2024:DHC:4266

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

\+ W.P.(C) 6607/2024

CHAND RAM PUBLIC SCHOOL ..... Petitioner

Through: Mr. Rohit Sharma, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Amit Gupta and Ms. Prerna Dhall, Advocates, for UOI.
Ms. Manisha Singh, Advocate, for CBSE
Ms. Hetu Arora Sethi, ASC with Mr. Arjun Basra, Advocate, for GNCTD.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% 22.05.2024

W.P.(C) 6607/2024

1. The petitioner was granted provisional affiliation for secondary level education and for conducting the secondary level examinations by the Central Board of Secondary Education (CBSE) with effect from 1 April 2011 till 31 March 2014. Subsequently, the affiliation was extended to the senior secondary level with effect from 1 April 2013 till 31 March 2016. The opening paragraph of show cause notice dated 11 July 2023, from which these proceedings emanate,

acknowledges the fact that the provisional affiliation granted to the petitioner would have remained alive till 31 March 2026, had the impugned proceedings not been taken against it.

2. Following a surprise inspection of the petitioner school which was conducted on 22 December 2022, the petitioner was issued a show cause notice by the CBSE on 11 July 2023. The show cause notice alleged that the surprise inspection found various violations in the petitioner institution, which were enlisted in the show cause notice. The petitioner was, therefore, directed to show cause "as to why action should not be taken against the school as per the penalties laid down in Chapter 12 of the Affiliation Bye-laws, 2018" ("the Affiliation Bye-laws").

3. Bye-law 12.1 of the Affiliation Bye-laws deals with imposition of penalties on schools for infraction of the bye-laws or other applicable statutes and reads thus:

> "12.1 If a School is found violating the provisions of the Affiliation Bye Laws / Examinations Bye Laws of the Board or does not abide by the directions of the Board, the Board shall have powers to impose the following penalties:
>
> 12.1.1 Written warning
>
> 12.1.2 Imposing fine up to ₹ 5,00,000/-
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> 12.1.3 Downgrading school from Senior Secondary Level to Secondary Level

12.1.4 Restricting number of sections in the School

12.1.5 Debarring the school from sponsoring students in Board's examinations up to a period of two years.

12.1.6 Suspension ofAffiliation for a definite period.

12.1.7 Debarring the school from applying for affiliation or restoration of affiliation up a period of five years.

12.1.8 Withdrawal of Affiliation in a particular subject(s) or stream(s).

12.1.9 Withdrawal of Affiliation

12.1.10 Any other penalty deemed appropriate by the Board."

As such, it is clear that violation of the provisions of the Affiliation Bye-laws by a school does not *ipso facto* and inexorably invite withdrawal of affiliation. There are various penalties which can be imposed and, therefore, before the CBSE resorts to the extreme penalty of withdrawal of affiliation, the non-negotiable legal imperatives are that, in the first place, the school should, in the show cause notice issued to it, be made alive to the fact that the alleged infractions are likely to result in withdrawal of its affiliation and should, therefore, be directed to show cause against such proposed withdrawal and, secondly, that the order which ultimately comes to be passed by the CBSE should also reflect conscious application of mind that the facts of the case would merit nothing less than withdrawal of affiliation.

4. The show cause notice dated 11 July 2023 issued to the

petitioner in the present case does not propose withdrawal of affiliation of the petitioner school. It merely refers to Chapter 12 without indicating the penalty that is proposed to be levied.

5. The petitioner submitted a reply to the show cause notice dated 11 July 2023.

6. By order dated 22 March 2024, the CBSE withdrew the petitioner's affiliation.

7. The petitioner preferred an appeal, against the said order, on 28 March 2024. This was followed by followed by further communications dated 28 March 2024, 3 April 2024, 6 April 2024 and 18 April 2024. Among other things, these communications also raised the issue of violation of the principles of natural justice, by pleading that no hearing had been granted to the petitioner before its affiliation was withdrawn.

8. As no action was being taken on the show cause notice, the petitioner approached this Court by the present writ petition being WP (C) 6607/2024.

9. On 9 May 2024, when the writ petition came up for hearing, the Court and the petitioner were apprised by Ms. Manisha Singh, learned Counsel for the CBSE, that an order had been passed by the CBSE on 7 May 2024, rejecting the petitioner's appeal. The petitioner was,

therefore, given an opportunity to amend the writ petition assailing the said order.

10. The writ petition has, therefore, been amended and the prayer in the writ petition has been modified to seek issuance of a writ of certiorari quashing and setting aside the order dated 7 May 2024, whereby the petitioner's appeal was rejected.

