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CHAPTER

PRINCIPLES OF NATURAL JUSTICE

18.1 INTRODUCTION

The principles of natural justice act as a check on the arbitrary exercise of the State power against its citizens and in securing justice to them. The motto written in front of the office of the Attorney General of USA, '*Every time justice is done to the citizen, the United States Government wins!*' sums up the concept of natural justice.

18.2 PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice are not defined in any statute. Yet, they are accepted and enforced. In practical terms, the essential principles of natural justice are the following:

- Justice should not only be done but seen to be done.
- One cannot be a judge in his own cause.
- No party should be condemned unheard.
- Impartial hearing must be extended to the person against whom a charge is framed to state his case.
- Final decision should be by way of a speaking order, for such an order prevents any bias or prejudice creeping into the decision.

18.3 JUSTICE SHOULD NOT ONLY BE DONE BUT SEEN TO BE DONE

The dictum 'Justice should be done' is satisfied by mere observance of the principles of natural justice. However, the principle does not end here. It extends further. Justice should *manifestly* be seen to be done. If this is ignored, then the decision would be affected, especially in cases where an allegation of bias or interest or favour is noticed and affording proper hearing is not forthcoming from the decision.

18.4 ELEMENT OF BIAS

Bias is an impediment in the way of fair decision making process. The presence of bias swings the judgment one way or other. According to Ramanatha Aiyar's Judicial Dictionary 'bias' is a "leaning of mind, prepossession, inclination, propensity towards an object, bent of mind, a mental power which sways the judgment… It is a predisposition to decide for or against one party without proper regard to true merits of the dispute." A decision which not based on evidence is biased. Broadly, bias may take the form of pecuniary bias, personal bias and official bias.

Pecuniary bias may be direct or even remote. Even a slight inkling of pecuniary interest in a case would disqualify a person from adjudicating. When pecuniary interest is present, the decision is a nullity.

Official bias or bias as to the subject matter relates to behavioural attitude of a judge. This means a predisposition or inclination towards a particular issue. It may affect a fair decision. Interest of a judge in the outcome of a proceeding may vitiate the order.

Personal bias means one of the affected parties is a relation of the judge. In such a case, the judge is likely to be biased in favour of his relative. Also where the judge has personal grudge or enmity or professional rivalry, the judge is likely to display prejudice in the decision-making process. Where a person acts as an accuser and judge, the same may give rise to bias. A judge sitting in appeal from his earlier decision may give rise to bias. A judge deciding a case in which he was earlier a counsel gives rise to bias. Cases of contempt against the decisions decided by the court may give rise to bias on some occasions.

In the above situations, the judge may act fairly and decide on merits. But still the party affected by even a fair decision would look at the same with some amount of suspicion. Therefore, the need for the judges, like the Caesar's wife, to be above suspicion.

18.5 ONE CANNOT BE A JUDGE IN ONE'S OWN CAUSE

Bias in this regard may relate to a pecuniary interest. This interest, however small or remote, may disqualify a judge from deciding the case fairly. In the case of *Dimes* v. *Grand Junction Canal* 1952 3 HLC 759, Lord Cottenham, who pronounced the judgment in favour of the Canal Company, owned some shares in the canal company. The House of Lords set aside the order of Lord Cottenham. While pronouncing the judgment, Lord Campbell held as under:

> "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern: but, my Lords, it is of last importance that the maxim that no man is to be a judge in his own

> cause be held as sacred. And it is not confined to a cause in which he is a party but applies to a cause in which he has interest… This will be a lesson to all inferior Tribunals to take care not only that in their decrees they are not influenced by their personal interest but avoid the appearance of labouring under such influence."

The decision of the Supreme Court of India in the case of *A. K. Kraipak* v. *UOI* AIR 1970 SC 150 is considered a classic one on the issue of personal bias. In this case, the acting Chief Conservator of Forests was a member of selection committee along with the Members of UPSC for selection to the post of Chief Conservator. At the same time, he was also a candidate for the post of Chief conservator. Although in the course of selection he did not participate in the proceedings when his name was considered, the Court held that the very fact that he was a Member of the Selection Board must have had its own impact on the decision of the Selection Board. Further, he participated in the deliberations of the Selection Board when the claims of his rivals were considered. The Court held that there was definitely a conflict between his own interest and the duty cast on him which could prevent him from being impartial. The Court observed that there was a reasonable likelihood of bias, which operates in a very subtle manner. The decision so arrived at is in violation of the principle of natural justice.

