TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

DATED 28TH SEPTEMBER, 2012

Petition No.444 of 2011

Bharti Airtel Ltd., New Delhi	...	Petitioner
Vs.		
Union of India, DoT	...	Respondent

Petition No.449 of 2011

(With M.A. Nos. 309, 311 & 312 of 2011)

Tata Communication Ltd.	...	Petitioner
Vs.		
Union of India & Anr.	...	Respondents

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON
HON'BLE MR.P.K. RASTOGI, MEMBER

For Petition No. 444 of 2011

For Petitioner	:	Mr. Maninder Singh, Sr. Advocate Mr. Tarun Gulati, Advocate Mr. Neil Hildrelth, Advocate Ms. Pearl Kumar, Advocate
For Respondent	:	Mr.K.P.S. Kohli, Advocate Mr. Tarven Singh, Advocate for Ms. Maneesha Dhir, Advocate

For Petition No. 449 of 2011

For Petitioner	:	Mr. Upamanyu Hazarika, Sr. Advocate Ms.Dharitry Phookan, Advocate Mr.Paul Roy Paske, Advocate
For Respondent	:	Mr.K.P.S. Kohli, Advocate Mr.Abhishek Kumar, Advocate Mr. Tarveen Singh, Advocate for Ms. Maneesha Dhir, Advocate

J U D G E M E N T

These petitions, being interconnected, were taken up for hearing together and are being disposed of by this common judgment.

2. The Petitioners are holders of ILD licenses; the licensee having been granted in terms of the proviso appended to Section 4 of the Indian Telegraph Act, 1985 ('The Act').

The said licenses were amended, whereby and whereunder the licensees were permitted to enter into agreements with the foreign operators as regards completion of half circuits in the respective areas within which they were permitted to operate.

The Petitioners pursuant to or in furtherance of the conditions laid down in the said license inter alia, entered into agreements with a foreign operator -

M/s Singapore Telecom Ltd. (hereinafter called and referred to for the sake of brevity as 'STL'.).

3. The International Telecom Union prepared some modules for such agreements commonly known as 'One Stop Shopping' (OSS) and Full Circle Services Agreement (FCSA).

Whereas Bharti entered into an agreement with STL on OSS basis, TATA did so on FCS basis.

4. The Petitioners received notices on or about 30.6.2010 from the Respondent directing them to show cause as to why appropriate action shall not be taken against them, they having enabled an ILD service provider to illegally sell IPLC circuits directly to the customers in India and collect money from them in their own account operated in Singapore under the garb of the agreements, being in violation of the provisions of the Act as also Clauses 2.2(A), 11.1, 19.2 and 23.26 (iv) of the ILD license agreement.

5. The Petitioners on receipt of the said show cause notices and before filing their respective responses thereto sought for clarifications with regard thereto

from STL. TATA sought for clarification from other international operators as well.

Whereas Bharti did not receive any reply from STL, TATA did. In its reply STL contended that it had not committed any breach of the terms of the agreement and it had been in touch with the DoT.

It appears that no other or further step in this behalf was taken by Bharti. TATA, however, suspended its operations and ultimately by a letter dated 03.8.2010 terminated the agreement.

6. Replies were filed by the Petitioners herein to the said show cause notices inter alia, contending the action taken by them is permissible under the licence. They also sought to explain various methodologies for provisioning ILD services by the carriers to the customers contending that OSS/FCS have been standardized and widely used in telecom industry across the globe.

7. Indisputably, the Respondent constituted a Committee comprising of (i) DDG (Security), DDG (AS), DDG (CS), DDG (DS) and DDG (LF-II).

It is not in controversy now that the Petitioners herein were allowed to make a power point presentation and furnish their explanation(s) as regards the nature of the agreements.

According to Bharti, the said Committee submitted a report in favour of the Petitioners prior whereto some informations were sought for and supplied by them to the members thereof.

In support of the said contention reliance has been placed on a news item appearing in the daily 'Economic Times' on 24.4.2011 titled : "DoT says SingTel violated ILD norms; clean chit to Bharti, Tatas."

