva Mills Co. Ltd. v. Union of India, [1973] 3 SCR 22 at 30; Mohinder Singh Gill v. Chief Election Commissioner, [1978] 1 SCC 405 at 434; Swadeshi Cotton Mills v. Union of India, [1981] 1 SCC 664 and Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors., Civil Appeal No. 1102 of 1990 decided on February 9, 1990. For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have *lis inter partes*. There need not be any struggle between two opposing parties giving rise to a '*lis*'. There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a *privi-lege* does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept.

iii) In D.K. Yadav vs. J.M.A. Industries Ltd. reported in (1993) 3 SCC 259, the Hon'ble Supreme Court from paragraph No.7, held as under:

7. The principal question is whether the impugned action is violative of principles of natural justice. In A.K. Kriepak and Ors. v. Union of India & Ors., [1969] 2 SCC 262 a Constitution bench of this court held that the distinction between quasi judicial and administrative order has gradually become thin. Now it is totally clipped

and obliterated. The aim of the rule of the natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules operate in the area not covered by law validly made or expressly excluded as held in Col. J.N. Sinha v. Union of India & Anr. [1971] 1 SCR 791. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. Conversely the Act made exceptions for the application of principles of natural justice necessary implication from specific provisions in the Act like Ss.25F; 25FF; 25FFF; etc, the need for temporary hands to cope with sudden and temporary spurt of work demands appointment temporarily to a service of such temporary workmen to meet such exigencies and as soon as the work or service are completed, the need to dispense with the services may arise. In that situation, on compliance of the provisions of s. 25F resort could be had to retrench the employees in conformity therewith particular statute or statutory rules or orders having statutory flavour may also exclude the application of the principles of natural justice expressly or by necessary implication. In other respects the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies.

8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill & Anr. v. The Chief Election Commissioner &

Ors. [1978] 2 SCR 272 at 308F the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In State of Orissa v. Dr. (Miss) Binapani Dei & Ors., this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

10. In State of West Bengal v. Anwar Ali Sarkar [1952] SCR 289, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Art. 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India, [1978] 2 SCR 621, another bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Art. 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in

a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Art. 14 and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Art. 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable.

13. In Delhi Transport Corpn. v. D. T. C. Mazdoor Congress and Ors, [1991] Suppl. 1 SCC 600 this court held that right to public employment and

its concomitant right to livelihood received protective umbrella under the canopy of Arts. 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the constitution and the rules made under the provisions of the constitution and the rules made under proviso to Art. 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Art. 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or arbitrary. The principles of natural justice is an integral part of the Guarantee of equality assured by Art. 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential ingredient of 'natural justice'. Arts. 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the effect thereof is the end result.

14. It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D. 7. C. v. D. T.C. Mazdoor Congress and Ors. (supra) the constitution bench, per majority, held that

termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order terminating the service of the employees was set aside.

iv) In *Managing Director, ECIL v. B. Karunakar* reported in (1993) 4 SCC 727, at paragraph Nos. 20 to 22, the Hon'ble Supreme Court held as under:

20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In *A. K. Kraipak v. Union of India*, (1970) 1 SCR 457: (AIR 1970 SC 150), it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In *Chairman, Board of Mining Examination v. Ramjee*, (1977) 2 SCR 904: (AIR 1977 SC 965), the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and

other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In *Institute of Chartered Accountants of India v. L. K. Ratna*, AIR 1987 SC 71, *Charan Lal Sahu v. Union of India*, (1990) 1 SCC 613 : (AIR 1990 SC 1480), (*Bhopal Gas Leak Disaster Case*) and *C. B. Gautam v. Union of India*, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated.

v) In *Canara Bank and Others vs. Debasis Das and Others* reported in (2003) 4 SCC 557, the Hon'ble Supreme Court at paragraph Nos.13 to 21, held as under:

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 [(1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] the principle was thus stated: (ER p. 420)

