Bias in Court Proceedings

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

1. **"Natural justice" meaning of?:** Natural justice is another name for common sense justice. Rules of natural justice are not codified cannons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense. Justice is based substantially on natural ideas and human values. See: Canara Bank Vs. V.K. Awasthy, 2005 (34) AIC 430 (SC).

2. **Three principles of natural justice:** Three principles of natural justice are as under:
   (i) rule against bias
   (ii) audi alteram partem (hear the other side also)
   (iii) nemo in propria causa judex, esse debet (no one ought to be a judge in his own cause).

3. **Aim of observance of principles of natural justice is to secure justice and prevent miscarriage of justice:** The aim of the rules of natural justice is to secure justice, or to put it negatively, to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past, only two rules were recognised but in course of time many more subsidiary rules came to be added to these rules. Till very recently, it was the option of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, there is no reason 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. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. 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. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. See: A. K. Kraipak Vs. Union of India, AIR 1970 SC 150 (Five-Judge Bench).

4. **Principles of natural justice must be realistically and pragmatically applied:** Principles of natural justice, though universal, must be realistically and pragmatically applied. See: Manohar Lal Sharma Vs. Principal Secretary, (2014) 9 SCC 614 (Three-Judge Bench).

5. **Principles of natural justice apply if the decision of authority affects individual rights or interests of a person:** Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice *'audi alteram partem*' (hear the other side also) applies. With the proliferation of administrative decisions in the welfare State, it is now further recognised by Courts both in England and in India that where a body or authority is characteristically administrative, the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interests and having regard to the particular situation, it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See: State of Punjab Vs. K. R. Erry and Sobhag Rai Mehta, AIR 1973 SC 834 (Five-Judge Bench).

6. **Departure from principles of natural justice not permissible even in the absence of rules:** Even where the rules require action without notice or opportunity of explanation and defence to the delinquent, the principles of natural justice must be read into the rules. See:

   (i) Maneka Gandhi Vs. Union of India, AIR 1978 SC 579(1), (Seven-Judge Bench) (Section 10 passports Act: Rule of natural justice may be followed by giving post decisional opportunity)

(ii) Vinay Kumar Tripathi Vs. State of UP 1995 Suppl (1) SCC 552 (Censure: Rule 55-B of erstwhile CCA Rules: Rule 6(2)(a) of the U.P. Subordinate Courts Staff (Punishment and Appeal Rules, 1976)
(iii) (iii) The Managing Director, U. P. Warehousing Corporation Vs. Vijay Narayan Vajpayee, AIR 1980 SC 840 (para 14)
(iv) (iv) State of Bihar Vs. Lal Krishna Advani, AIR 2003 SC 3357.

7. **Doctrine of natural justice is an in-built requirement in every Statute:** In the present case, there was a provision for automatic termination of service under standing orders for unauthorised absence for ten consecutive days. Absenting employee was informed on 4th day of absence that he should report back to duty in 48 hours. Warning that if he fails, his name would be struck off from the rolls was also administered. Another letter was issued to the employee after 10 days of his absence intimating him that his name had been struck off. Letter issued on 4th day of leave could not be treated as an opportunity of hearing to the employee. Action of employer of terminating services of the employee neither depicts acceptability of doctrine of natural justice nor concept of fairness and was liable to be set aside. See: M/s. Lakshmi Precision Screws Ltd Vs. Ram Bahagat, AIR 2002 SC 2914.

8. **Conducting departmental enquiry in an unbiased manner mandatory:** When a departmental enquiry is conducted against a government servant, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with the closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but it is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. See: State of UP Vs. Saroj Kumar Sinha, AIR 2010 SC 3131.

