

# **The Concept of Post Decisional Hearing: Establishing its Jurisprudence, and Contemporaneous Relevance**

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## **Abstract**

In the late 1970's Indian Legal Jurisprudence witnessed the evolution and growth of a new dynamic concept named 'Post Decisional Hearing'. Principle of Natural Justice ought not to be followed in strict sense it must have a flexible approach and the result of that approach has lead to the development of Post Decisional Hearing. In present context, the principle is being followed at many instances. In many situations where providing pre decisional hearing becomes difficult than authorities may give an opportunity to be heard to other party after taking tentative decisions, this will be seen in compliance with the Rule of Audi AlteramPartem. The principle of Natural Justice must be followed by administrative and Quasi Judicial Bodies also. Though Pre Decisional Hearing must be the rule and Post Decisional Hearing must only be applied in exceptional circumstances, it must be applied judiciously. Providing Opportunity to be heard is the basic right that should be present with every individual before passing an order. The concept of Post Decisional Hearing in India was introduced through the judicial decisions of the Apex Court. After the evolution of this principle the court looked into the effectiveness of the same through various judgements. The relevance and significance that has been gained by this principle in present time is enormous.

## **Introduction**

Natural Justice is the underlying soul of impartial and unbiased court rulings. The fundamental rule governing the principle of Natural Justice is Audi AlteramPartem; it embodies the concept that no one should be condemned unheard. Right to be heard is an essential and imperative element of Principle of Natural Justice. The jurisprudence behind this principle is that a person who is accused or whose right and interest are being affected or against whom adverse action are being initiated by an authority must be given an opportunity to defend and present his views on those matters, rather deciding the issue without hearing the party. A fair hearing is the duty of the administration, it is a right that every civilized society must provide it to their citizens, though right to be heard is not a fundamental right.<sup>1</sup>

Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The norms pertinent to fair hearing differs from institution to institution. The Apex Court has stated that the principles of Natural Justice are not rigid, immutable, but are flexible in nature.<sup>2</sup> The Supreme Court has been comprehensively able to appreciate the concept of fair hearing as an elastic one and is not susceptible of easy and precise definition.<sup>3</sup> At every stage of administrative adjudication, the principle of Audi AlteramPartem must be followed. Audi alterampartem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Its reach should not be narrowed and its applicability circumscribed. Even in cases of administrative actions Principle of Natural Justice is applied which was first proposed in the English Case Ridge v. Baldwin<sup>4</sup> and reiterated in Indian case State of Orissa v. Dr. Binapani Dei &Ors<sup>5</sup>

In this paper we would, on the basis of Audi AlteramPartem, lucidly lay out and establish the jurisprudence of Post-Decisional Hearing. As there is a lack of authoritative literature and

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<sup>1</sup>Union of India v. J.N. Sinha 1971 SCR (1) 791.

<sup>2</sup> K.L. Tripathi v. State Bank of India, AIR 1984 SC 273 at 285.

<sup>3</sup>Mineral Development v. State of Bihar AIR 1960 SC 468.

<sup>4</sup>1964 A.C. p. 40.

<sup>5</sup>1967 2 SCR 625.

commentary on the topic, we would be doing this with the help of some prominent Supreme Court ruling in which the Court has gone into every contention of the matter and laid down the principles on Post-Decisional hearing, also deliberating on its justifiability and exceptionality. Further, we would delve into some recent case laws and put forth an opinionated view on the use and need for Post-Decisional hearing.