"[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 chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. 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 Summer (then Hamilton, L.J.) in R. v. Local Govt. Board [(1914) 1 KB 160 : 83 LJKB 86] (KB at p. 199)

described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman [1943 AC 627 : (1943) 2 All ER 337 : 112 LJKB 529 (HL)] 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 [1911 AC 179 : 80 LJKB 796 : (1911-13) All ER Rep 36 (HL)] 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 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 think 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 [(1885) 10 AC 229 : 54 LJMC

81 : 53 LT 151] 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 Lebura* [(1855) 2 Macq 1 : 25 LTOS 282 (HL)] (Macq at p. 8), Lord Cranworth defined it as "universal justice". In *James Dunber Smith v. Her Majesty the Queen* [(1877-78) 3 AC 614 (PC)] (AC at p. 623) Sir Robert P. Collier, 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* [(1885) 10 AC 229 : 54 LJMC 81 : 53 LT 151] (AC at p. 240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In *Vionet v. Barrett* [(1885) 55 LJRD 39] (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* [(1890) 24 QBD 712] Lord Esher, M.R. instead of using the definition given earlier by him in *Vionet* case [(1885) 55 LJRD 39] chose to define natural justice as "fundamental justice". In *Ridge v. Baldwin* [(1963) 1 QB 539 : (1962) 1 All ER 834 : (1962) 2 WLR 716 (CA)] (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* [(1978) 1 SCC 248 : (1978) 2 SCR 621]. In *H.K. (An Infant), Re* [(1967) 2 QB 617 : (1967) 1 All ER 226 : (1967) 2 WLR 962] (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* [(1976) 1 WLR 1255 : (1976) 2 All ER 865 (HL)] 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* [(1977) 1 WLR 766 : (1977) 3 All ER 452 (CA)] 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 case [(1605) 12 Co Rep 114 : 77 ER 1390] 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 right" [see Boswell's case [(1605) 6 Co Rep 48b : 77 ER 326] (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.

vi) In *Dev Dutt vs. Union of India and others* reported in (2008) 8 SCC 725, the Hon'ble Supreme Court at paragraph Nos.24 to 35, 39 and 40 held as under:

24. What is natural justice? The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarized in one word : fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on the situation and the context.

25. Lord Esher M.R. in *Voinet vs. Barrett* (1885) 55 L.J. QB 39, 39 observed: "Natural justice is the natural sense of what is right and wrong."

26. In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the

part of the respondent in not communicating the 'good' entry to the appellant since he was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of Superintending Engineer. One may not have the right to promotion, but one has the right to be considered for promotion, and this right of the appellant was violated in the present case.

27. A large number of decisions of this Court have discussed the principles of natural justice and it is not necessary for us to go into all of them here. However, we may consider a few.

28. Thus, in *A. K. Kraipak & Ors. vs. Union of India & Ors.* AIR 1970 SC 150, a Constitution Bench of this Court held :

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse judex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice".

(emphasis supplied)

The aforesaid decision was followed by this Court in *K. I. Shephard & Ors. vs. Union of India & Ors.* AIR 1988 SC 686 (vide paras 12-15). It was held in this decision that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held that natural justice has various facets and acting fairly is one of them.

29. In *Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant* AIR 2001 SC 24, this Court held (vide para 2):

"2.....the doctrine (natural justice) is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action".

(emphasis supplied)

In the same decision it was also held following the decision of *Tucker, LJ in Russell vs. Duke of Norfolk* (1949) 1 All ER 109:

"The requirement of natural justice must

depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth".

30. In *Union of India etc. vs. Tulsiram Patel etc.* AIR 1985 SC 1416 (vide para 97) a Constitution Bench of this Court referred to with approval the following observations of Ormond, L.J. in *Norwest Holst Ltd. vs. Secretary of State for Trade* (1978) 1, Ch. 201 :

"The House of Lords and this court have repeatedly emphasized that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case".
(emphasis supplied)

31. Thus, it is well settled that the rules of natural justice are flexible. The question to be asked in every case to determine whether the rules of natural justice have been violated is : have the authorities acted fairly?

32. In *Swadesh Cotton Mills etc. vs. Union of India etc.* AIR 1981 SC 818, this Court following the decision in *Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors.* AIR 1978 SC 851 held that the soul of the rule (natural justice) is fair play in action.

33. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

34. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (*audi alteram partem*). However, subsequently, as noted in *A.K. Kraipak's case* (supra) and *K.L. Shephard's case* (supra), some more rules came to be added to the rules of natural justice, e.g. the requirement to give reasons vide *S.N. Mukherji vs. Union of India* AIR 1990 SC 1984. In *Maneka Gandhi vs. Union of India* (supra) (vide paragraphs 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

35. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural

justice in appropriate cases.

39. In *Canara Bank vs. V. K. Awasthy* 2005 (6) SCC 321, this Court held that the concept of natural justice has undergone a great deal of change in recent years. As observed in para 8 of the said judgment:

"8. 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".

In para 12 of the said judgment it was observed:

"12. 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* (1914) 1 KB 160:83 LJKB 86 described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Spackman* (1943) AC 627: (1943) 2 All ER 337, Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed".

40. In *State of Maharashtra vs. Public Concern for Governance Trust & Ors.* 2007 (3) SCC 587, it was observed (vide para 39):

"39.....In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play".

vii) In *Sahara India (Firm) v. CIT* reported in (2008) 14 SCC 151, the Hon'ble Supreme Court at paragraph Nos.14 to 19, 21, 24, 25, 32 held as under:

14. Before dealing with the rival submissions to determine whether the principles of natural justice demand that an opportunity of hearing should be afforded to an assessee before an order under Section 142 (2A) of the Act is made, we may appreciate the concept of "natural justice" and the principles governing its application.

15. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in

action. As observed by this Court in A.K. Kraipak & Ors. Vs. Union of India & Ors. , the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see: Income Tax Officer & Ors. Vs. M/s Madnani Engineering Works Ltd., Calcutta).

16. In Swadeshi Cotton Mills Vs. Union of India , R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, his Lordship observed thus (SCC p.666; Headnote):

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle # as distinguished from an absolute rule of uniform application # seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very

exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

17. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in *State of Orissa Vs. Binapani Dei & Ors.*, the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

18. Recently, in *Canara Bank Vs. V.K. Awasthy*, the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that 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, the Court said :

"14. 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 fact 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. 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."

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

21. In *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*, explaining as to what is meant by expression 'civil consequence', Krishna Iyer, J., speaking for the majority said:

"66.....'Civil Consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence." (emphasis supplied)

24. Dealing with the question whether the requirement of affording an opportunity of hearing is to be read into Section 142 (2A), in *Rajesh Kumar* (supra) it has been held that prejudice to the assessee is apparent on the face of the said statutory provision. It has been observed that on account of the special audit, the assessee has to undergo the process of further accounting despite the fact that his accounts have been audited by a qualified auditor in terms of Section 44AB of the Act. An auditor is a professional person. He has to function independently. He is not an employee of the assessee. In case of misconduct, he may become liable to be proceeded against by a statutory authority under the Chartered Accountants Act, 1949. Besides, the assessee has to pay a hefty amount as fee of the special auditor.

Moreover, during the audit of the accounts again by the special auditor, he has to answer a large number of questions.

25. Referring to the decision of this Court in *Binapani Dei* (supra) wherein it was observed that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, the principles of natural justice are required to be followed and in such an event, although no express provision is laid down in this behalf, compliance with the principles of natural justice would be implicit, the learned Judges held that by virtue of an order under Section 142 (2A) of the Act, the assessee suffers civil consequences and the order passed would be prejudicial to him and, therefore, principles of natural justice must be held to be implicit. The Court has further observed that if the assessee was put to notice, he could show that the nature of accounts is not such which would require appointment of special auditors. He could further show that what the Assessing Officer considers to be complex is, in fact, not so. It was also open to him to show that the same would not be in the interest of the revenue.