9. **Non-observance of principles of natural justice when not fatal?:** There are certain well recognised exceptions to the *audi alteram partem* rule established by judicial decisions and they are summarised by A.S. de Smith in Judicial Review of Administrative Action, 2nd Edition, at page 168 to 179. The Supreme Court while analysing these exceptions closely held that the exceptions to the principle of audi alteram partem do not in any way militate against the principle which requires fair play in administrative action. The word 'exception' is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to 'fair play in action' but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem

rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice or to make the law lifeless, absurd, stultifying, self-defeating or plainly contrary to the commonsense of the situation. The exceptions to the rules of natural justice are a misnomer or 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. See:

(i) Maneka Gandhi Vs. Union of India, AIR 1978 SC 579 (Seven-Judge Bench)

(ii) (ii) Mohinder Singh Gill Vs. Chief Election Commissioner, AIR 1978 SC 851 (Para 48)

(iii) (iii) Arun Kumar Singh Vs. Gorakhpur University, 1986 ALJ 286 (Allahabad) (DB) (Paras 8 to 11).

10. **Hearing of parties by delegate essential when he has to act on objective satisfaction and not on subjective satisfaction:** Conditional legislation can be broadly classified into three categories : In the first category when the Legislature has completed the task of enacting a Statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area and exercise that power as a delegate of the parent legislative body. When the Act itself is complete and is enacted to be uniformly applied in future to all those who are to be covered by the sweep of the Act, the Legislature can be said to have completed its task. All that it leaves to the delegate is to apply the same uniformly to a given area indicated by the parent legislation itself but at an appropriate time. This would be an act of pure and simple conditional legislation depending upon the subjective satisfaction of the delegate as to when the said Act enacted and completed by the parent legislation is to be made effective. As the parent legsislation itself has laid down a binding course of conduct to be followed by all and sundry to be covered by the sweep of the legislation and as it has to act as a binding rule of conduct within that sweep and on the basis of which all their future actions are to be controlled and guided, it can easily be visualised that if the parent legislation was not required to hear the parties likely to be affected by the operation of the Act, its delegate exercising an extremely limited and almost ministerial function as an agent of the principal Legislature applying the Act to the area at an appropriate time is also not supposed and required to hear all those who are likely to be affected in future by the binding code of conduct uniformly laid down to be followed by all within the sweep of the Act as enacted by the parent Legislature. However, there may be second category of conditional legislations wherein the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdrawn

from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act. When such a power by way of conditional legislation is to be exercised by the delegate, a question may arise as to how the said power can be exercised. In such an eventuality, if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate and if such an exercise is not required to be based on the prima facie proof of factual data for and against such an exercise and if such an exercise is to uniformly apply in future to a given common class of subjects to be governed by such an exercise and when such an exercise is not to be confined to individual cases only, then even in such category of cases while exercising conditional legislative powers the delegate may not be required to have an objective assessment after considering rival versions on the data placed before it for being taken into consideration by it in exercise of such power of conditional legislation. Where the delegate proceeds to fill up the details of the legislation for the future which is part of the integrated action of policy-making for the future, it is part of the future policy and is legislative. But where he merely determines either subjectively or objectively - depending upon the "conditions" imposed in the Statute permitting exercise of power by the delegate, there is no legislation involved in the real sense and therefore, applicability of principles of fair play, consultation or natural justice to the extent necessary cannot be said to be foreclosed. The fact that in such cases of conditional legislation these principles are not foreclosed does not necessarily mean that they are always mandated. In a case of purely ministerial function or in a case where no objective conditions are prescribed and the matter is left to the subjective satisfaction of the delegate no such principles of fair play, consultation or natural justice could be attracted. That is because the very nature of the administrative determination does not attract these formalities and not because the determination is legislative in character. But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the delegate. In such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such power. May be such an exercise may not amount to any judicial or quasi-judicial function, still it has to be treated to be one which requires objective consideration of relevant factual data pressed in service by one side and which could be tried to be rebutted by the other side who would be adversely affected if such exercise of power is undertaken by the delegate. In such a third category of cases of conditional legislation, the Legislature fixes up objective

conditions for the exercise of power by the delegate to be applied to past or existing facts and for deciding whether the rights or liabilities created by the Act are to be denied or extended to particular areas, persons or groups. This exercise is not left to his subjective satisfaction nor it is a mere ministerial exercise. See: State of T.N. Vs. K. Sabanayagam, AIR 1998 SC 344.