8. However, on or about 22.6.2011 a new Committee comprising of five members headed by an officer of the rank of a Director was constituted. Constitution of the said Committee allegedly was not made known to the Petitioner.

Concedingly no opportunity of hearing was given by the said Committee to the Petitioners. A report was submitted to the Respondent by the said Committee on or about 09.09.2011 whereafter the impugned order was passed on 11.11.2011 imposing a penalty of Rs.50.00 crores on each of the Petitioners.

9. The Petitioners are, thus. before us.

10. The Respondent in its reply inter alia, would contend :

1. The Petitioners could not have entered into the aforementioned agreements relying on or on the basis of the ITU recommendations which had not been accepted by the DoT.
2. Such agreements are violative of various clauses of the ILD licenses.
3. Admittedly STL could not have billed any Indian customer directly and it having done so, the Petitioners must be held to have violated the conditions of license.

11. Mr. Maninder Singh and Mr. U. Hazarika, learned senior counsel appearing for the Petitioners, in support of these petitions, urged:-

1. The impugned orders, having been passed in violation of the principles of natural justice, cannot be sustained.
2. One Committee having given an opportunity to the Petitioner to make presentation(s), and the other Committee having not provided such an opportunity, it must be held that the impugned orders have been passed at the instance of second Committee without hearing the Petitioners and on that ground alone the impugned orders are liable to be set aside.
3. One of the members of the said Committee, Mr. S.T. Abbas, who issued the notices was also a member of the Committee, issued the

impugned order and also affirmed an affidavit in support of the petition and, thus, there cannot be any doubt that he was a judge of his own cause.

4. The second Committee in its report dated 09.09.2011 having clearly stated that the matter had been referred to it to quantify the amount of penalty, it is beyond any pale of doubt that the Committee acted with a pre-determined mind.

12. Mr. K.P.S. Kohli, learned counsel appearing on behalf of the Respondent, on the other hand, would submit :-

1. Keeping in view the facts and circumstances of this case, it was for the Petitioners to establish their bona fide in the transaction and it having not been shown as to what steps had been taken against S.T.L. by them, these petitions should be dismissed.
2. The Petitioners had asked a wrong question which led to a wrong answer in so far as they based their entire case on ITU recommendations which having not been accepted by the Union of India, the agreements in question could not have been entered into.
3. In view of the admitted fact that STL has billed an Indian end customer which was not permissible in terms of the ILD license,

the Petitioners cannot be heard to say that they acted bonafide and/or are not liable to pay the amount of penalty for an act of omission and commission on the part of STL.

13. We may proceed on the basis of some admitted facts.

1. The Petitioners have been granted ILD licenses.
2. Keeping in view the amendments made in the ILD licenses, they were entitled to enter into agreements with a foreign operator providing for International Private Lease Circuit (IPLC).
3. The customers in question, namely, M/s Interglobe Technologies and IBM Daksh had offices in other countries as also in India.
4. They were bona fide customers.
5. STL had raised only one invoice in each of the cases on Indian end customer, although the second Committee in its report has considered three invoices.

14. The core issue in these matters is as to whether in this case the principles of natural justice had been breached.

15. The principles of natural justice, it is well settled cannot be put in a strait jacket formula. The extent of its application would differ from case to case.

16. The Petitioners have been inflicted with penalty of Rs.50.00 crores being the maximum amount specified in Clause 9 of the agreement wherefor charges were made against it and, thus, the principles of natural justice would be applicable. It is trite that higher the charges, higher would be the requirements to comply with the principles of natural justice.

We say so because the Respondent states that:-

1. The agreements entered into by and between the Petitioners and STL were illegal.
2. The Petitioners were accomplices to the acts of STL in so far as it acted in violation of the provisions of the Act and the conditions of license, wherefor a complaint to the CBI had been made by it.
3. The Petitioners had failed to perform their obligations under the licence.