### **Concept of Post Decision Hearing**

The idea of Post Decision Hearing has been developed to maintain a balance between administrative efficiency and fairness to individuals.<sup>6</sup> In Post Decisional Hearing, an individual is given an opportunity to be heard after a tentative decision has been taken by the authorities. In certain situations, it is not feasible for the authorities to have a normal pre-decisional hearing and decisions are being taken on first instance before providing the individual to present his views, than it would be consider reasonable if the authorities provide Post Decision Hearing as well ,as it will be in compliance with the Principle of Natural Justice. In Post Decision Hearing, the prominent point is that authorities must take only a tentative decision and not a final decision without hearing the party concerned.<sup>7</sup> The fundamental objective is that when a final decision is taken than it becomes difficult for the authorities to reverse it and the purpose of providing a fair hearing gets defeated,therefore, for an accused it turns out to be a less effective than pre decision hearing. The similar proposition was ingeminated by the Apex Court.<sup>8</sup>

With the introduction of this concept, the prospect of Principle of Natural Justice has widened. The Supreme Court has been emphatic and prefers for Pre Decision Hearing rather Post Decision Hearing which must be done only in extreme and unavoidable cases. It strengthens the concept of Audi AlteramPartem by providing Right to Heard at a later stage. The Supreme Court has different views on Post Decision Hearing, on whether providing opportunity to be heard at a later stage subserves the Principle of Natural Justice or not, or can post decision hearing be an absolute substitute for pre decision hearing.

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<sup>6</sup>I.P.Massey, Administrative Law, (6<sup>th</sup> edition 2005).

<sup>7</sup> M P Jain & S C Jain, Principles of Administrative Law ( 5<sup>th</sup>edition, 2007).

<sup>8</sup>Yoginath D. Bagde v. State of Maharashtra, (1997) 7 SCC 739.

The concept of post-decisional hearing, though jurisprudentially groundbreaking, has been rather frequently discussed; so much so that there only a handful of cases which can be cited to discuss the concept and its jurisprudence in depth and detail. An analysis of the same are as follows

### **Establishing its jurisprudence through established case laws**

The Supreme Court has recognized the concept of Post Decision Hearing in many of its judgements. There are no strict principles related to whether Post Decision Hearing is an adequate means to justify and satisfy the rule of Audi AlteramPartem, it depends on the dimensions and facts of every case.

#### *Maneka Gandhi v. Union of India*<sup>9</sup>

This case is a landmark judgement on this point and was instrumental in introducing the concept of Post Decision Hearing in Indian Legal Jurisprudence.

The petitioner was provided with a notice by the Regional Passport Office, Delhi to submit the passport within seven days of her receiving the notice. The decision was made by the Government of India under Section 10(3)(c) of Passport Act,1967 on the ground of Public Interest. The petitioner immediately asked the Passport Office to furnish the grounds on which her passport is impounded upon as provided under Section 10(5), the Government refused to provide the same stating in the interest of the general public, they will not provide the reasons for this order. The petitioner filed a writ petition challenging the order passed by the Government.

#### Analysis of few relevant Sections of Passport Act, 1967:

Section 10(3)(c) provide one of the ground on which passport could be impounded by the concerned authorities. The concern section states that in the interest of sovereignty and integrity of India, security of India or in the interest of General Public, the authorities have the power to take back the passport of that individual.

Section 10(5) makes it mandatory for the Government to provide reason to the concerned person regarding the impounding of his passport unless the Government is of the opinion that it may be

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<sup>9</sup>1978 SCR (2) 621.

against the interest of sovereignty and integrity of India or security of India or in the interest of general public.

Issues Raised:

1. Whether the Section 10(3)(c) of the Passport Act, 1967 violates the Fundamental Right provided under Article 14, 19(1)(a) or (g)?
2. Does Freedom of Speech and Expression confined to Indian Territory or it extends to foreign land also?
3. Whether the order passed by the Government intra vires to Section 10(3)(c)?
4. Should the Government abide by the Principle of Natural Justice and give the opportunity to the petitioner to be heard?