32. The upshot of the entire discussion is that the exercise of power under Section 142 (2A) of the Act leads to serious civil consequences and, therefore, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in Section 142 (2A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of principles of natural justice is to be read into the said provision. Accordingly, we reiterate the view expressed in *Rajesh Kumar's* case (supra).

viii) In *Competition Commission of India vs. Steel Authority of India Limited* and Another reported in (2010) 10 SCC 744, the Hon'ble Supreme Court at paragraphs 67, 68, 78 to 86 and 95, held as under:

67. In *Cooper v. Wands Worth Board of Works* [(1863), 14 C.B. (N.S.) 180] and *Errington v. Minister of Health*, [(1935) 1 KB 249], the Courts in the United Kingdom had enunciated this principle in the early times. This principle was adopted under various legal systems including India and was applied with some limitations even to the field of administrative law. However, with the development of law, this doctrine was expanded in its application and the Courts specifically included in its purview, the right to notice and requirement of reasoned orders, upon due

application of mind in addition to the right of hearing. These principles have now been consistently followed in judicial dictum of Courts in India and are largely understood as integral part of principles of natural justice. In other words, it is expected of a tribunal or any quasi judicial body to ensure compliance of these principles before any order adverse to the interest of the party can be passed. However, the exclusion of the principles of natural justice is also an equally known concept and the legislature has the competence to enact laws which specifically exclude the application of principles of natural justice in larger public interest and for valid reasons.

68. Generally, we can classify compliance or otherwise, of these principles mainly under three categories. First, where application of principles of natural justice is excluded by specific legislation; second, where the law contemplates strict compliance to the provisions of principles of natural justice and default in compliance thereto can result in vitiating not only the orders but even the proceedings taken against the delinquent; and third, where the law requires compliance to these principles of natural justice, but an irresistible conclusion is drawn by the competent court or forum that no prejudice has been caused to the delinquent and the non-compliance is with regard to an action of directory nature. The cases may fall in any of these categories and therefore, the Court has to examine the facts of each case in light of the Act or the Rules and Regulations in force in relation to such a case. It is not only difficult but also not advisable to spell out any straight jacket formula which can be applied universally to all cases without variation.

78. Cumulative reading of these provisions, in conjunction with the scheme of the Act and the object sought to be achieved, suggests that it will not be in consonance with the settled rules of interpretation that a statutory notice or an absolute right to claim notice and hearing can be read into the provisions of Section 26(1) of the Act. Discretion to invite, has been vested in the Commission, by virtue of the Regulations, which must be construed in their plain language and without giving it undue expansion.

79. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non-compliance thereof,

would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the Courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance to the principles of natural justice in light of the above noticed principles.

80. In *Tulsiram Patel* (1985) 3 SCC 398, this Court took the view that audi alteram partem rule can be excluded where a right to a prior notice and an opportunity of being heard, before an order is passed, would obstruct the taking of prompt action or where the nature of the action to be taken, its object and purpose as well as the scheme of the relevant statutory provisions warrant its exclusion. This was followed with approval and also greatly expanded in the case of *Delhi Transport Corporation vs. Delhi Transport Corporation Mazdoor Congress* [(1991) Suppl SCC 600], wherein the Court held that rule of audi alteram partem can be excluded, where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions, fairness in action does not demand its application and even warrants its exclusion.

81. In *Union of India v. W.N. Chadha* [(1993) Supp 4 SCC 260], wherein the Court was primarily concerned with Section 166(9) of the Criminal Procedure Code and the application of principles of natural justice in the domain of administrative law and while deciding whether a person was entitled to the right of hearing, held as under:-

"88. The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima facie case has or has not been made out, is not by itself determinative of the exclusion of hearing, but the consideration that the decision was purely an administrative one and a full-fledged inquiry follows is a relevant -- and indeed a significant -- factor in deciding whether at that stage there ought to be hearing which the statute did not expressly grant.

89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full inquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all."

82. The exclusion of principles of natural justice by specific legislative provision is not unknown to law. Such exclusion would either be specifically provided or would have to be imperatively inferred from the language of the provision. There may be cases where post decisional hearing is contemplated. Still there may be cases where 'due process' is specified by offering a full hearing before the final order is made. Of course, such legislation may be struck down as offending due process if no safeguard is provided against arbitrary action. It is an equally settled principle that in cases of urgency, a post-decisional hearing would satisfy the principles of natural justice. Reference can be made to the cases of *Maneka Gandhi v. Union of India* [(1978) 1 SCC 48] and *State of Punjab v. Gurdayal* [AIR 1980 SC 319].

