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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9424/2009

% ***Judgment dated 20.04.2010***

LALIT KUMAR VIMAL ..... Petitioner
Through : Ms. Richa Kapoor, Adv.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent
Through : Ms. Alka Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (*ORAL*)

1. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. Brief facts of the case, as set out in the present petition, are that in the year 1996 DDA announced its expandable housing scheme and invited applications for allotment of 3500 expandable houses. Two categories of houses were being offered – Type A, comprising of one room set; and Type B, comprising of 2 or three room set. As per the table formulated in the brochure, DDA had fixed different cost for the houses depending on the colony. The petitioner with spouse made an application to the DDA for allotment of Type A category flat and paid the registration amount in the sum of Rs.7500/- vide Bank Draft No.313424 dated 9.10.1996. On 21.3.1997 petitioner was allotted a flat bearing No.112, Pocket 12, Sector 22, Rohini, Delhi under the expandable housing scheme.
3. It is the case of the petitioner that even though the draw of lots in respect of the petitioner's flat has been held on 21.3.1997 the

respondent delayed the issuance of demand-cum-allotment letter, which was issued only in September, 1998. Vide allotment letter with block dates dated 1.9.1998 – 10.9.1998, a sum of Rs.4,50,468.80 was demanded from the petitioner along with confirmation charges in the sum of Rs.15,000/- which were to be paid by 10.10.1998. The petitioner deposited the confirmation charges in the sum of Rs.15,000/- within the time allowed, however, did not deposit Rs.4,50,468.80.

4. According to the petitioner, the amount of Rs. 4,50,468.80 was in excess of the tentative disposal cost, which was mentioned as Rs.3,87,700/- in the brochure. The petitioner is stated to have visited the site and was shocked to learn that the basic amenities like water, electricity, sewage, etc., were not available in the flats and the roads were yet to be constructed.
5. Learned counsel for the petitioner submits that similarly situated allottees filed a batch of writ petitions in the High Court seeking a writ of mandamus directing DDA to adhere to cost mentioned in the brochure. All the writ petitions were clubbed together and were listed for final hearing. Counsel further submits that the petitioner had also filed a writ petition being WP(C)No.3146/1999 seeking similar reliefs. On 27.11.2003, a Single Judge of this Court while disposing of ***Raj Kumar Vs. DDA***, WP(C)No.214/1999, [batch consisting of three writ petitions] of similarly situated allottees directed the petitioners to pay interest @ 12% per annum on 50 % of the amount from the date of demand-cum-allotment letter and 100% of the amount from the date the amenities were made available. It was also directed that in the alternate, the petitioners could also opt within 45 days for payment on the basis of current cost. Accordingly, the W.P.(C)No.1999 filed by the petitioner was also decided by the this Court vide order 19.12.2003 in terms of the aforesaid order dated 27.11.2003. Petitioner exercised his option vide his representation dated 9.11.2004 to opt for current cost.

6. Learned counsel for the petitioner submits that the petitioner made a representation to the DDA on 9.11.2004 beyond the period of 45 days and approximately 72 other applicants opted for allotment at current cost. Although, admittedly, the name of the petitioner was included at Sl. No.9 in the list prepared by the DDA of 72 applicants, who were similarly placed, but the petitioner did not receive any demand-cum-allotment letter. Counsel for the petitioner also submits that similarly situated persons to whom demand letters were issued, had, *inter alia*, challenged the costing of the DDA pursuant to demand-cum-allotment letter issued besides other reliefs. The batch of said writ petitions were disposed of by a common judgment rendered by a Single Judge of this Court in the case of ***Madan Lal Nayak Vs. Delhi Development Authority***, WP(C)No.3257/2007, [batch comprising of 18 writ petitions] on 19.03.2008. Counsel next submits that after pronouncement of the judgment in the case of ***Raj Kumar Vs. Delhi Development Authority***, CWP NO.214/1999 on 27.11.2003, DDA was to issue a fresh demand-cum-allotment letter to the petitioners.
7. It is contended by counsel for the petitioner that despite various representations having been made by the petitioner to the DDA, demand-cum-allotment letter was not issued to the petitioner.
8. Learned counsel for the petitioner submit that the same very issue was considered by this Court in WP(C)No.3257/2007 and other connected matters on 19.03.2008. While disposing of these connected matters, this Court had issued the following directions:

> *"8. In view of the above facts and the statements made by learned counsel for the parties, the following directions are issued:*
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> *(i) DDA will make calculation and issue demand cum allotment letters to the petitioners on the basis of calculation sheet shown in the Court today, within 30 days. The petitioners will be liable to pay interest @ 12% till the date when demand cum allotment letter is issued and payment will be made in terms of the payment.*