18.6 NEED FOR SHOW CAUSE NOTICE

The person proceeded against is required to be informed about the exact nature of charges leveled against him. The authority taking a decision must apply his mind to the explanation furnished. Application of mind must be apparent from the order as held by the Supreme Court in the case of *Tar Lochan Dev Sharma* v. *State of Punjab* [2001] 6 SCC 260.

The importance of a show cause notice has been reiterated by Supreme Court in the case of *Umanath Pandey* v. *State of UP* [2009] 12 SCC 40-43 as under:

> "Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and 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."

In the case of *Biecco Lawrie Ltd* v. *State of West Bengal* [2009] 10 SCC 32, the Supreme Court observed as under:

> "One of the essential ingredients of fair hearing is that a person should be served with a proper notice, *i.e.* a person has a right to notice. Notice should be clear and precise so as to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative

> decision as vitiated. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following: (*a*) time, place and nature of hearing; (*b*) legal authority under which hearing is to be held; (*c*) statement of specific charges which a person has to meet."

In the case of *Maruti Suzuki India Ltd.* v. *Addl. CIT* [2010] 192 Taxman 317 (Delhi), it was held that a cryptic order sheet noting would not amount to a proper show cause notice to a party to defend his case. It would amount to failure to adhere to the principles of natural justice.

In *CCE* v. *ITC Ltd.* [1995] 2 SCC 38 (SC), it has been held that an assessee should be asked to show cause as to why he should not be visited with higher tax before such levy. He must be given an opportunity of meeting those grounds. This is a requirement of the principles of natural justice.

18.7 ADEQUATE OPPORTUNITY OF BEING HEARD

The opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be a paper opportunity. This was so held in *CIT* v. *Panna Devi Saraogi* [1970] 78 ITR 728 (Cal.). In *Smt. Ritu Devi* v. *CIT* [2004] 141 Taxman 559 (Mad.), time of just one day was given to the assessee to furnish reply. This was held as denial of opportunity. As held in *E. Vittal* v. *Appropriate Authority* [1996] 221 ITR 760 (AP), where a decision is based upon a document in a proceeding, copy of the same should be provided to the affected party. Otherwise, it would violate the principles of natural justice as the opportunity of being heard should be an effective opportunity and not an empty formality. Denial of opportunity may make an order void. Limitation of time cannot stand in the way of not giving adequate opportunity. The principle is inviolable.

18.8 ADJOURNMENTS

Courts grant adjournment liberally. More so, if the cause is sufficient. However, a party who has been allowed sufficiently long time to reply may not be entitled to adjournment. But the necessity to furnish an effective reply against a show cause notice cannot be overstated. Therefore, to demonstrate that justice is done, the authority has to grant adjournment where the request is for a valid reason. In such cases, granting adjournment too, therefore, could be a part of the principles of natural justice.

18.9 OPPORTUNITY NOT A RIGID DOCTRINE

Where nothing unfair can be discerned from the act of not giving opportunity, the rule may not be attracted. It is not a rigid doctrine. In the case of *Union of India* v. *W. N. Chadha* AIR 1993 SC 1082, the Supreme Court observed as overleaf:

> "The rule of *audi alteram partem* is not attracted unless the impugned order is shown to have deprived a person of his liberty or his property. The rule of *audi alteram partem* is a rule of justice and its application is excluded where the rule will itself lead to injustice. There is exclusion of the application of *audi alteram partem* rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. This rule cannot be applied to defeat the ends of justice or to make the law 'lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation' and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands." (paras 80 to 88)

In *Chairman Mining Board* v. *Ramjee* 1977 AIR 965 SC, the Supreme Court observed as under:

> "Natural justice is no 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 procedural 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. Courts cannot look at law in the abstract or natural justice as a mere artefact… 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."