11. **Compliance of principles of natural justice in passing administrative orders involving civil consequences mandatory:** Even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. Where an order of compulsory retirement based on a certain disputed date of birth was passed against the petitioner without giving him the report of the enquiry officer who conducted an enquiry into his correct date of birth, it has been held by the Supreme Court that the order violates principles of natural justice. See: State of Orissa Vs. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269.

12. **Principles of natural justice cannot be stretched too far and may or may not be applied subject to statutory rules:** Principle of natural justice is required to be observed by a Court or Tribunal before a decision is rendered involving civil consequences. It may only in certain situation be read into Article 14 of the Constitution of India when an order is made in violation of the rules of natural justice. Principles of natural justice, however, cannot be stretched too far. Its application may be subject to the provisions of a statute or statutory rule. Before a contemnor is punished for contempt, the Court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the Code of Criminal Procedure. But if a law which is otherwise valid provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws, some offences carry minimum sentence. The gravity of such offences, thus, is recognised by the Legislature. The Courts do not have any role to play in such a matter. Rule 11 framed by the Kerala High Court is legislative in character. As said rule is valid, it cannot be said that the same by itself, having not provided for a further opportunity of hearing, the contemnor would attract the wrath of Article 14 of the Constitution of India. Furthermore, the contemnor could also get an opportunity of hearing while purging his conduct. Rule 11 of the Rules, therefore, is not ultra vires Article 14 of the Constitution. See: Bar Council of India Vs. High Court of Kerala, AIR 2004 SC 2227 (Three-Judge Bench).

13. **Natural justice not an unruly horse and cannot be applied by ignoring the harsh realities of the case:** Natural justice is not an unruly horse, nor lurking landmine nor a judicial cure for all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice without reference of the administrative realities and other factors of a given case can be exasperating. See:

(i) Chairman, Board of Mining Examination Vs. Ramjee, AIR 1977 SC 965

(ii) (ii) Rajesh Singh Vs. Vidhyadhiraj Pandey & Others, (2006) 2 SAC 599.

14. **Principles of natural justice can be excluded or waived by Statute:** It is well known that the principles of natural justice can be excluded by a statute. They can also be waived. See: State of UP Vs. Sheo Shanker Lal Srivastava & Others, (2006) 3 SCC 276 (Para 14).

15. **Whether or not any rules of natural justice had been contravened should be decided in the light of statutory rules and provisions:** The rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function. The question whether or not any rules of natural justice had been contravened should be decided not under any pre-conceived notions but in the light of the statutory rules and provisions. Where no such rules which could be said to have been contravened by a tribunal is brought to the notice of the Court, it is no ground for interference either under Articles 226 or 227 of the Constitution simply because the tribunal had viewed the matter in a light which is not acceptable to the Court. See: Nagendra Nath Bora Vs. Commissioner of Hills Division and Appeals, Assam & Others, AIR 1958 SC 398 (Five-Judge Bench).

16. **Principles of natural justice not violated if accused is not provided hearing before filing of court complaint u/s 340 CrPC:** Where in a land acquisition proceedings, the claimants/land owners after playing chicanery on the court had wangled a bumper gain as compensation and the reference court which granted a quantum leap in awarding compensation to the land owners/claimants later found that they had used forged documents of sale deeds inveigling such a bumper gain as compensation and hence the court ordered some of the claimants/landowners to face prosecution proceedings in a criminal court. The court is not under a legal obligation to afford an opportunity to be heard to claimant/landowner before ordering such prosecution. The scheme underlying Section 340, 343, 238, 243 of the Code of Criminal Procedure clearly shows there is no statutory requirement to

afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Once the prosecution proceedings commence, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code of Criminal Procedure itself. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not. The court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage, the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. See: Pritish Vs. State of Maharashtra, AIR 2002 SC 236 (Three-Judge Bench).