If the said allegations are true, apart from the civil liability by way of imposition of penalties to the extent of Rs.50.00 crores, the Petitioners may

also face other proceedings i.e. termination of their licenses as also criminal proceeding.

We, therefore, are of the opinion that it is not a case where the petitioners can be said to have not been prejudiced by reason of non-compliance of principles of natural justice.

The Frankfurter principle laid down in Viterali Vs. Seaton (1959) 359 US 53 that 'he that takes the procedural sword shall perish with the sword', has been accepted by the Indian Courts.

(See for example Ramana Dayaram Shetty v. The International Airport Authority reported in (1979) SC 1628 para 10)

17. Before, however, we consider the extent of requirements of the said principles in so far as these petitions are concerned, we may notice a submission of Mr. Maninder Singh that the completion of half circuits have been mandated by the Telecom Regulatory Authority of India (TRAI).

18. The TRAI in exercise of its jurisdiction conferred upon it under Section 11(1)(b) read with Section 36 of the TRAI Act, has framed a Tariff Order known as 'Telecommunication Tariff (39th Amendment) Order, 2005'. By reason thereof, the parties have been prohibited from charging any amount more than

the specified rate. Completion of the half circuit by the Indian operator has been mandated thereby.

19. The said Regulations were framed on or about 08.09.2005, the relevant terms whereof are :-

(2) Coverage	*(a) All tariffs specified as ceilings.* *(b) The ceiling tariff in respect of each capacity specified in Item No.3 of this Schedule will be applicable for all destinations and types of cable systems used for carrying either voice or data.* *(c) Service providers may offer discount on the ceiling tariff. Discounts, if offered, shall be transparent, non-discriminatory based on laid down criteria and should be reported to TRAI.* *(d) It is mandatory for International Private Leased Circuit Service Providers to offer Half Circuits for all routes/destinations for which circuits are offered by them.*	
(3) Tariff for IPLC	*Capacity/Speed*	*Ceiling Tariff per annum (Rupees in Lakhs)*
	E1	*13*
	DS-3	*104*
	STM-1	*299*

20. In its Explanatory Memorandum, the TRAI stated :-

"Cable based International Private Leased Circuit (IPLC) that offers global connectivity through submarine cable is a critical input for provision of Broadband and Internet services, International Long Distance Voice Telephony and for a number of key industries like Information Technology (IT) and Information Technology-Enabled Services. These industries play a key role in the economic development of the country at this point of time and they are also considered to be quite critical to the future socio-economic development of India. It is therefore important that the price at which IPLC services are made available to the user industries are competitively determined.

Standard Tariff for Half-circuit IPLC to be mandatory

75. There are two components involved in the provision of IPLC service i.e. half circuit of the Indian end and the other half-circuit of the farther end. TRAI's regulation/tariff orders for IPLC can cover only the near end portion of the IPLC that is offered by a licensed ILDO of India. ILDOs in India do provide full circuit services of IPLC by having commercial arrangements with the foreign carriers; but the Tariff order of TRAI applies only for the near-end Half-circuits linked to India. Therefore, the Authority mandates a Standard Tariff Package in which Half-circuit will be offered in compliance with the ceiling tariff for each of the capacities and destinations for which full circuit services are offered by the ILDOs. This would enable the Authority to monitor the compliance of the tariff order by the service providers. However, the ILDOs are at liberty to offer competitive activity in the market. The choice from among all the tariff packages

including the mandatory Standard Tariff Package will rest with the buyers of IPLC Services."

21. There cannot, therefore, be any doubt or dispute that provisioning of the half circuit within the territorial jurisdiction of India had been recognized by the Regulator.

The ITU made recommendations in 1992 whereby and whereunder an agreement between the 'coordinating administration' and 'participating administration' for providing service to the customers was highlighted.

The subscriber would be the one of the Coordinating Administrator.

22. By signing a subscriber form of OSS, the participating coordinator had an option to enter into the said arrangements whereby the Coordinating Administration handles co-ordination between customers and other administrators concerned; the participating administration in order to make it simpler for the customer leasing International Private Leased Telecommunication Circuits.