11. I do not deem it necessary to enter into the merits of the controversy, as the decision to withdraw the affiliation of the petitioner, as well as to dismiss the appeal preferred by the petitioner against the said decision cannot sustain in view of the judgment of this Court in ***Mount Columbus School v. CBSE***[1]. In the said judgment, this Court has taken the view that withdrawal of affiliation of a running school is an extreme measure which subjects not only the school, but its staff, and the students studying in the school, to serious prejudice, and cannot be taken save and except in strict compliance with the principles of natural justice, which included due compliance with *audi alteram partem*. Paras 48 to 54 of the decision in ***Mount Columbus School*** may be reproduced thus:

> "48. The submission of Ms. Manisha Singh that the law did not require an opportunity of personal hearing to be granted to the petitioner is obviously unacceptable. The decision to disaffiliate an educational institution is an extreme decision. It amounts to civil death. It results in serious prejudice not only to the institution, its officers and employees, but to the multitude of students who are being educated within its portals. It is a decision to be taken,

[1] **2024 SCC OnLine Del 2778**

therefore, in the most extreme of cases, and after rigorous and scrupulous adherence not only to the procedure stipulated in that regard, but also independently with the principles of natural justice and fair play, which would include, needless to say, compliance with *audi alteram partem*.

49. Moreover, in the present case, it has to be borne in mind that the petitioner is an institution which was affiliated as far back as in 2003 In such a circumstance, any decision to disaffiliate the petitioner could not have been taken without affording the petitioner an opportunity of personal hearing in the matter.

50. Even otherwise, it is well settled in administrative law that a decision which entails serious civil consequences has to be preceded by compliance with the principle of audi alterum partum, even if the statutory provision does not expressly so required. That the requirement of grant of an opportunity of hearing in such cases has necessarily to be read into the statute, is the law which follows from a long line of decisions. A Division Bench of the High Court of Orissa felicitously expressed the principle thus, in Narayan Chandra Jena v. State Transport Authority[2]:

> "It is true that Sec. 50[3] in terms does not provide for granting an opportunity to be heard. But the audi alteram partem rule is of universal application and law is well settled that when a statute is silent regarding observance of the principles of natural justice, the rule shall be read into the statute as an inbuilt provision. The rule must be held to be a necessary postulate in all cases where a decision is to be taken affecting a person's rights or interest unless such rule is specifically excluded by the relevant statute. It is also well settled that failure to observe natural justice cannot be justified merely because the authority vested with the powers to decide is of the opinion that granting of such opportunity would be an exercise in futility since the person to be condemned can have nothing more to add. Non-

[2] **AIR 1987 Ori 163**

[3] The reference is to Section 50 of the erstwhile Motor Vehicles Act, 1939, which reads:

> "**50. Procedure of Regional Transport Authority in considering application for contract carriage permit. –** A Regional Transport Authority shall, in considering an application for a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest ; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.

> observance of natural justice is itself a prejudice and independent proof of prejudice due to denial of natural justice is unnecessary."

This, and several other pronouncements to the said effect, were relied upon by a Division Bench of the High Court of Punjab & Haryana (speaking through Swatanter Kumar, J., as he then was) in ***Ram Niwa's Bansal v. State Bank of Patiala***[4], to hold that the requirement of compliance with audi alteram partem is to be read into every provision, the enforcement of which entails civil consequences, even if the provision is itself silent in that regard, unless the statute provides otherwise.

51. ***J.T. (India) Exports v. U.O.I***.[5], rendered by a Full Bench of this Court, is also relevant. Division Benches of this Court were divergent on the issue of whether the third proviso to Section 4-M of the Imports & Exports (Control) Act, 1947 required grant of an opportunity of personal hearing before deciding whether to waive penalty in full or in part. Significantly, the Full Bench noted, at the very outset, the earlier decision of the Supreme Court in ***U.O.I. v. Jesus Sales Corporation***[6] which, dealing with the same provision, held that, in every case, in could not be held that failure to grant personal hearing was fatal. Nonetheless, the Full Bench proceeded, in paras 13 and 15 of its judgment, to hold thus, apropos that the requirement of grant of an opportunity of hearing; thus:

> "13. 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 C R 114***, that is, 'no man shall be a judge in his own cause'. Coke used the form *'aliquis non debet esse judex inpropria causa quia non potest esse judex at pars*' (***Co. Litt. 1418***), that is, 'no man

[4] **(1999) II LLJ 126 (P & H)**
[5] **94 (2001) DLT 301 (FB)**
[6] **(1996) 4 SCC 69**

ought to be a judge in his own cause, 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 and that is the rule with which we are concerned in this case is *'audi alteram partem*', that is, 'hear the other side'. At times and particularly in continental countries, the form '*audietur at alteram 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 isright' (See ***Bosewell' case***[10]): or in other words, as it is now expressed, 'justice should no only be done but should manifestly beseen to be done'.