17. **Observance of principles of natural justice not necessary where doctrine of necessity applies:** In a case where doctrine of necessity is applicable, compliance with the principles of natural justice would be excluded. See: State of UP Vs. Sheo Shanker Lal Srivastava & Others, (2006) 3 SCC 276 (Para 15).

18. **Bias: what is?: "**Bias" in judicial proceedings means prejudice of the judge to unjustly and unfairly favour one party over the other. A judge can be said to be biased in favour of one party and against the other when he is pre-determined to decide the case in a particular manner by ignoring the principles of fairness and neutrality which is expected of a judge in conducting the judicial proceedings and deciding the case in an impartial manner.

19. **Kinds of bias:** A judge may act in a biased manner for several reasons and some of them can be enumerated as under:

    (i) Personal bias on account of being friend, foe or relative to one of the parties to the case
    (ii) Bias on account of caste, community, region or religion of one or the other party to the case
    (iii) Ideological bias which may be political, social, sectarian, etc in nature
    (iv) Pecuniary bias on account of having indirect or covert financial interest of the judge in the subject matter of the case
    (v) Institutional bias
    (vi) Bias on account of belief of the judge in utopianism, excessive idealism detached from the realities of life and times
    (vii) Gender bias
    (viii) Bias of the judge on account of pre-conceived notions

(ix) Bias in favour of or against either side because of good or bad conduct and behavior of the party or his counsel to the case

(x) Bias of the judge in favour of or against either side to the case on account of lack of objectivity and spirituality in the judge

20. Impact of bias on judicial proceedings and its outcome: Bias on the part of judge conducting the judicial proceedings and deciding the case would result into illegality, partiality, unfairness, injustice to one party and undue benefit to the other side to the case.

21. "Doctrine of bias" when and how attracted ?: The principles governing the "doctrine of bias" vis-à-vis judicial tribunals, are well-settled and they are:

(i) no man shall be a judge in his own cause;

(ii) justice should not only be done but manifestly and undoubtedly seem to be done.

(iii) The two maxims yield the result that if a member of a judicial body is subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not take part in the decision or sit on the Tribunal; and that any direct pecuniary interest, however small, in the subject-matter of inquiry, will disqualify a judge and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias. The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals who have to act judicially in deciding the rights of others, i.e. authorities who are empowered to discharge quasi-judicial functions. In England, a statutory invasion of the common law on the ground of bias is tolerated by decisions but the invasion is confined strictly to the limits of the statutory exception. Therefore, unless the legislature clearly and expressly ordained to the contrary, the principles of natural justice cannot be violated. In England, the Parliament is supreme and therefore a statutory law, however repugnant to the principles of natural justice, is valid whereas in India, the law made by Parliament or a State Legislature should stand the test of fundamental rights declared in Part III of the Constitution. See: Gullappalli Nageswararao Vs. State of A.P. & Others, AIR 1959 SC 1376 (Three-Judge Bench).

22. When can a person be said to be biased in a matter?: It is an elementary rule of natural justice that a person who tries a cause should be able to deal with the matter before him objectively, fairly, and impartially. Anything which tends or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased. Thus, if a person has a pecuniary interest in the case brought before him, or is hostile to a party whose cause he is called upon to try, that would introduce the

infirmity of bias and would disqualify him from trying the cause. In dealing with cases of bias, it is necessary to remember that "no one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind." The broad principle which is universally accepted is that a person trying a cause even in quasi-judicial proceedings must not only act fairly but must be able to act above suspicion of unfairness. The use of the word 'bias' should be confined to its sphere. Its proper significance is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office or those who are commonly regarded as holding a quasi-judicial office, such as arbitrator. The reason for this clearly is that having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind without any inclination or bias towards one side or the other in dispute. See: The A.P. State Road Transport Corporation, Hyderabad Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur & Others, AIR 1965 SC 1303 (Five-Judge Bench).