18.10 NEED FOR SPEAKING ORDER

A speaking order ensures that the principles of natural justice are followed. To give reasons for the decision is a requirement of the principles of natural justice. The order would show which particular circumstance received due consideration while arriving at the decision. As held in *Kishan Lal* v. *UOI* [1998] 97 Taxman 556 (SC), a speaking order reduces arbitrariness. A reasoned order speaks for itself. It embodies in itself the principles of natural justice. In the case of *Asstt. Commissioner Commercial Tax Department, Works Contract and Leasing Quota* v. *Shukla & Bros.* [2010] (4) JT 35, the Supreme Court observed that it shall be obligatory on the part of the judicial or quasi-judicial authority to pass a reasoned order while exercising statutory jurisdiction. In the absence of a reasoned order, it would become a tool for harassment.

In the case of *Santosh Hazari* v. *Purushottam Tiwari* [2001] (2) JT 407, the Supreme Court held as under:

> "The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for hearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons,

on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court."

In the case of *S. N. Mukherjee* v. *Union of India* AIR 1990 SC 1984, the Supreme Court has observed as follows:

"Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement…. it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

In the case of *Woolcombers of India Ltd.* v. *Woolcombers Workers' Union* AIR 1973 SC 2758, the Supreme Court held as under:

"...The giving of reasons in support of their conclusions by the judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will also have the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave granted under article 136. A judgment which does not disclose the reasons will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time ... will be saved if reasons are given in support of the conclusions..." (p. 2761)

In the case of *Baidya Nath Sarma* v. *CWT* [1983] 11 Taxman 158 (Gau.), the Court observed as under:

"...The duty to give reasons is a safety-valve against arbitrary exercise of discretionary power. If such quasi-judicial authorities are permitted to render order without reason, apart from arbitrariness there might be potent danger

> of non-consideration of the application and would encourage mechanical exercise of the power."

In *Rasiklal Ranchhodbhai* v. *CWT* [1980] 121 ITR 219 (Guj.), the Court struck down the order of the Commissioner by observing that passing a cryptic order without giving reasons violates the principles of natural justice. It was observed that reasons must be substantial and cogent. It must not be an apology for reasons. This order was passed in the context of waiver of penalty.

18.11 SUBSEQUENT EXPLANATIONS CANNOT SUSTAIN A DECISION

The Supreme Court in *Commissioner of Police* v. *Gordhandas Bhanji* 1952 AIR SC 16 held as under:

> "We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanation subsequently given by the Officer making the order of what he meant, or of what was in his mind or what he intended to do."

Orders passed by the income tax authorities, be they assessment orders or appellate orders or orders of revision, must speak for themselves while passing the same. Any subsequent explanations to improve or supplement the order passed will not validate the decisions. This principle can be pressed into service when the revenue tries to justify reopening u/s 147 on the strength of material gathered subsequent to reopening of the case by filing an affidavit.

18.12 PRINCIPLES OF NATURAL JUSTICE DO NOT SUPPLANT LAW BUT SUPPLEMENT IT

In *Thakur V. Hariprasad* v. *CIT* [1987] 32 Taxman 196 (AP), the High Court held as follows:

> "The doctrine of natural justice is a facet of fair play in action. No person shall be saddled with a liability without being heard. In administrative law, this doctrine has been extended when a person is made liable in an action without being heard. The principles of natural justice do not supplant the law but merely supplement the law or even humanise it. If a statutory provision can be read consistent with the principles of natural justice, the court could do so, for the Legislature is presumed to intend to act according to the principles of natural justice."

18.13 NATURAL JUSTICE OPERATES IN AREAS NOT EXCLUDED BY LEGISLATION

The Court cannot ignore the mandate of the Legislature. As held in *Swadeshi Cotton Mills Co. Ltd.* v. *Union of India* [1981] 51 Comp. Cas. 210/AIR 1981 SC 818, 831 where a statutory provision specifically excludes the application

of rules of natural justice, the Court cannot ignore it. It cannot extend the rule to the excluded category.

18.14 PRINCIPLES OF NATURAL JUSTICE APPLY EVEN WHERE NOT EXPRESSLY PROVIDED

In the case of *Peerless General Finance & Investment Co. Ltd.* v. *Dy. CIT* [1999] 236 ITR 671 (Cal.) it was observed that the principles of natural justice can be presumed as necessary unless there exists a statutory prohibition.

