REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 992 OF 2009
(Arising out of SLP(Crl.)No. 6705/2006)

GURMEJ SINGH .. APPELLANT

vs.

STATE OF PUNJAB & ANR.. RESPONDENTS

J U D G M E N T

Dr. ARIJIT PASAYAT,J.

Application for impleadment is rejected.

Leave granted.

Challenge in this appeal is to the order passed by a learned single Judge of Punjab and Haryana High Court which gave certain directions qua the present appellant who was the investigating officer. One Sanjiv Kumar filed an appeal against the judgment dated 17/7/2005 passed by learned Sessions Judge, Kapurthala, whereby the said accused Sanjiv Kumar was convicted for the offences punishable under Sections 395, 450, 342 of Indian Penal Code, 1860 (in short the `IPC').

The complainant Sukhraj Singh also filed a revision for payment of compensation. The prosecution version was that the accused Sanjiv Kumar was posted as ASI in Police Station City Phagwara. On 23/2/2002 at

about 7.30 p.m. he along with 4-5 unidentified persons had committed an offence of trespass by entering into building of M/s. Wadhawan Forex (P) Limited Phagwara. He allegedly committed dacoity by robbing Sukhraj Singh Director of that Company of the Indian currency and

foreign currency. There were other aspects highlighted by the prosecution in the trial. We are not concerned with those presently.

The present appellant appeared as DW.1 and supported the version given in FIR No.19 dated 23/2/2002 registered by Gurmej Singh Inspector SHO. The High Court was of the view, while dealing with the appeal of Sanjiv Kumar, that it would have been fair and proper to involve the present appellant and all the persons named in FIR No.19 and to prosecute them and that if they had been present in the Court then the witnesses could say whether they were the other persons or

not. It was also observed that when the other persons were not challaned or shown then the witnesses could always say about Sanjiv Kumar ASI and 4-5 unidentified persons. With these observations and after discussing the evidence, the High Court upheld the conviction of the accused -Sanjiv Kumar for offence punishable under Sections 395, 450 and 342 IPC. High Court was of the view that the sentence of imprisonment

imposed on the appellant Sanjiv Kumar was on the higher side especially when the appellant herein who was the main person involved in the matter had not been prosecuted. The Home Secretary of the State and the DGP were directed to look into the matter and take steps to prosecute the appellant herein in the appeals atleast for the offences for which Sanjiv Kumar appellant has been charged or at least for preparing false documents involving Sukhraj Singh and keeping him wrongfully confined.

Though various points were argued, the main contention made for the appellant was that the observations and directions were given even without issuance of notice to the appellant. In other words he has been condemned without even hearing him. According to the learned counsel, the basic principles of natural justice have been violated. Learned counsel for the State fairly accepted that no opportunity was granted during hearing of the appeal by the High Court.

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.

What is meant by the term 'principles of natural justice' is not easy to determine. Lord Summer (then Hamilton, L.J.) in Ray v. Local Government Board (1914) 1 KB 160 at p.199:83 LJKB 86) described the phrase as sadly lacking in precision. In General Council of Medical

Education & Registration of U.K. v. Sanckman (1943 AC 627: (1948) 2 All ER 337), Lord Wright observed that it was not desirable to attempt 'to force it into any procusteam 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.

Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice (1911 AC 179:80 LJKB 796), where Lord Loreburn, L.C. observed as follows:

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices 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 and that in doing either they must act in good faith and fairly listen 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 the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the

way 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, LO in Spackman v. Plumstead District

Board of Works (1985 (10) AC 229:54 LJMC 81), 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 oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

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 frame-work 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.

Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855(2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In James Dunber Smith v. Her Majesty the Queen (1877-78(3) App.Case 614, 623 JC) Sir Robort P. Collier, speaking for the judicial committee of Privy council, used the phrase 'the requirements of substantial justice', while in Arthur John Specman v.

Plumstead District Board of Works (1884-85(10) App.Case 229, 240), Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice'. In Vionet v. Barrett (1885(55) LJRD 39, 41), Lord Esher, MR 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 Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra) chose to define natural justice as 'fundamental justice'. In Ridge v. Baldwin (1963(1) WB 569, 578), Harman LJ, in the Court of Appeal countered natural justice with 'fair-play in action' a phrase favoured by Bhagawati, J. in Maneka Gandhi

v. Union of India (1978 (2) SCR 621). In re R.N. (An Infaot) (1967(2) B617, 530),Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'. In fairmount Investments Ltd. v. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. In Regina v. Secretary of State for Home Affairs Ex Parte Hosenball (1977 (1) WLR 766) preferred the homely phrase 'common fairness'.

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 (1605) 12 Co.Rep.114 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 at 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 at 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 alteram actquam licet dixerit, haud acquum facerit' 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 Bosewell's case (1605) 6 Co.Rep. 48-b, 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. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

Above being the position in law the observations and directions given by the High Cort qua the present appellant cannot be maintained and stand quashed.

The appeal is allowed.

..... .J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
April 28, 2009.

SUPREME COURT OF INDIA

JUDGMENT