

PRINCIPLES OF NATURAL JUSTICE AND APPLICATION IN TAX ASSESSMENT PROCEEDINGS

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Natural Justice: Meaning

- Broadest Sense- "the natural sense of what is right and wrong" Lord Esher in *Voinet v. Barrett* (1885) 55 LJQB 39@41
- Equated with fairness: *Ridge v. Baldwin* (1964) A.C.40- Lord Reid held that a decision given without regard to the principles of natural justice is void.

Procedural Justice

- H.W.R. Wade in Administrative Law
- Lawyers are a procedurally minded race, and it is natural that administrators should be tempted to regard procedural restrictions, invented by lawyers, as an obstacle to efficiency. It is true that rules of natural justice restrict the freedom of administrative action and that their observance costs a certain amount of time and money. But that time and money are likely to be well spent if they reduce friction in the machinery of government; and it is because they are essentially rules for upholding fairness and so reducing grievances that the rules of natural justice can be said to promote efficiency rather than impede it. Provided that the courts do not let them run riot, and keep them in touch with the standards which good administration demands in any case, they should be regarded as a protection not only to citizens but also to officials. Moreover, a decision which is made without bias, and with proper consideration of the views of those affected by it, will not only be more acceptable; it will be of better quality. Justice and efficiency go hand in hand, so long at least as the law does not impose excessive refinements.
- P.373 11th Edition

Natural Justice - Meaning

- No definition & Not constant or rigid or absolute
 - Uma Nath Pandey vs. State of UP [2009 (237) E.L.T. 241 (S.C.)]
- Unless excluded, applicable in all cases
 - CCE vs. Sanawarmal Purohit [1978 (2) E.L.T. (J 416) (S.C.)]
- Must afford where civil or penal consequences follows
 - Surjit Singh vs. State of Punjab [1984 (18) E.L.T. 241 (S.C.)h

Stage 1: Investigations

- Fairness
- Transparency
- Strict procedural compliance
- Search
- Seizure
- Summons
- Statements

- Key Decisions
 - Panchas are material witness and can be cross-examined; *Arya Abhushan Bhandar vs. Union of India* [2002 (143) E.L.T. 25 (S.C.)]
 - Strict Procedural Compliance; *CCE, Bangalore vs. P. Laxminarayan Reddy* [2015 (319) E.L.T. 363 (S.C.)]

Stage 2: Show Cause Notice

- Disclose full investigations
- Summary of allegations
 - Adjudication cannot go beyond allegations in SCN; *Commissioner v. Transpek Industries Ltd.* [2002 (140) E.L.T. A97 (S.C)]
- Charges must be made known
 - *Kaur & Singh vs. CCE, New Delhi* [1997 (94) E.L.T. 289 (S.C.)]
- Show cause notice required
 - *East India Commercial Co. Ltd. vs Collector of Customs, Calcutta* [1983 (13) E.L.T. 1342 (S.C.)]
- Service of Notice
 - *Payal A. K. Jindal vs. Cpn. Ashok Kumar Jindal* [1992 (60) E.L.T. 19 (S.C.)]

Stage 3: Disclosure of Documents

- Relied upon
 - Tribhuvandas Bhimji Zaveri vs. CCE [1997 (92) E.L.T. 467 (S.C.)]
 - Accused to be given opportunity to rebut evidence; Mohanlal Shamji Soni vs. Union of India [1992 (61) E.L.T. 521 (S.C.)]
- Un-relied upon but seized
 - Dina Metals vs. Union of India [2010 (255) E.L.T. 212 (Pat.)]
- Documents relied upon and received in the course of investigation
 - Kothari Filaments vs. CC, Kolkata [2009 (13) S.T.R. 225 (S.C.)]

Stage 4: Hearing...

- Reasonable / adequate opportunity
 - CCE vs. National Tobacco Co. Ltd [1978 (2) E.L.T. (J 416) (S.C.)]
 - FEDCO (P) Ltd vs. SN Bilgrami [1999 (110) E.L.T. 92 (S.C.)]
- Preliminary hearing
- Oral evidence and cross-examination
 - Swadeshi Polytex vs. CCE, Meerut [2000 (122) E.L.T. 641 (S.C.)]
 - Andaman Timber Industries vs. CCE, Kolkata II [2015 (324) E.L.T. 641 (S.C.)]

... Stage 4: Hearing

- Expert evidence
 - Commissioner vs. UG Hospitals [Commissioner v. U.G. Hospitals - 2003 (152) E.L.T. A258 (S.C.)]
- Admissibility of documents – unattested/photo copies/public
 - J. Yashoda vs. K. Shobha Rani [2007 (212) E.L.T. 458 (S.C.)]
- Evaluation of statements – admissions, retractions
 - Vinod Solanki vs. Union of India [2007 (212) E.L.T. 458 (S.C.)]
 - Vinod Kumar Sahadev vs. Union of India [2014 (304) E.L.T. 335 (Del.)]

Stage 5: Order

- Hearing – pre-decisional & Post-decisional – exception
 - Sahara India (Firm) vs. CIT, Central-I [2008 (226) E.L.T. 22 (S.C.)]
- Suspension of license only after hearing
 - *Baraka Overseas Trader vs. DGFT* [2006 (202) E.L.T. 3 (S.C.)]
- Reasoned Order
 - *Orient Paper Mills Ltd vs. Union of India* [1978 (2) E.L.T. J 345 (S.C.)]

Other Key Decisions

- ITO –vs- M.Pillani Chodi [*2010 (15) SCC 283*]
- State of Kerala –vs- K.T.Shaduli [*1977 (2) SCC 777*]
- Maneka Gandhi –vs- Union of India [*1978 (1) SCC 578*]
- Carborandum Universal Limited –vs- CBDT [*1989 (Supp.2) SCC 462*]
- C.B.Gautam –vs- Union of India [*1993 (1) SCC 78*]

THANK YOU

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