Contentions by the Petitioner

1. The petitioner raised the issue with regard to the violation of Article 14 of Indian Constitution while applying Section 10(3)(c) of the Passport Act, 1967. The arbitrariness and vagueness of the phrase “in the interest of general public” mentioned in section 10(3)(c) leads to excessive, unguided and unfettered power to the authorities, there exists no reasonable ground to make such an order.
2. The petitioner further argued that no opportunity to be heard was provided by the Government before passing this order under Section 10(3)(c), which violates the fundamental rule of Natural Justice, therefore the order should be made null and void.
3. The petitioner contended that her Right to Life is being violated by not allowing her to visit foreign country and they substantiated their argument by relying on *Satwant Singh Sawhney v. D.Ramarathnam, Assistant Passport Officer. Government of India, New Delhi &Ors*<sup>10</sup> in which it was held that Right to Life includes Right to go Abroad. Article 21, Right to Life was also brought in by the petitioner. They stated that Article 21 could only be revoked by the procedure establish by Law. And section 10(3)(c) does not abide or fall in the category of such procedure established by law and hence it is ultra vires. In *A.K. Gopalan v. State of Madras*,<sup>11</sup> majority judges held

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<sup>10</sup>1967 SCR (2) 525.

<sup>11</sup> 1950 SCR 88.

- that the any procedure prescribed by Law under Article 21 cannot be arbitrary, oppressive or unjust.
4. The petitioner stated that she is a journalist and for her professional work she had to visit foreign nation but through the order made by the Government her Right to free speech and expression and practice any profession provided under Article 19(1)(a) and (g) respectively is violated through this order, and therefore it must be struck down by the court. The petitioner stated that Article 19(1)(a) and (g) is applicable outside the Indian Territory also and for the same they brought Article 19 of Universal Declaration of Human Rights (UDHR), 1948<sup>12</sup> which declares that an individual must have right to express his views and speech across the globe without any hindrance, and our Constitution which came after this declaration abides by the same and hence an individual's Fundamental Right under Article 19(1)(a) and (g) exists outside the Indian Territorial boundaries. Article 19 can only be revoked on the grounds provided under Article 19(6) and no such ground as provided by the order is mentioned in that provision. Right to go Abroad is peripheral right emanating from the right to freedom of speech and expression and is therefore covered under Article 19(1)(a).

#### Arguments by the Respondent

1. Regarding the issue of Article 19, the Respondents urged that Article 19 only provides the rights within the Indian Territory; it cannot be comprehended with right to go abroad and hence the order cannot be stated as violation of Fundamental Right as provided under Article 19. Right to go abroad was not connected integrally with freedom of speech and expression.
2. The Attorney General urged that Rule of Audi AlteramPartem must be excluded in the following case, as the purpose for which the passport was to be impounded may be frustrated. The holder of passport may leave the country; therefore audialterampartem rule cannot in all fairness be applied while impounding a passport.

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<sup>12</sup>Report of Universal Declaration of Human Rights, United Nations.(1948).

3. The ground on which the Government issued the order for the impoundment of passport was the fear that the petitioner may leave the country and not provide evidence to Shah Commission which was appointed by the Government.

### Judgement

1. The argument presented by the Attorney General regarding the applicability of *audi alteram partem* was rejected by the Court. The court stated that it is necessary for the authorities to comply by the principle of Natural Justice and an opportunity to be heard must be provided to the petitioner before passing any final order.
2. Court held that procedure established by section 10(3)(c) of Passport Act, 1967 is in conformity with the requirement of Article 21. The Act provides the ground on which the passport could be impounded and this procedure was comprehensively recognized by the Court.
3. While considering the issue concerning Article 14, court categorically stated that certain reasonable ground must be there while differentiating between two subjects which were given in the case *E.P. Royappa v. State of Tamil Nadu & Another*<sup>13</sup>. In present case court disagreed with the petitioners view and held that Passport Act, 1967 clearly provides the ground on which passport could be taken back by the authorities and the powers given to these authorities are not unfettered and excessive. Therefore under Section 10(3)(c), power conferred to the authorities are in conformity with Article 14.
4. The court discussed *R.C.Cooper v. Union of India* to mention the rule of direct and inevitable test which was propounded in this case. The respondent argument regarding Article 19 that Right to go abroad does not affect Article 19 and also no intention exist on part of the authorities to exclude Fundamental Right was not appreciated by the court. Court observed that the decision to impound passport may affect a person's profession or his free speech and expression though not directly but inevitably it may harm their Fundamental Rights. But in this particular case court rejected the petitioner argument and held through this order Article 19 is not violated as the purpose for which she had to visit was not clearly stated. Court also held that certain Fundamental Rights can be exercised even beyond the territories of India. The petitioner heavily relied on the American