83. The provisions of Section 26(1) clearly indicate exclusion of principles of natural justice, at least at the initial stages, by necessary implication. In cases where the conduct of an enterprise, association of enterprises, person or association of persons or any other legal entity, is such that it would cause serious prejudice to the public interest and also violates the provisions of the Act, the Commission will be well within its jurisdiction to pass ex parte ad interim injunction orders immediately in terms of Section 33 of the Act, while granting post decisional hearing positively, within a very short span in terms of Regulation 31(2). This would certainly be more than adequate compliance to the principles of natural justice.

84. It is true that in administrative action,

which entails civil consequences for a person, the principles of natural justice should be adhered to. In the case of *Raj Restaurant and Anr. v. Municipal Corporation of Delhi*, [(1982) 3 SCC 338], the Supreme Court held as under:

"5. Where, in order to carry on business a licence is required, obviously refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a situation before either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must. It is not disputed that no such opportunity was given before taking the decision not to renew the licence though it is admitted that the for the reasons herein before set out the licence was not renewed such a decision in violation of the principle of natural justice would be void. Now, it is true that no specific order is made setting out the reason for refusal to renew the licence. But the action taken of sealing the premises for carrying on the business without a licence clearly implies that there was refusal to renew the licence and the reasons are now disclosed. And the action disclosing the decision being in violation of the principle of natural justice, deserves to be quashed."

85. Wherever, this Court has dealt with the matters relating to complaint of violation of principles of natural justice, it has always kept in mind the extent to which such principles should apply. The application, therefore, would depend upon the nature of the duty to be performed by the authority under the statute. Decision in this regard is, in fact, panacea to the rival contentions which may be raised by the parties in a given case. Reference can be made to the judgment of this Court in the case of *Canara Bank vs. Debasis Das* [(2003) 4 SCC 557].

86. We may also notice that the scope of duty cast upon the authority or a body and the nature of the function to be performed cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated in the plain language of the section itself. 'Natural justice' is a term, which may have different connotation and dimension depending upon the facts of the case, while keeping in view, the provisions of the law applicable. It is not a codified concept, but are well defined principles enunciated by the Courts. Every quasi

judicial order would require the concerned authority to act in conformity with these principles as well as ensure that the indicated legislative object is achieved. Exercise of power should be fair and free of arbitrariness.

95. The Court examined various judgments of this Court in relation to its application to administrative law and held as under:

"11. The Supreme Court in the case of S.N. Mukherjee v. Union of India [(1990) 4 SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said "administrative process will best be vindicated by clarity in its exercise". To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This Court with approval stated:-

"11....."the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

xxx xxx xxx xxx

13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and

appropriate grounds before the higher Court in the event of challenge to that judgment...

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders...

In this very judgment, the Court while referring to other decisions of the Court held that it is essential that administrative authorities and tribunals should accord fair and proper hearing to the affected persons and record explicit reasons in support of the order made by them.

ix) In *Manohar s/o Manikrao Anchule v. State of Maharashtra and Another* reported in (2012) 13 SCC 14, the Hon'ble Supreme Court at paragraph Nos.18, 19 and 21 held as under:

18. In *A.K. Kraipak & Ors. v. Union of India & Ors.* [(1969) 2 SCC 262], the Court held as under :

"17. ... It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding... The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it... The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just

two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

19. In *Kranti Associates (P) Ltd. & Ors. v. Masood Ahmed Khan & Ors.* [(2010) 9 SCC 496], the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under :

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is

the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

21. Referring to the requirement of adherence to principles of natural justice in adjudicatory process, this Court in the case of Namit Sharma v. Union of India [(2013) (1) SCC 745], held as under:

"99. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr. [(1976) 2 SCC 981]; and Assistant Commissioner,

Commrcial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers [(2010) 4 SCC 785]."

x) In Union of India and Others vs. Sanjay Jethi and Another reported in (2013) 16 SCC 116, the Hon'ble Supreme Court at paragraphs 34 and 35 stated thus:

34. The fundamental principles of natural justice are ingrained in the decision making process to prevent miscarriage of justice. It is applicable to administrative enquiries and administrative proceedings as has been held in A.K. Kraipak v. Union of India [1969 (2) SCC 262]. It is also fundamental facet of principle of natural justice that in the case of quasi-judicial proceeding the authority empowered to decide a dispute between the contesting parties has to be free from bias. When free from bias is mentioned, it means there should be absence of conscious or unconscious prejudice to either of the parties and the said principle has been laid down in Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation and others [AIR 1959 SC 308], Gullappalli Nageswarrao v. State of A.P. and others [AIR 1959 SC 1376] and Dr. G. Sarana v. University of Lucknow and others [1976 (3) SCC 585].

30. In Manak Lal v. Dr. Prem Chand Singhvi and others [AIR 1957 SC 425] the Court has stated thus:

'It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.'

xi) Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati and others reported in (2015) 8 SCC 519 the Hon'ble Supreme Court at paragraphs 20 to 48 held as under:

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 a 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 give (sic an opportunity) 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 are: (i) rule against bias i.e. *nemo debet esse iudex in propria sua causa*; and (ii) opportunity of being heard to the party concerned 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 the 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 *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405 : AIR 1978 SC 851] explained the Indian origin of these principles in the following words: (SCC pp. 432-33, para 43)

"43. 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 hone [Ed.: The word "hone" is usually used as a verb, meaning "to sharpen". Rarely, it is also used as a noun, as here, meaning "whetstone".] 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 depths 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 AD called it "jura naturalia" i.e. natural law.

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a 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 an 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 a 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 [On "Procedural Fairness" in Birks (Ed.), The Frontiers of Liability, Vol. 1 (Oxford 1994)] 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 emphasising 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 [A Treatise of Judicial Evidence (London 1825)] , 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 ["Procedural Fairness and the Duty of Respect" (1998) 18 OJLS 497] , on the other hand, justifies procedural fairness by following the aforesaid principles of natural justice as rooted in the rule of law leading to good governance. He supports Galligan in this respect and goes to the extent by saying that it is the 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 insofar 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 the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions 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.

29. De Smith [Judicial Review of Administrative Action (1980) 161] captures the essence thus:

"Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on the plainest principles of natural justice."

(emphasis supplied)

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.

31. In Cooper v. Wandsworth District Board of Works [(1863) 14 CBNS 180 : (1861-73) All ER Rep Ext 1554 : 143 ER 414] the Court laid down that: (ER p. 420) "... although there is no positive word in the statute requiring that the party shall be heard, yet the justice of the common law would supply the omission of the legislature".

(emphasis supplied)

32. Exhaustive commentary explaining the varied contours of this principle can be traced to the judgment of this Court in ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , wherein the Court discussed plenty of previous case law in restating the aforesaid principle, a glimpse whereof can be found in the following passages: (SCC pp. 751-52, paras 20-22)

"20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also

especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In Board of Mining Examination v. Ramjee [(1977) 2 SCC 256 : 1977 SCC (L&S) 226], the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The courts cannot look at law in the abstract or natural justice as mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In Institute of Chartered Accountants of India v. L.K. Ratna [(1986) 4 SCC 537 : (1986) 1 ATC 714], Charan Lal Sahu v. Union of India [(1990) 1 SCC 613] (Bhopal Gas Leak Disaster case) and C.B. Gautam v. Union of India [(1993) 1 SCC 78], the doctrine that the principles of natural justice must be applied in the unoccupied

interstices of the statute unless there is a clear mandate to the contrary, is reiterated."

33. In his separate opinion, concurring on this fundamental issue, K. Ramaswamy, J. echoed the aforesaid sentiments in the following words: (ECIL case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , SCC p. 773, para 61)

"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice."

34. Likewise, in C.B. Gautam v. Union of India [(1993) 1 SCC 78] , this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, 1961. It was further observed that: (SCC p. 104, para 30)

"30. ... The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the undervaluation in the agreement for sale was not with a view to evade tax." It is, therefore, all the more necessary that an opportunity of hearing is provided.