14. *Even if grant of an opportunity is not specifically provided for it has to be read into the unoccupied interstices and unless specifically excluded principles of natural justice have to be applied. Even if a statute is silent and there are no positive wordsin the Act or Rules spelling out the need to hear the party whose rights and interests are likely to be affected, the requirement to follow the fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise.* Reference is accordingly disposed of."

(Emphasis supplied)

52. The fact that the impugned order was passed with no opportunity of hearing granted to the petitioner, is, therefore, an additional circumstance which would justify its evisceration.

53. ***Swadeshi Cotton Mills***, cited by Mr. Gupta, crystallizes this position. Para 18 of the report noted the point that arose for consideration, thus:

"18. Thus, the first point for consideration is whether, as a matter of law, it is necessary, in accordance with the rules of natural justice, to give a hearing to the owner of an undertaking before issuing a notified order, or enforcing a decision of its take- over under Section 18-AA11."

The Supreme Court held:

"25. Before dealing with the contentions advanced on both sides, it will be useful to have a general idea of the concept of "natural justice" and the broad principles governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal constituted thereunder.

26. Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth". [Paul Jackson : Natural Justice, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice". 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.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are:

(i) *audi alteram partem* and (ii) *nemo judex in re sua*. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea[12] that it is unjust to reach a decision without a full hearing. In ***Maneka Gandhi***[7] case, Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at

[7] **Maneka Gandhi v. U.O.I., (1978) 1 SCC 248**

> a just decision and itis calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

28. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lordsin ***Ridge v. Baldwin***[8] it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in ***Dr Bina Pani Dei***[9]; wherein 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. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in ***Dr Bina Pani Dei***, was further rubbed out to a vanishing point in ***A.K. Kraipak v. Union of India***[10], thus:

> "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....
> 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."

29. In ***A.K. Kraipak***, the court also quoted with approval the observations of Lord Parker from the Queen's Bench decision in ***Inre H.K. (Infants)***[11]; which were to the effect, that good administration and an honest or bona fide

[8] **1964 AC 40**
[9] **State of Orissa v. Dr Bina Pani Dei, AIR 1967 SC 1269**
[10] **(1969) 2 SCC 262**
[11] **1965 AC 201**

decision require not merely impartiality or merely bringing one's mind to bear on the problem, but *acting fairly*. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

30. In the language of V.R. Krishna Iyer, J. (vide ***Mohinder Singh Gill***[12] : "... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in itsplay ... Its essence is good conscience in a given situation; nothing more — but nothing less."

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in ***A.K. Kraipak***). If a statutory provision *either specifically or by inevitable implication* excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see ***Union of India v. Col. J.N. Sinha***[13])

32. The maxim *audi alteram partem* has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice" — as Lord Atkin felicitously put it — "are often not on

[12] **Mohinder Singh Gill v. Election Commissioner of India, (1978) 1 SCC 405**
[13] **(1970) 2 SCC 458**

speaking terms [***General Medical Council v. Spackman***[14]] ".

33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by *express* language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought *by implication* due to the presence of certain factors: such as, urgency,where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive orremedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word "immediate" in Section 18-AA(1). *Audi alteram partem* rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the Magistrates specified therein to make an *ex parte* conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.

34. Be that as it may, the fact remains that there is no consensus of judicial opinion on whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice. In ***Durayappah v. Fernando***[15] Lord Upjohn observed that "while urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.

35. These observations of Lord Upjohn in ***Durayappah***

[14] **1943 AC 627, 638**

[15] **(1967) 2 AC 337**

were quoted with approval by this Court in ***Mohinder Singh Gill***. It is therefore, proposed to notice the same here.

36. In ***Mohinder Singh Gill*** the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The Returning Officer reported the happening to the Chief Election Commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing and all that he had was a vacuous meeting where nothing was disclosed. The Election Commission contended that a prior hearing had, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negatived by this Court. Delivering the judgment of the Court, V.R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso:

> "Once we understand the soul of the rule as fair play in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to

fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a givensituation; nothing more — but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case."