In *Rajesh Kumar* v. *Dy. CIT* [2006] 157 Taxman 168 (SC), the Supreme Court observed that when civil consequences ensue, there is hardly any distinction between an administrative order and a quasi-judicial order. The Supreme Court further held that there might have been difference of opinions at one point of time, but it is now well-settled that a thin demarcated line between an administrative order and quasi-judicial order now stands obliterated.

In *Sahara India (Firm)* v. *CIT* [2008] 169 Taxman 328 (SC), the Supreme Court held 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.

In case of conflict between a statutory provision and natural justice, the former should prevail. But where there is no such exclusion in the statute, the application of the principles can be assumed in cases where in exercise of administrative jurisdiction the rights of citizens are affected to their prejudice. This was so held in the case of *Asiatic Oxygen Ltd.* v. *STO* [1982] Tax LR (NOC) 200 (Ori).

18.15 WHETHER ORDER PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE VOID OR VOIDABLE?

The AP High Court in the case of *Thakur V. Hariprasad* v. *CIT* [1987] 32 Taxman 196 has held that where the principles of natural justice are not followed, the order is only voidable and it can be cured with a direction to afford opportunity to the assessee of being heard. The decision in the case of *Grindlays Bank Ltd.* v. *ITO* [1980] 3 Taxman 38 (SC) is also to the same effect.

Depending on the facts and the circumstances of a case, violation of the principles of natural justice may or may not invalidate an order. In the case of *State of Orissa* v. *Dr. (Miss) Binapani Dei* [1967] 2 SCR 625, it was observed as overleaf:

> "An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our Constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the tails of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

H.W.R. Wade in Administrative Law, 5th Edition, pages 310-311, has stated that the act, in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice, is void or of no value. In *Ridge* v. *Baldwin* [1964] AC 40 and *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 AC 147, the House of Lords held that breach of natural justice nullifies the order. The order passed in violation of the principles of natural justice is of no value as held by the Supreme Court in *R. B. Shreeram Durga Prasad and Fatechand Nursing Das* v. *Settlement Commission* [1989] 43 Taxman 34 (SC).

An act or order, howsoever void it may be, is still capable of legal consequences, if it is not successfully challenged in a court of law. It has legal effect until it is challenged in a court and its illegality not waived. But in *R.* v. *Paddington Valuation Officer* [1966] 1 QB 380, 402 (CA), Lord Denning said as under:

> "It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more *ado*. The other kind is when the validity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside."

18.16 VIOLATION OF PRINCIPLES OF NATURAL JUSTICE - EFFECT ON JURISDICTION

In *Ponkunnam Traders* v. *Addl. ITO* [1972] 83 ITR 508 (Ker.), Mathew J., dealing with a case arising under the Income Tax Act, held that the failure to conform to the principles of natural justice would make a judicial or quasi-judicial order void, and such an order cannot be validated by the appellate or revisional orders. This is a landmark decision on the question of exercise of jurisdiction and effect of non-compliance to the principles of natural justice. In this case, there is comprehensive discussion about a void and voidable order. The decision in Ponkunnam Traders was confirmed in appeal by a Division Bench of the High Court in *Addl. ITO* v. *Ponkunnam Traders* [1976] 102 ITR 366 (Ker.).

In *State of Kerala* v. *Shaduli Grocery Dealer (K.T.)* AIR 1977 SC 1627, the Supreme Court observed that the tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe the principles of natural justice in reaching their conclusions. The Court held that although the Officer 'is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a court of law but that cannot deviate him from the principles of natural justice'. It was held that when the assessment was based on information collected from the books of a third party, necessary opportunity must be given for cross examination, if specifically requested for, when such information formed the sheet anchor of evidence to frame the assessment. In this case, the assessment was declared as void, confirming the decision of the Kerala High Court, for not affording opportunity for cross examination of the third party.

It is apt to recall the observations of Denning L.J. in *Barnard* v. *National Dock Labour Board* [1953] 2 QB 18/1 All ER 1113 (CA), which are as follows:

> "So where a decision is null by reason of want of jurisdiction, it cannot be cured by any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal but he is not bound to do so, because he is at liberty to treat the act as void."

18.17 TECHNICALITIES AND IRREGULARITIES DO NOT OCCASION FAILURE OF JUSTICE

In *State Bank of Patiala* v. *K Sharma* [1996] 3 SCC 364, the Supreme Court has observed as follows:

> "Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed

> to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise."