(ii) *DDA will be entitled to verify and examine genuineness of the case of the petitioners."*

9. Learned counsel for the petitioner submits that second direction, which was issued as similar objection with regard to genuineness was raised by the DDA was in the light of very same objection, which was raised by the DDA. In the light of this objection, this Court had directed that the DDA would be entitled to verify and examine the genuineness of the case of the petitioners. Counsel further submit that valuable rights of the petitioners could not have been determined by the respondents unilaterally without issuing a show cause notice and without granting a hearing in the matter.
10. Counsel for the petitioner submits that the present case is fully covered in fact and law by the decision rendered by this Court in the case of ***Sunita Vs. D.D.A.***, W.P.(C)No.3556/2008 and in the case of ***Sh. Anil Kumar Vs. DDA***, W.P.(C)No.7809/2009.
11. Learned counsel for the respondent – DDA has opposed this petition on the ground that the case of the petitioner was not considered as the representation/application received by them, did not seem to be genuine and the application was not signed by the allottee. Thus, the DDA did not deem it proper to consider the application and the same stand rejected on this ground alone. Counsel for the DDA is unable to show that the facts of the present case are in any way different to the facts in the case of ***Sunita Vs. D.D.A.*** (supra) and in the case of ***Sh. Anil Kumar Vs. DDA*** (supra). Counsel for the DDA, however, submits that this Court had decided both the above matters based on an earlier decision which was rendered on the basis of concession given by counsel for the DDA.
12. Learned counsel for the petitioner submit that neither any show cause notice was issued to the petitioner nor any opportunity of hearing was granted to the petitioner to enable him to clear the doubts of the DDA.

13. I have heard counsel for the parties. The petitioner has been locked in a legal battle against the DDA since the year 1998 when the first demand-cum-allotment letter was issued. Today, it is not disputed that before rejecting the application of the petitioner, the petitioner was neither issued any show cause notice nor asked to remain present along with supporting documents in support of his identification. It is also not disputed that the petitioner had filed the earlier writ petition, which was disposed of by an order of this Court dated 19.12.2003.

14. In the case of ***Canara Bank and Others v. Debasis Das and Others,*** reported at (2003) 4 SCC 557, the Supreme Court of India has held that:

> ***"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.*
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> ***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.*
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> ***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[2] 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 chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

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[3] (KB at p. 199) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman[4] 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[5] 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*[6] *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*[7] *(Macq at p. 8), Lord Cranworth defined it as "universal justice". In James Dunber Smith v. Her Majesty the Queen*[8] *(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* 573 *Board of Works*[6] *(AC at p. 240), the Earl of Selbourne, S.C. preferred the phrase "the substantial requirement of justice". In Vionet v. Barrett*[9] *(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*[10] *Lord Esher, M.R. instead of using the definition given earlier by him in Vionet case*[9] *chose to define natural justice as "fundamental justice". In Ridge v. Baldwin*[11] *(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*[12]*. In H.K. (An Infant), Re*[13] *(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*[14] *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*[15] *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*[16] *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 Boswel's case 17 (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."*

15. Taking into consideration the facts of this case and applying the principles laid down, I find force in the submission made by counsel for the petitioner that the order of cancellation could not have been passed without following the principles of natural justice. In this case the petitioner has been agitating his rights from the year 1998, and at this crucial juncture, when all issues stood resolved, it is not open to the DDA to reject the case of the petitioner on the ground that his identity is in doubt without following the principles of natural justice and issuance of show cause notice. This Court while disposing of Writ Petition 7809/2009 and other connected matters, on similar issue, issued necessary directions by which DDA was entitled to verify and examine the genuineness of the case of the petitioner. Nothing has been produced on record to satisfy this court how the genuineness of the petitioner was ascertained. It is for this reason that courts have laid stress that there must be protection of the rights of the individual which cannot be determined by any arbitrary procedure which may be adopted. The petitioner could not have been condemned unheard. Consequently, the petitioner must succeed since the only ground taken by the DDA for not issuing the demand-cum-allotment letter is the identity of the petitioner. The petitioner shall appear before the Deputy Director (Housing), DDA, in person along with all original supporting documents including proof of identity, upon being informed by the DDA about the time and date at the address mentioned in the writ

petition. Once the DDA is satisfied about the genuineness of the petitioner, the demand-cum-allotment letters shall be issued in accordance with law.

16. Petition as well as all pending applications stand disposed of.

G.S. SISTANI, J.

April 20, 2010
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