37. After referring to several decisions, including the observations of Lord Upjohn in ***Durayappah v. Fernando***, the court explained that mere invocation or existence of urgency does not exclude the duty of giving a fair hearing to the person affected:

> "It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural pre-condition of fair hearing, however minimal, even post- decisional, has relevance to administrative and judicial gentlemanliness....
>
> We may not be taken to ... say that situational modifications to notice and hearing are altogether impermissible The glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs, doctors remedies to suit the patient, promotes, not freezes, life's processes, if we may mix metaphors. "

38. The court further emphasised the necessity of

striking pragmatic balance between the competing requirements of acting urgently and fairly, thus:

"

> "Should the cardinal principle of 'hearing' as condition for decision-making be martyred for the cause of administrative immediacy? We think not. The full panoply may not be there but a manageable minimum may make- do.
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> In ***Wiseman v. Borneman***[16] there was a hint of the competitive claims of hurry and hearing. Lord Reid said: "Even where the decision has to be reached by a body acting judicially, *there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him*."
>
> (emphasis added)
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> We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justiceis pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances."

The court further pointed out that the competing claims of hurry and hearing can be reconciled by making situational modifications in the audi alteram partem rule:

> "(Lord Denning M.R., in Howard v. Borneman, summarised the observations of the Law Lords in this form.) No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or

[16] **1971 AC 297**

> otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded an opportunity of hearing the parties, and revoke the earlier directions. All that we need emphasize is that the content of natural justice is a dependent variable, not an easy casualty.
>
> 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 added)

39. In ***Maneka Gandhi***, it was laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or opportunity to be heard, the preliminary action should be soon followed by a full remedial hearing.

40. The High Court of Australia in ***Commissioner of Police v. Tanos***[17] held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures. In ***Heatley v. Tasmanian Racing & Gaming Commission***[18] the same High Court held that

[17] **(1958) 98 CLR 383**
[18] **14 Aus LR 519**

without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the commission to issue a warning-off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the commission and show why the proposed long-term order be not made.

41. As pointed out in ***Mohinder Singh Gill v. Chief Election Commissioner*** and in ***Maneka Gandhi v. Union of India*** such cases where owing to the compulsion of the fact-situation or the necessity of taking speedy action, no pre-decisional hearing is given but the action is followed soon by a full post-decisional hearing to the person affected, do not, in reality, constitute an "exception" to the audi alteram partem rule. To call such cases an "exception" is a misnomer because they do not exclude "fair play in action", but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing.

42. "The necessity for speed", writes Paul Jackson: "may justify immediate action, it will, however, normally allow for a hearing at a later stage". The possibility of such a hearing — and the adequacy of any later remedy should the initial action prove to have been unjustified — are considerations to be borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought "that because rough, swift or imperfect justice only is available that there ought to be no justice": ***Pratt v. Wanganui Education Board***.

43. Prof. de Smith, the renowned author of Judicial Review (3rd Edn.) has at p. 170, expressed his views on this aspect of the subject, thus: "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto? A prior hearing may be better than a subsequent hearing, but a subsequent

hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings."

44. In short, 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 progress 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, to recall the words of Bhagwati, J., 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."

(Italics in original; underscoring supplied)

54. Compliance with the *audi alteram partem* requirement is, therefore, non-negotiable. In rare cases, and where administrative exigencies or considerations of expedience absolutely proscribe grant of a pre-decisional hearing, an immediate post-decisional hearing may suffice. That, however, is clearly the exception, and

> cannot be used as an escape route to avoid granting a pre-decisional hearing. Where, therefore, the situation is not so emergent as would justify the hearing to be deferred to the post-decisional stage, the decision, if it entails civil consequences and has not been preceded by a hearing, is vitiated in its entirety. The only exception is where the statute expressly excludes the requirement of grant of a hearing."

28. In these circumstances, Ms. Manisha Singh, with commendable fairness, submits that the Court may dispose of the matter in the light of the judgment in ***Mount Columbus School***, but reserve the right with the CBSE to proceed against the school, if so advised. The Court appreciates the fair stand taken by Ms. Manisha Singh.

29. In these circumstances, following the afore-extracted passages from the decision in ***Mount Columbus School***, the impugned order withdrawing provisional affiliation of the petitioner, and the order dated 7 May 2024 rejecting the appeal filed by the petitioner thereagainst, stand quashed and set aside. The provisional affiliation granted to the petitioner stands restored.

30. Needless to say, however this order shall not curb the CBSE from proceeding against the petitioner if so advised in accordance with law and the decisions of this Court in that regard.

31. The writ petition stands allowed to the aforesaid extent, with no order as to costs.

CM APPL. 27518/2024 (stay) and CM APPL. 31126/2024

(amended WP (C) 6607/2024 to be taken on record)

32. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

MAY 22, 2024
rb

Click here to check corrigendum, if any