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<sup>13</sup>1974 SCR (2) 348.

Judgement in *Kent v. Dullas*<sup>14</sup> in which court held that right to travel is our Fundamental Right.

Finally the court did not pass any order as assurance was provided by the Attorney General to provide the petitioner with the opportunity to present her views within two weeks (Post Decisional Hearing) and prior to the taking of final decision authorities will consider the views given by the petitioner.

Hence first time in Indian Legal Jurisprudence the concept to Audi Alteram Partem was evolved.

### *Swadeshi Cotton Mills v. Union of India*<sup>15</sup>

In 1978, Swadeshi Cotton Mills was taken over by the Government through the Industries (Development and Regulation) Act, 1951 on the ground that the production of articles will be drastically reduced and immediate action is required to protect it. The management was handed over to National Textile Corporation Limited for a term of five years. The act provides the Centre Government with the power to issue orders regarding any public limited industry which is not been able to function properly. The company decided to file a writ petition in Delhi High Court against the Government's order. The High Court upheld the order of government. The appellant then filed a revision petition before Supreme Court.

### Questions Raised

1. Can Pre Decisional Hearing be excluded if the act expressly mentions about providing Post Decisional Hearing?
2. Whether it was necessary to observe the rules of Natural Justice before issuing the order by the Government?

### Contentions by the Appellate

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<sup>14</sup>357 U.S.116 (1958).

<sup>15</sup>1981 SCR (2) 533.

1. The legislative intention to exclude pre decisional hearing cannot be inferred only because Clause 18(F) provides for Post Decisional Hearing. No specific provision exists in the act which expressly or has inevitable implication as to the exclusion of Pre decisional Hearing. The counsel substantiated his views by relying on a Supreme Court judgement, *Keshava Mills Company Ltd. v. Union of India*,<sup>16</sup> the court held in this case that before passing an order government must give an opportunity to the party to express their views and abide by the principles of Natural Justice.
2. Section 18(f) cannot be a substitute for pre decisional hearing. The effect and operation of Post decisional hearing is prospective and not retrospective. Therefore post decisional hearing is not an adequate substitute to pre decisional hearing.
3. Section 18AA(a) provides for a word 'immediate'. Appellant stated that the word immediate has been incorporated with regard to the investigation, any action may be taken by the authorities without any investigation but this does not exclude the principle of *audi alteram partem*. The counsel argued that Immediacy does not exclude a duty to act fairly because even an emergent situation can co-exist with the canons of natural justice.

#### Arguments by Respondent

1. The Union of India argued that principle of Natural Justice has been incorporated in Section 18(F) by providing for Post Decisional Hearing. The counsel on behalf of the government argued that even by providing opportunity to be heard the effect on the government order would have been same as they had relied on the balance sheet and other accounts of the Company.
2. An aggrieved party can file an application to cancel the order under Section 18(F).
3. In an immediate situation the act provides the power to the government to issue order, and in this matter as the production was declining at a greater pace therefore the government issued the order regarding the management of the Company and

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<sup>16</sup>[1973] 3 S.C.R. 22.

therefore an opportunity to be heard was not provided to the Company due to the urgency and taking appropriate actions immediately. And regarding immediacy of the situation it is outside the purview of judicial review if the legislature expressly provides power to administration to determine the same which was proposed in the case of Queen v. Davey & Ors.