23. It provided for a single point billing.

Clauses 4.2 and 4.4 of the said recommendations read as under:

"4.2 The coordinating Administration will not be liable to the participating Administration(s) for any charges unpaid by the customer. In the case of a customer failing to pay the bill for whichever reason, the coordinating Administration will inform the participating Administration(s) of this within a mutually agreed period.

4.4 The coordinating Administration may reserve the possibility of levying a special charge on the customer to recover any additional cost it has incurred."

24. Although a great deal of argument has been advanced as to the legal character of the said recommendations, nothing has been pointed out before us to show that the said ITU recommendations are contrary to or inconsistent with any provision of any Parliamentary Act or the Conditions of License.

The OSS/FCS agreement entered into by and between the Petitioners and S-Tel were placed before us on the first date of hearing.

Respondents themselves have annexed the said agreements as a part of their Replies.

25. Mr. Kohli, when asked, did not say that the said agreements are in any way illegal being contrary to any statue or public policy.

It is one thing to say that such agreements were drawn in the form as recommended by ITU but it is another thing to say that only because such

forms were adopted, the agreements become illegal. The agreements, there cannot be any doubt or dispute, must conform to the municipal laws and the licenses granted thereunder.

26. Mr. Kohli has taken great pains before us to show that there had been violations of certain provisions of the conditions of license. It has, however, not been shown that the agreements per se were violative of any statute or conditions of license.

27. The sole surviving question, therefore, is as to whether by reason of the action on the part of the STL in raising a single invoice on an Indian end customer would vitiate the entire agreement and/or by itself would be sufficient to impose penalty?

28. Mr. Kohli, in support of its contention that the ITU's recommendations have not been accepted in India, has placed strong reliance upon the judgment of this Tribunal in Petition No. 3 of 2005 Reliance Infocomm Ltd. Vs. Union of India, disposed of on 04.03.2005.

In that case, the Petitioners therein were charged with masking of calls by showing international calls as local calls.

A plea was raised that such arrangements are permitted by ITU.

The said contention of Reliance was negatived by this Tribunal opining that the ITU's recommendations were not contrary to the provisions of section 4 of the Act.

In fact, this Tribunal in its judgment, referring to the ITU's recommendations clearly stated that the Petitioner therein had failed to establish existence of such an agreement.

29. It is in the aforementioned factual backdrop, we may consider the applicability of the principles of natural justice.

In Automotive Tyre Manufacturers Association Vs. Designated Authority & Ors. reported in (2011) 2 SCC 258, the Supreme Court of India held :-

> *"**80.** It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of*

natural justice can neither be put in a strait jacket nor is it a general rule of universal application.

81. *Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha [(1970) 2 SCC 458] .)"*

30. The principles of natural justice, as is well known, comprise of two pillars:-

(i) Nobody should be condemned unheard;

(ii) Nobody should be a judge of his own cause.

31. To these basic pillars, a judge made pillar was added, namely 'duty to assign reasons'.

32. Applicability of the principles of natural justice, even in a case of administrative action is now beyond any question in view of the decision of the Supreme Court of India in Dr. Binapani Dey Vs. State of Orissa reported in A.I.R. (1967) SC 1269.

The dividing line between an 'administrative action' and a 'quasi judicial action' was said to be a thin one and in fact, the said fine distinction was obliterated in later decisions.

The principle of natural justice, it is now well settled by reason of a large number of decisions of the Supreme Court of India, is mandatorily required to be complied with in the cases where an Administrative order leads to any civil or evil consequence.

It is true, as was submitted by Mr. Kohli that only on the ground of non-compliance of the principles of natural justice, an order may not be set aside unless it is shown that the Petitioner has been prejudiced thereby.