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 case [(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 Corpn. v. Suvarna Board Mills [(1994) 5 SCC 566], this aspect was explained in the following manner: (SCC p. 568, para 3)

"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."

36. In East India Commercial Co. Ltd. v. Collector of Customs [AIR 1962 SC 1893], this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the persons concerned disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principles of natural justice are violated. To the same effect are the following judgments:

- (a) Union of India v. Madhumilan Syntex (P) Ltd. [(1988) 3 SCC 348 : 1988 SCC (Tax) 341],
- (b) Morarji Goculdas B&W Co. Ltd. v. Union of India [1995 Supp (3) SCC 588],
- (c) Metal Forgings v. Union of India [(2003) 2

SCC 36] , and

(d) Union of India v. Tata Yodogawa Ltd.
[(2015) 9 SCC 102 : (1988) 38 ELT 739 : (1988) 19
ECR 569 (SC)]

37. Therefore, we are inclined to hold that there was a requirement of issuance of show-cause notice by the Deputy Commissioner before passing the order of recovery, irrespective of the fact whether Section 11-A of the Act is attracted in the instant case 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 straitjacket 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 a 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 emphasising that the principles of natural justice cannot be applied in straitjacket 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 Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)], who said that: (WLR p. 1595 : All ER p. 1294)

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “prejudice”. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

41. In *ECIL* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704], the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle: (SCC pp. 756-58, para 30)

“30. Hence the incidental questions raised above may be answered as follows:

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing

of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."

42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in General Medical Council v. Spackman [1943 AC 627 : (1943) 2 All ER 337 (HL)] . This Court also spoke in the same language in Board of High School and Intermediate Education v. Chitra Srivastava [(1970) 1 SCC 121 : AIR 1970 SC 1039] , as is apparent from

the following words: (SCC p. 123, para 7)

"7. The learned counsel for the appellant, Mr C.B. Agarwala, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed."

43. In view of the aforesaid enunciation of law, Mr Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since the judgment in R.C. Tobacco [(2005) 7 SCC 725] had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in ECIL [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: (SCC p. 758, para 31)

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is

the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco [(2005) 7 SCC 725] .

46. To recapitulate the events, the appellant was accorded certain benefits under the Notification dated 8-7-1999. This Notification stands nullified by Section 154 of the 2003 Act, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefited under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in R.C. Tobacco [(2005) 7 SCC 725] . Likewise, even the officer who passed the order has no choice but to follow the dicta in R.C. Tobacco [(2005) 7 SCC 725] . It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty formality and we are of the firm opinion that the case stands covered by "useless formality theory".

47. In Escorts Farms Ltd. v. Commr. [(2004) 4 SCC 281] , this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the

following terms: (SCC pp. 309-10, para 64)

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

48. Therefore, on the facts of this case, we are of the opinion that non-issuance of notice before sending communication dated 23-6-2003 has not resulted in any prejudice to the appellant and it may not be feasible to direct the respondents to take fresh action after issuing notice as that would be a mere formality.

10. Keeping in mind the above decisions, let us consider the facts of this case.

11. Though a contention has been made that as per G.O. Ms. No.151 Social Welfare and Noon Meal Scheme I/2003-1 dated 11/8/2003, Anganwadi Workers, Helpers, Cook, are not eligible for any subsistence allowance, this court is not inclined to reverse the order made in W.P. No.19677 of 2015, dated 6/7/2015, setting aside the removal order.

12. Though the learned Government Advocate submitted that respondent being a temporary employee, is not entitled to an opportunity of hearing, we are not inclined to accept the said contention for the reason that G.O. Ms. No.151/SWD-1/2003-1, dated 11/8/2003, stated supra, prescribes a procedure and also provides for an opportunity to the respondent, against whom, allegations of misconduct is made and an enquiry has to be conducted if the explanation is not satisfactory. For brevity, G.O. Ms. No.151/SWD-1/2003-1 dated 11/8/2003, is extracted

hereunder:-

SOCIAL WELFARE AND NOON MEAL PROGRAMME (SWD1) DEPARTMENT
G.O.Ms.No.151/SWD-1/2003-1, dated 11/8/2003

From

Tmt.C.K.Kariyali, I.A.S
Government Secretary

To

All District Collectors
Rural Development Director/Municipality
Administrative Commissioner
Project Coordinator, World Bank Assisted Integrated
Child Development Service Scheme - 3
Chennai 113.