### Judgement

1. The court reversed the decision of High Court and held that Section 18AA does not exclude the rule of *audi alteram partem* at pre decisional stage. The respondents contention that providing a prior opportunity to the Company would have been useless was rejected by the Apex Court by citing *S.L.Kapoor v. Jagmohan*.<sup>17</sup>
2. The phrase in Section 18AA(a) 'immediate action is necessary', court held that this phrase is used with regard to 'without proper investigation' mentioned under section 15 and it does not extend to excluding the principle of natural justice. Court took a pragmatic view and held that in this case the Kanpur unit was closed for more than three months and the other five units though few of them showed declining trend in the production but this does not constitute as a situation to take immediate actions, and therefore government had violated the rule of *audi alteram partem* by not providing opportunity to be heard.
3. The court recognized the principle of Post Decisional Hearing and held that in certain situations it is not possible to give prior notice or opportunity to be heard, in such circumstances the authorities may take the necessary decisions but it must be followed by a full remedial hearing. Supreme Court previously observed the same in *Mohinder Singh Gill v. Chief Election Commissioner*.<sup>18</sup>
4. Regarding the judicial review of the order Apex Court differed from the respondent and stated that taking immediate action is the question of fact and therefore court can interfere if the administration is not reasonable in its approach as they form their opinion by collecting evidences.

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<sup>17</sup>[1981] 1 S.C.R. 746.

<sup>18</sup>AIR 1978 SC 851.

Post decisional hearing does not exclude the rule of pre decisional hearing unless specifically prescribed by the act. And in this case the Government has violated the Principle of Natural Justice by not providing an opportunity to be heard.

*K.I. Shephard v. Union of India*<sup>19</sup>-

The question arose in the said case was related to the effectiveness of Post Decisional Hearing.

The Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank were amalgamated with Punjab National Bank, Canara Bank, State Bank of India respectively in terms of separate schemes drawn under the Banking Regulation Act, 1949. 125 employees of the transferor banks were excluded from their employment by the transferee banks without providing any justification and neither gave the employees the opportunity to respond. The employees approached the High Court for relief, a single judge bench provided a partial relief, and a subsequent writ petition by the transferee bank was rejected by the Division Bench. The Single judge of Kerala had proposed the post amalgamation hearing to the hearings later vacated by the divisional bench. Finally the petition was filed in the Apex Court.

The main dispute arose in the interpretation of Section 45 of Banking Regulation Act, 1949. The relevance of this section is that it provides for the amalgamation of the banks and the procedure that must be followed. It noticeably provides with the continuation of the employees in the transferee bank with the same terms and conditions of services which were present in their previous employment.

#### Contentions by the Petitioners

1. The counsel for the petitioner relied on the Subsection 6(a) of Section 45, and stated that the act contemplates the employees to be specifically named in the draft scheme. They supported their argument by showing and inferring the intention of the legislatures while drafting this provision.
2. Under Section 45, the employees of transferor bank are insured with the same terms and conditions of the services to be continued by the transferee bank. And in the present case, the employees are denied with this proposition.

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<sup>19</sup>(1987) 4 SCC 431.

3. Infraction and non compliance with the Natural justice and not being given an opportunity to be heard was the main contention of the petitioners.

#### Written Submissions by the Respondent

1. Initially the learned counsel on the behalf of RBI stated, in the matter of legislative actions it is not mandatory to abide by the principles of natural justice. As the Act was prepared by the legislature and for the sanctioning of the scheme prepared by RBI, it needs to be put forward to the Central Government. The order issued by the Central Government needs to be placed before the parliament. Therefore it was completely a legislative process and need not follow the principle of natural justice. They carried forward this argument by stating the applicability of natural justice in only judicial and quasi judicial functions. Legislative and administrative functions must be kept outside the purview of natural justice. To support the argument the counsel had heavily relied on the Supreme Court decision in Union of India &Anr. V. Cynamide India Ltd. &Anr.<sup>20</sup> In which it is well settled principle that natural justice shall not be employed in the matter of legislative actions.
2. Contrary to the views of the Petitioner, RBI contended that it was not necessary to include the names of the employees excluded from the employment in the draft scheme and the names could be incorporated in a later stage after the scrutinizing done by RBI.
3. There is no specific provision mentioned in the act which provides the right to be heard to the employees.