33. Recently, the Apex Court in Kesar Enterprises Ltd. Vs. State of Uttar Pradesh and Others reported in (2011) 3 SCC 733, in a case involving imposition of penalty by the Excise Commissioner in exercise of its jurisdiction under U.P. Excise Act, 1910, noticed its earlier decision in Sahara India (Firm) Vs. CIT reported in (2008) 4 SCC 151 and stated the law in the following terms:-

"19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

It was opined that functions of the Excise Commissioner in terms of Rule 633 of the U.P. Excise Manual was quasi-judicial in nature, stating :-

"31. Undoubtedly, action under the said rule is a quasi-judicial function which involves due application of mind to the facts as well as to the requirements of law. Therefore, it is plain that before raising any demand and initiating any step to recover from the executants of the bond any amount by way of penalty, there has to be an adjudication as regards the breach of condition(s) of the bond or the failure to produce the discharge certificate within the time mentioned in the bond on the basis of the explanation as also the material which may be adduced by the person concerned denying the liability to pay such penalty. Moreover, the penalty amount has also to be quantified before proceedings for recovery of the amount so determined are taken.

32. In our view, therefore, if the requirement of an opportunity to show cause is not read into the said Rule, an action thereunder would be open to challenge as violative of Article 14 of the

Constitution of India on the ground that the power conferred on the competent authority under the provision is arbitrary."

34. Mr. Kohli, in support of his contention, however, has relied on Ossein And Gelatine Manufactures' Association of India Vs. Modi Alkalies And Chemicals Limited And Another reported in (1989) 4 SCC 264, wherein on the fact situation obtaining therein, it was concluded that no prejudice had been caused to the appellant therein and in fact, the order impugned therein itself summarized and dealt with all the important objections raised by it.

In that case, the issue revolved round grant of a permission to establish an undertaking for the manufacturer of Ossein and Gelatine in the State of Rajasthan, which was objected to by the Appellants.

The said decision, therefore did not, nor did it have any occasion to, deal with any matter involving an individual vis-à-vis a financial liability imposed by the State.

Reliance has also been placed by Mr. Kohli on Carborundum Universal Ltd. vs. Central Board of Direct Taxes reported in (1989) Supp 2 SCC 462.

The said decision was rendered in a case where a personal hearing was denied by the Board. As Section 220 (2-A) of the Income Tax Act conferred a discretionary power upon it in terms whereof a right to represent by the affected assesses was given and the decision was to be made on a consideration thereof, the principle of natural justice was held to have been complied with.

The Supreme Court of India, in view of the nature of the power available to the Board and keeping the same confined to the fact of the case, did not render any decision as to whether the Commissioner's report should have been supplied to the assesses before a decision was taken by the Board.

35. Reliance has also been placed upon Grosons Pharmaceuticals (P) Ltd. And Another Vs. State of U.P. And Others reported in (2001) 8 SCC 604, wherein an order of blacklisting was passed after issuing a show cause notice and obtaining the Contractor's reply.

In the fact situation obtaining in the said case, it was held :-

> *"It was sufficient requirement of law that an opportunity of show cause was given to the Appellant before it was blacklisted. It is not disputed that in the present case, the Appellant was given an opportunity to show cause and it did reply to the show cause, which was duly considered by the State Government."*

36. Reliance has also been placed on Ganesh Santa Ram Sirur Vs. State Bank of India And another reported in (2005) 1 SCC 13, wherein a question arose as to whether a Bank employee had committed a misconduct by sanctioning loan to his spouse in contravention of the service rules, although the cheque issued pursuant thereto was not encashed.

On fact, it was held that the decision in question was not an honest decision. It was furthermore held that objective was to ensure a fair hearing, a fair deal to a person whose rights are going to be affected and that the applicability of the principles of natural justice depends upon the context as well as facts and circumstances of each case.

The said decision, as would appear from paragraph 36 of the report, however, was rendered in the peculiar facts and circumstances of this case, as despite such a finding, the Court directed that the Appellant therein would be entitled to full pension and gratuity irrespective of his total period of service. Thus, for all intent and purport even the doctrine of proportionality was invoked.

37. In the instant case what, according to the Respondent itself, was necessary was to formulate a policy. The Committee was asked to examine whether any violation of the terms and conditions of international long distance licence has been caused by the Petitioners and quantify the amount of penalty on the ILD companies.