Sir,

Sub: Social Welfare and Noon Meal Programme -
Puratchi thalaivar M.G.R.Noon meal scheme -
World Bank Assisted Integrated Child
Development Service Scheme - organiser,
Anganwadi worker, Cook and helper -
irregularity in service - suspension -
charges frame - advice - regarding.

Ref: 1. G.O.Ms.No.370 Social Welfare and Noon
Meal Programme
dated 16/4/1989
2. Government letter No.16 Social Welfare
and Noon Meal Programme, dated 14/1/1992.

- - - - -

Your attention is required as per Government
order and letter cited above.

2. Anganwadi worker, Anganwadi helper, Dais
and Community Nutrition Worker who work under
Puratchi Thalaivar M.G.R.Noon Meal Scheme, World Bank
Assisted Integrated Child Development service scheme
-3 and Integrated Child Development Service as per
G.O.1 cited above cum under part time permanent
employees no government rules have been framed for
these categories. They are administrated only by
order which is released now and then. But they are
suspended and disciplinary action take due to their
irregularities by District Collector like giving food
in an unprotected manner, preparing insufficient

food, insufficient stock in centres, call for explanation to Anganwadi worker for irregularities within 21 days as per reference 2 cited. If explanation is not submitted treat them as they have accepted their fault and remove them from service. It has been instructed as per reference 2 the individual given explanation take action within 21 days and place final orders. But the instruction is not carried out properly nowadays and it has been brought to government notice. Because of this reason, the workers kept under suspension go to tribunal, sub Court and Hon'ble High Court, Chennai as ask for subsistence allowance and ask for reinstate of duties and it is increase in practice among workers. Tamil Nadu Tribunal and High Court place orders to pay subsistence allowance for workers who are under suspension the High Court ordered in one case follows:-

"The Right of an employee to claim subsistence is a fundamental and it cannot be denied by any employer. Therefore, notwithstanding the fact that the TNCS (D & A) Rules are not strictly applicable to the applicant, he is entitled to subsistence allowance because he is still retained in service and his services have not been terminated.

In some cases of Supreme Court has been ordered and opinion given if fundamental rule does not apply the workers who are under suspension are eligible for full salary.

Fundamental rule apply for workers who are part time or permanent are eligible to get.

Hence to avoid this unnecessary circumstances, instructions are given as follows:-

As per para 1, if organisers Anganwadi workers, cook assistants if suspended take disciplinary action and 17 A, B, E charges do not apply to these employees.

If explanation is received take speedy action with relevant records, enquiry conducted by giving punishment like stoppage of increment, censure, recovery amount from salary, transfer to far of place or other District, or permanent removal from service any one above punishment within 6 weeks. If action taken within 6 weeks workers going to Tribunal or High Court can be prevented. If Government instructions not followed within specified time, the worker suspended to go to Tribunal or High Court for getting subsistence allowance and in that case, if not taken action within time the concerned officers

are District Collectors are responsible to pay subsistence allowance. Hence all District Collectors are instructed to follow instructions.

Kindly acknowledge the letter received immediately."

13. Reading of the impugned order shows that explanation has been submitted by the respondent which has been received through the Child Development Project Officer. In the case on hand, reasons for not accepting the explanation are not assigned and no enquiry has also been conducted.

14. In the light of the above discussion and decisions, we do not find that there is any manifest error in the order of the writ Court, warranting interference. Accordingly, Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

mvs/asr

To

1. The Collector
Krishnagiri
Krishnagiri District.
2. The District Project Officer
Integrated Child Development Schemes
Krishnagiri
Krishnagiri District.

+1cc to Mr.K.Sankar Krishnan, Advocate SR.No.76507

+1cc to Government Pleader, High Court, Madras SR.No.76507

Writ Appeal No.1995 of 2018

EV(CO)
GMY(07/11/2019)