18.18 PRINCIPLES OF NATURAL JUSTICE ARE NOT IMMUTABLE AND RIGID

In the case of *Satyabir Singh* v. *UOI* AIR 1986 SC 555, the Supreme Court observed as under:

> "The principles of natural Justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forwards towards its proclaimed and destined goal of JUSTICE, social, economic and political. This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign no pasaran is put up."

A principle that can be gleaned out of the case is that where, in view of the urgency of the situation coupled with practical consideration, it is not possible to adhere to the principles of natural justice, the same can be departed.

In *K. L. Tripathi* v. *State Bank of India* AIR 1984 (SC) 273, it was observed as under:

> "The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case."

18.19 SILENCE OF THE STATUTE NOT TO BE CONSTRUED AS EXCLUSION OF OPPORTUNITY

Where the statute is silent as to whether or not the assessee should be heard before an order is passed, it does not mean that opportunity of being heard is excluded. The principle is that unless a hearing is statutorily excluded, an administrator taking a decision affecting the rights of a citizen is bound to hear him as held in *Smt. Maneka Gandhi* v. *Union of India* AIR 1978 SC 597, 624.

The Supreme Court in *Swadeshi Cotton Mills Co. Ltd.* v. *Union of India* [1981] 51 Comp. Cas. 210/AIR 1981 SC 818, 831 has held as follows:

> "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."

The above principle has been followed in the case of *Dy. CIT* v. *Muthoottu Mini Kuris* [2003] 128 Taxman 240 (Ker.).

In the case of *Rajesh Kumar* v. *Dy. CIT* [2006] 157 Taxman 168 (SC), it was held that when the action of a statutory authority results in civil or evil consequences, the principles of natural justice are required to be followed even in the absence of a statutory provision. This can be taken as implicit in a statutory provision.

18.20 PRINCIPLES OF NATURAL JUSTICE AND CROSS-EXAMINATION

The Assessing Officer cannot gather material or evidence at the back of the assessee and use it unilaterally. Evidence has to be tested on cross examination. Failure to afford opportunity to the assessee to cross-examine a third party whose evidence is sought to be utilised would make the assessment void as held in the cases of *Kishinchand Chellaram* v. *CIT* [1980] 4 Taxman 29 (SC), *Sona Electric Co.* v. *CIT* [1984] 19 Taxman 160 (Delhi), *Nathu Ram Prem Chand* v. *CIT* [1963] 49 ITR 561 (All). In the case of *Andaman Timber Industries* v. *CCE* [2015] 62 taxmann.com 3/52 GST 355 (SC), the Apex Court observed that not allowing the assessee to cross-examine the witness whose statement has been relied upon to frame the order is a serious flaw. This makes the order a nullity.

18.21 APPLICATION OF RULES OF NATURAL JUSTICE IN INCOME-TAX PROCEEDINGS

It is well settled that while acting in their quasi-judicial capacity the income tax authorities have to adhere to the principles of natural justice. In *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri* [1954] 26 ITR 1 (SC), the Supreme Court has held that the assessment proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before any conclusion is arrived at. The assessee has a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provision of the Income Tax Act.

In *Dhakeshwari Cotton Mills Ltd.* v. *CIT* [1954] 26 ITR 775 (SC), the Supreme Court emphasised that the principles of natural justice are applicable to the proceedings under the Income-tax Act. It observed:

> "It is … surprising that the Tribunal took from the representative of the department statement of gross profit rates of other cotton mills without showing the statement to the assessee and without giving him an opportunity to show that statement had no relevancy whatsoever to the case of the mill in question."

In the case of *Gargi Din Jwala Prasad* v. *CIT* [1974] 96 ITR 97 (All.) also, the Court has held similarly.

The power of revision conferred by section 25 of the Wealth Tax Act, 1962 is not administrative but quasi-judicial in nature. The expression 'may make such inquiry and pass such order thereon' does not confer any absolute discretion. In exercising the power the Commissioner must decide the issue with an unbiased mind, consider the objections of the affected party impartially and decide the dispute by following the principles of natural justice. He cannot make his judgment based on matters not disclosed to the assessee. He cannot act according to the dictates of another authority. This was so held by the Supreme Court in *Sirpur Paper Mill Ltd.* v. *CWT* [1970] 77 ITR 6 (SC).