#### Judgement

The court allowed the appeal by comprehensively interpreting the Section 45 and the intent of the legislatures behind this provision. Dealing with all the contentions raised by the parties at length Court finally allowed the appeal and ordered the bank to reinstate the employees.

On examining the argument raised by the RBI as to the legislative function regarding drafting the scheme, court held only by presenting the order by the Central Government in the parliament will not be termed as legislative function. In the Act it is provided the drafting of

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<sup>20</sup>1987 2 SCC 720.

scheme will be executed by the Reserve Bank of India, therefore it is rather an administrative or executive function.

Court interpreted the intention of the legislatures in the procedure regarding drafting of scheme and concluded that it was necessary for RBI to name the employees which needs to be terminated from the services in the initial stage of scheme drafting and validated the contention raised by the Petitioner.

Drafting of Scheme was explained as an executive or administrative function by the Apex Court. The Counsel for the RBI stated even in the process of executive function principle of natural justice can be waived. While refusing this contention, Supreme Court relied on the few Judgement mainly *State of Orissa v. Dr. Binapani Dei &Ors.*<sup>21</sup>, which clearly provides that any administrative order which involves civil consequences must abide by the principle of natural justice. Another case *A.K Kraipak&ors. v. Union of India &ors*<sup>22</sup> professing the applicability of natural justice in administrative functions. The court reiterated that if the objective of Natural Justice is to protect the individuals from unjust than it must compulsorily be applied to the administrative functions as well. On the basis of these authorities court held that any administrative functions performed by the executive are under the ambit of Principle of Natural Justice.

Court was against the concept of providing Post Decision (amalgamation) Hearing proposed by the Single judge bench of Kerala. While addressing this issue it was observed that Post Decisional Hearing in this case will not serve its purpose. Employees those who were sacked had been drastically been affected by this decision, it had a negative effect on their livelihood. And giving them opportunity after taking the decision will not serve its fruitful purpose as the authorities would also move with a closed mind setup. Therefore, there is no justification to provide Post Decisional Hearing, and doing so will not fulfill the principle of Natural Justice.

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<sup>21</sup> Supra Note 5.

<sup>22</sup>1970 1 SCR 457.

Agreeing with the petitioner's contentions court upheld their appeal and ordered the banks to restore the employees. And the major principle that surfaced was the applicability of Principle of Natural Justice while serving administrative functions.

*H.L.Treahan v. Union of India*<sup>23</sup>-

The core issue in the following case was whether post decisional hearing undermines the principle of natural justice or not.

Caltex Oil Refinery (India) Ltd. was acquired by the Central Government on 30<sup>th</sup> December, 1976 through Section 3 of The Caltex (Acquisition of Shares of Caltex Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd) Act 17 of 1977 which provides for the acquisition of the shares of CORIL. According to the said section all the shares in the company were owned by the Central Government.

On 8<sup>th</sup> March, 1978 the chairman issued a circular stating that perquisites admissible to the management staff of CORIL would be rationalized in the manner prescribed in the said circular. And subsequently on May 9<sup>th</sup>, 1978 CORIL was amalgamated with Hindustan Petroleum Corporation Ltd.

#### Important Sections of the Act

Section 9(1) provides the Central Government to vest its rights, title and liabilities in the Government Company through a notification.