38. The First Committee headed by the Advisor (T) thought that the Petitioners should be given an opportunity to make a presentation. They not only did so, the Petitioners were given an opportunity to explain. The said

Committee had been constituted on 22.10.2010. A report was prepared. The Respondent accepted that the said Draft Report was under consideration. However, the Advisor (T) superannuated on 31.12.2010.

Effect thereof need not be considered as admittedly no final report has been submitted.

39. Learned senior counsel appearing on behalf of the Petitioner suggested that even other five members of the Committee should have signed the report or even some of them should have been made members of the Second Committee. We do not intend to go into the said question in these proceedings being not very relevant.

It is, however, beyond any doubt or dispute that the Second Committee did not give an opportunity of hearing to the Petitioners. They, of-course, had the materials before them but the same would not mean that the necessity of grant of personal hearing to explain their view points made in their earlier presentation and/or clear the doubts of the Members of the Committee effaced. The Second Committee submitted its report on 09.09.2011. The impugned order was passed on 11.11.2011.

A comparison of the show cause notice and the impugned order would clearly go to show that except for the last two paragraphs, the language used in both of them is identical.

The said two paragraphs read as under :-

"16. And whereas, it has been observed that M/s. BAL have submitted their reply on the basis of their OSS agreement entered into with M/s. STL. In their reply to the show cause notice, M/s. BAL has broadly mentioned that they had acted in compliance of OSS agreement. However, they have failed to prove the compliance of the Clause Nos. 2.2, 9.1, 11.1, 23.23, 23.26 (vi) and 19.2 of the ILD service license agreement which were stated to be violated by them as per show cause notice. DoT is of the view that M/s. BAL must have ensured that the IPLC customers in India are being served and billed by the Indian ILD operators; and the foreign carrier, with whom M/s BAL has signed OSS agreement, does not acquire customers in India and does not issue bills to the customers in India on the basis of such OSS agreement.

17. Now, therefore, as M/s Bharti Airtel Limited has violated the clause No. 2.2, 9.1, 11.1, 19.2, 23.23 and 23.26 of the ILD service license, a financial penalty of Rs.50 Crores (Rupees Fifty Crores) is hereby imposed on M/s Bharti Airtel Limited as per clause 13.2(ii) of the terms and conditions of the ILD service licence agreement. M/s. Bharti Airtel is directed to pay the financial penalty amounting to Rs.50 Crores immediately and in any case within 15 days of the date of issue of this notice failing which further action will be initiated under the terms and conditions of the ILD service licence. The amount may be deposited by means of demand draft/banker's cheque drawn on any scheduled bank payable at New Delhi in favour of Pay & Accounts Officer (Headquarter), Department of Telecommunications, New Delhi."

40. Thus, no reason has been assigned in support of the said order. How and in what manner, the provisions of the conditions of licence are said to have been violated have not been stated.

The Respondent arrived at an opinion that the "Petitioners must have ensured that the IPL customers in India are being served and billed by the Indian operators".

The fact that the Petitioners have billed only S. Tel and not its customers is not in dispute.

It is also evident from the records that the concerned customers i.e. both Interglobe and IBM (Daksh) had their offices abroad. We have noticed heretobefore that even in the show cause notice, the customers were treated to be bonafide ones.

No allegation of malafide was raised. No finding had been arrived at that there had been a deliberate violation of the conditions of the licence agreement.

In a case of this nature, it may or may not be necessary to prove Mens-Rea. Recently, in Commissioner of Sales Tax Vs. Sanjiv Fabrics Commissioner of Sales Tax Vs. Sanjiv Fabrics reported in (2010) 9 SCC D. K. Jain, J. has held that the question as to whether the principle of mens-rea would be an essential ingredient or not would depend upon the nature of the statute.