23. **Conducting proceedings in biased manner renders it invalid:** The continuance of inquiry by a biased enquiry officer holding an office has been held by the Supreme Court to be bad in law. The subsequent authorisation by Government by his name did not validate the inquiry proceedings and the order of punishment passed on the basis of such inquiry was illegal, invalid and inoperative. See: S. Parthasarathi Vs. State of A.P. AIR 1973 SC 2701.

24. **Mere allegations of bias or ill-will or malice without cogent evidence not acceptable:** The word 'Bias' in popular English parlance stands included within the attributes and broader purview of the word 'malice' which in common acceptation means and implies 'spite' or 'ill-will'. It is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice. See:

(i) Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant & Others, AIR 2001 SC 24

(ii) (ii) Supreme Court Advocates-on-Record Association Vs. Union of India, 2015 AIR SCW 5457 (Five-Judge Bench) (Para 1114).

25. **Showing undue and hot haste amounts to bias and prejudice:** An unpleasant event took place while the General Manager (Tourism) left on an official tour to Tibet. On the very next day after he returned, the Managing Director passed an order withdrawing the duties of the respondent General Manager. Financial and Administrative powers of the respondent were also

withdrawn. On the third day, a show cause notice containing 13 allegations without any documentary support therefor was served on the respondent General Manager. Despite request, copies of documents were not made available to him. An enquiry officer who was directly under supervision of the Managing Director was appointed even before explanation on show cause notice was received. The Inquiry Officer on supposed examination of the records and admittedly without giving any notice and without fixation of any date or time or any venue for the inquiry or for examination or cross-examination of the witnesses and upon purported consideration of so-called reply of the respondent General Manager proceeded to complete the inquiry. Even no Presenting Officer was appointed and as a matter of fact the enquiry report itself disclosed that the Inquiry Officer dealt with the matter himself without any assistance whatsoever. Copy of the enquiry report was sent to the respondent General Manager with a request to give a reply thereto positively on the next day at 10.30 a. m. The respondent was directed to produce his defence at 11.00 a.m. on the same day without, however, permission to summon his defence witnesses. Subsequently, personal hearing was offered by the Managing Director and within hours of the personal hearing, an eighteen page order was passed dismissing the respondent General Manager from services at about 7.30 p.m. On challenge by the respondent General Manager to his dismissal, the Supreme Court held that it is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend. While it is true that in a departmental proceeding, the disciplinary authority is the departmental judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review in case of departmental proceedings cannot be doubted. Judicial review has its application to its fullest of extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the finding are totally perverse. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and the same tantamounts to a total miscarriage of justice. The order of dismissal of the respondent General Manager also suffered from the bias of the Managing Director. The language used in the show cause notice-cum-charge-sheet, clearly showed that the Managing Director had a mind-set even at the stage of framing of charges. The Managing Director admittedly was not well disposed of towards the respondent General Manager by reason wherefor the respondent was denuded of the financial power as also the administrative management of the department. It was the self-same Managing Director who

levelled thirteen charges against respondent and was the person who appointed the Inquiry Officer but afforded a pretended hearing himself late in the afternoon and communicated the order of termination consisting of eighteen pages by early evening, the chain was complete. Prejudice of the Managing Director against the respondent General Manager was apparent. Bias as stated by the respondent General Manager was found proved. The Supreme Court further observed that however conceptually, the issue of bias ought to be decided on the facts and circumstances of the individual case. See: Kumaon Mandal Vikas Nigam Ltd Vs. Girja Shankar Pant & Others, AIR 2001 SC 24.