Section 11(2) of the Act comprehensively states that any employee who was appointed before the appointed day (December 30<sup>th</sup>, 1976. Section 2(1)) would have the same rights to pensions, gratuity and other terms and conditions of their employment and shall continue to hold the office unless the following conditions are fulfilled which are mentioned in the section. This section secured the individuals who were the employees in this Company before the acquisition was made by the Government.

Section 23- This section provides Central Government with the power to make rules to carry out this act.

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<sup>23</sup>(1989) 1 SCC 764.

The employees challenged this circular before the High Court as they were not given the opportunity to present their opinions neither the chairperson before issuing the circular consulted and heard the employees.

### Petitioners Contention

1. The first contention put forward by the petitioner was that the notification issued by the Central Government regarding the management of CORIL was ultra vires to Section 9(1).
2. The violation of Article 14, 19 and 31 of Indian Constitution through Section 11(1) and therefore this provision must be struck down.
3. Section 11(1) provides the officer with an arbitrary power to alter the terms and conditions of the service or employment.
4. Finally, the petitioner rely their argument on the Principle of Natural Justice. They contended that the officials had not provided them the opportunity to present their views and therefore, this evidently shows the violation of Principle of Natural Justice.

### Arguments by Respondents

1. No prejudicial alternation was made in the terms and conditions of their service.
2. The Respondents in their contentions has not been able to provide with the clause which indicates that the circular is detriment to their current employment.
3. Lastly, they stated that an opportunity of hearing was provided to employees after the circular was issued.

### Issues Raised

Whether Post Decisional Hearing subserve the Principle of Natural Justice?

### Judgement

The High Court agreed with the contentions of the employees and quashed the impugned order. Finally it was brought before the Supreme Court, and the Apex Court upheld the decision of the Delhi High Court and observed that the employees of CORIL were not given the opportunity to speak and the violation of principle of natural justice was quite evident in this particular case. Following the Judgement of K.I. Shephard v. Union of India in which a vital principle was laid

down in relation to government servants and administrative officers that no deprivation of the rights and benefits enjoyed by these officers without following the principle of natural justice and providing opportunity to be heard.

*'Providing Post decision Hearing does not subserve the principle of natural justice.'* Supreme Court took a pragmatic view and stated that the concerned authorities while hearing the other side after taking a tentative decision proceed with the matter with the closed mind setup and becomes difficult for them to change and reverse their decision. Therefore, by providing Post Decisional Hearing it will not be in compliance with the principle of Natural Justice.

These cases have helped in the development and evolution of Post Decisional Hearing. The courts have been able to comprehensively determine the effectiveness and working of a new era concept of Post Decisional Hearing. In many other cases such as *Canara Bank v. V.K.Awasthy*<sup>24</sup> and others Courts have judicially applied this concept.

### **Contemporaneous Relevance**

The concept of Post Decisional Hearing has gained its significance in recent times. The urgency in taking administrative actions without giving a pre decisional hearing has gradually developed the notion of Post Decisional Hearing. In few situations it becomes necessary for the authorities to take immediate actions else the purpose would be defeated, in those cases providing post decision hearing may prove to be in compliance with the Principle of Natural Justice, though it cannot be a substitute to pre decision hearing. The rule of *audi alteram partem* has become dynamic with the growth of administrative and legislative function. Individuals affected by the decisions of the concerned authorities seeks to implement the principle of Natural Justice and providing Post Decisional Hearing is deemed as best remedy for the same as held in *Maneka Gandhi case*.<sup>25</sup> In present time, even administrative authorities have power to provide Post Decisional Hearing if they have sufficient and reasonable ground for not providing Pre decisional hearing. It helps the authorities to take action and at the same moment abide by the Principle of Natural Justice. The administrative procedure makes it difficult for an aggrieved party to present its case after the order has been passed but due to the introduction of this concept

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<sup>24</sup>(2005) 6 SCC 321.

<sup>25</sup> Supra Note 9.

even after passing a tentative decision a person is given the opportunity to be heard.