41. We may, however, notice that the Supreme Court of India in Hindustan Steel Ltd. Vs. State of Orissa reported in (1969) 2 SCC 627 and Karnataka Rare

Earth Vs. Senior Geologist, Dept. of Mines & Geology (2004) 2 SCC 783 opined that in a case of imposition of penalty mens-rea is necessary to be established.

However, we in view of the order proposed to be passed, need not determine the said issue finally.

In Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-Education) Higher Secondary School**,** (1993) 4 SCC 10, it has been held :-

> *"**10.** Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice. In Russell v. Duke of Norfolk [(1949) 1 All ER 109 (CA)] Tucker, L.J. observed:*
>
> *"... There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."*
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> *It has been observed by this Court in Union of India v. P.K. Roy [(1968) 2 SCR 186 : AIR 1968 SC 850 : (1970) 1 LLJ 633] :*
>
> *"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket or a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."*

42. Yet again, in Cantonment Executive Officer Vs. Vijay D. Wani reported in (2008) 12 SCC 230, the question, which was posed, was noticed in paragraph 7 of the judgement :-

> ***"7.*** *The question of bias is always the question of fact. The court has to be vigilant while applying the principles of bias as it primarily depends on the facts of each case. The court should only act on real bias not merely on likelihood of bias. In the present case, so far as the members of the Committee who conducted a disciplinary inquiry were also the members of the Cantonment Board where the report was to be considered, decided and whether to accept it or not and finding the respondent (herein) guilty or not. The very fact that these three persons who conducted inquiry were also the members of the Board and that the Board was to take a decision in the matter whether the report submitted by the enquiry committee should be accepted or not. Therefore, the participation of these three members in the Committee has given a real apprehension in the mind of the respondent that he will not get a fair justice in the matter because the three members who submitted the report would be interested to see that their report should be accepted. This bias in this case cannot be said to be unreal, it is very much real and substantial one that the respondent is not likely to get a fair deal by such disciplinary committee."*

It was held :-

> ***"13.*** *Therefore, the ratio of all these cases is that a person cannot be a Judge in his own cause. Once the disciplinary committee finds the*

incumbent guilty, they cannot sit in the judgment to punish the man on the basis of the opinion formed by them. Objectivity is the hallmark of a judicial system in our country. The very fact that the disciplinary committee which found the respondent (herein) guilty participated in decision-making process for finding the respondent (herein) guilty and to dismiss him from service is bias which is apparent and real. Consequently, the view taken by the Division Bench of the High Court cannot be faulted."

43. So far as the necessity to assign reasons is concerned, there cannot be any controversy with regard to the proposition that it is a part of the principles of natural justice, as has been held by the Supreme Court of India in S. N. Mukherjee Vs. Union of India reported in (1990) 4 SCC 594 and Maya Devi v. Raj Kumari Batra reported in (2010) 9 SCC 486.

In Rasid Javed Vs. State of Uttar Pradesh reported in (2010) 7 SCC 781, the Supreme Court of India has opined :-

"51. *That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in Gullapalli Nageswara Rao but based on such principle the limited authority of hearing given to the Hearing Authority by the State Government cannot be treated as enlarged in its scope. A delegate must confine his activity within four corners of the powers invested in him and if he has acted beyond*

that, his action cannot have any legal sanction unless ratified by the delegator."

Having regard to the manner in which the Government of India functions, it is difficult to say that the signatory to the demand notice was to hear this petition. He is only authorized to sign on behalf of the President of India.

44. Yet recently, in Natwar Singh Vs. Director of Enforcement reported in (2010) 13 SCC 255, it was held that adverse materials should be supplied to the affected party.

45. In a case of this nature, therefore, we are of the opinion that the Petitioner has been prejudiced by reason of non-compliance of the principles of natural justice.

46. For the reasons aforementioned, we are of the opinion that interest of justice would be sub-served if the Petitioners are allowed an opportunity of being heard.

47. These Petitions are allowed.

The impugned orders are set aside with the aforementioned observations.

However, in the facts and circumstances of the case, there shall be no order as to costs.

.....
(S.B. Sinha)
Chairperson

.....
(P.K. Rastogi)
Member

rkc