*Canara Bank v. V.K.Awasthi*<sup>26</sup>

The respondent was served with a show cause notice on 6.08.1992 and was granted 15 days to reply. The respondent failed to reply and as a consequence was terminated from the service on 17.08.1992. The respondent contended that principles of natural justice was not followed and High Court upholding the said contention ordered the bank to provide proper hearing to the respondent before the disciplinary committee. Hence, the bank filed an appeal before the Supreme Court.

The bank provided the respondent with personal hearing before the appellant authority. The issue concerning in this case was whether post decisional hearing provided by the bank to the respondent before appellant authority is in concurrence with Audi alteram partem or not. The Apex Court relied on *Charan Lal Sahuv. Union*<sup>27</sup> where the Court held that 'post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing'. Therefore, if there is any lack in the proceedings of any case, then it can be resolved by using post- decisional hearing. Therefore court allowed the appeal and held that no violation of Principle of Natural Justice was witnessed and Post Decisional Hearing in the present appeal serves the purpose of pre decisional hearing.

The application of Post Decisional Hearing has not been appreciated by Courts when the matter was in relation to elections and Representation of People's Act. In case of *Ram Naresh Tyagi & Ors. v. Election Commission of India & Anr.*<sup>28</sup> and *Arun Tyagi v. Election Commission of India & Anr.*<sup>29</sup> The Delhi High Court ruled out the application of Post Decisional hearing. The issue was regarding the deletion of voter's names from their electoral roll. Section 22- C of Representation of Peoples Act provides that hearing must be provided to the voter before removing their name from the electoral roll. The Election Commission without providing hearing deleted 841 names from the electoral roll. Petitioners challenged before the High Court. Election Commission contended that they are willing to provide post decisional hearing but the

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<sup>26</sup>(2005) 6 SCC 321.

<sup>27</sup> AIR 1990 SC 1480.

<sup>28</sup>WP(C) No.5064 of 2013.

<sup>29</sup>LPA No.2/2011.

Court rejecting their argument held that in such matters post Decisional Hearing does not serve as substitute of Pre Decisional Hearing and if the legislation clearly provides for hearing before deletion of names, than providing hearing after the decision is taken to remove the names does not serve the purpose and hence, Election Commission was ordered to reinstate their names in the Electoral Roll.

These cases are a proof that post decisional hearing as a process is here to stay. Primarily, because it is done in cases of extreme and grave importance which have huge bearing on the legality of the thing or act concerned. So, they serve as a good and reasonable method to pass and carry out orders so that the matter doesn't worsen, as well as, respecting the urgency of the situation. Also, post decisional hearing is well within the boundaries of Natural Justice, and we can say that it challengesthe boundaries of natural justice to the point on furthering it but never crosses those boundaries. Therefore it is a way to enlarge and broaden the scope of Natural Justice on case to case basis, thus, accreditingthe legal jurisprudence with some very practical and sound processes.

## **Conclusion**

Post decisional hearing as a concept, though indirectlydisregarded by the Supreme Court, has stood the test of time and is here to stay. Though it might appear to be blatant violation of Audit AlteramPartem and Principles of Natural Justice, when delved into it comes out to be as a furtherance of these established legal principles. Not only does the concept of Post Decisional Hearing flexibly furthers principles of natural justice but it helps its age old jurisprudence to survive the test of time and makes it a very dynamic concept, equipped with flexibility and opportunity for further growth. Considering this aspect of it, it is a principle which must not be disregarded and discouraged but must be used as a useful measure respecting the urgency of the fact situations. But it must be kept in mind that is should not allowed to run amuck, as then it might become a bull in china shop and end up subserving the principles of natural justice altogether. Thus, it must be taken an exceptional rule which in extreme cases is a useful method to meet the ends of justice, respecting the urgency of the facts and the legal repercussions which might result if not acted upon.