26. **Litigants and lawyers cannot be permitted 'choice' of 'forum' by taking plea of bias and such an attempt must be crushed with a heavy hand :** No lawyer or litigant can be permitted to browbeat the Court or malign the Presiding Officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and Rule of Law would receive a set back. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand. At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance, for the proper administration of justice, that judicial powers must be exercised impartially and within the bounds of law. It must always be remembered that justice must not only be done but it must also be seen to be done. See : M/s. Chetak Construction Ltd Vs. Om Prakash & Others, AIR 1998 SC 1855 (paras 19 & 20)

27. **Application moved u/s 407 & 408 CrPC seeking transfer of case from court of ASJ on ground of bias and being relative of a Minister opposed to the accused rejected by Supreme Court :** Where in the case of Lalu Prasad Yadav, Ex-Chief Minister of Bihar, application for transfer of the case involving fodder scam was moved u/s 407 & 408 CrPC against the ASJ on the ground of the ASJ being biased and relative of a Minister opposed to the accused, the Supreme Court rejected the transfer application and directed the ASJ to decide the sessions trial within a specified period by providing opportunity of arguments to the prosecution and defence as directed by the

Supreme Court. See : Lalu Prasad Yadav Vs. State of Jharkhand, (2013) 8 SCC 593 (Three-Judge Bench).

28. **Presiding officer should not proceed further with the case and should wait for order on transfer application** : When there is apprehension in the mind of any party that he will not get justice from a particular presiding officer of the court and the presiding officer is in the knowledge of the transfer application having been moved, he must not decide the case and should wait for orders on the transfer application. It will be in the interest of justice to transfer the case to other court. See : P.K. Ghosh, IAS Vs. J.G. Rajput, AIR 1996 SC 513

29. **Presiding officer having come to know about the transfer application being moved before the District Judge must not proceed further with the case and wait for order on the transfer application :** During the pendency of a civil revision before the Addl. District Judge, Jhansi, a transfer application was moved against the Addl. District Judge on the basis of allegations and partiality and the same was pending before the District Judge, Jhansi, who passed an order on 26.10.1999 to the effect *"Heard. Register as Misc. Case. Summon the record. Put up therewith tomorrow for hearing".* The copy of the said order dated 26.10.1999 passed by the District Judge, Jhansi, was received in the office of the Addl. District Judge, at 4.00 p.m. on 26.10.1999 itself but the Addl. District Judge, Jhansi, despite knowledge of the order of the District Judge passed on the transfer application decided the revision on 27.10.1999. Severe disciplinary action was directed to be taken by the Hon'ble Allahabad High Court against the Addl. District Judge, Jhansi by relying on the decision of the Hon'ble Supreme Court reported in **P.K. Ghosh, IAS Vs. J.G. Rajput, AIR 1996 SC 513** by observing that *"When there is apprehension in the mind of any party that he will not get justice from a particular presiding officer of the court and the presiding officer is in the knowledge of the transfer application having been moved, he must not decide the case and should wait for orders on the transfer application. It will be in the interest of justice to transfer the case to other court."* See : Ram Narayana Vs. Rakesh Tandon, 2006 (63) ALR 47 (All).

30. **Presiding Judge having come to know about the transfer application being moved must not proceed further with the case and wait for order on the transfer application :** Once it is brought to the notice of the court that transfer application has been moved, it must stay the proceedings and wait for the decision on the transfer application. See : Lallu Prasad Vs. Lakshmi Narain, 2006 (5) ALJ (NOC) 1041 (All).

31. **Case of the party having apprehension in mind of not getting justice from a particular presiding officer should be transferred to other court :** Relying on the decision of the Supreme Court reported in **P.K. Ghosh, IAS Vs. J.G. Rajput, AIR 1996 SC 513,** the Hon'ble Allahabad High Court, in the case noted below, has held that if there is any apprehension in the mind of any

party that he will not get justice from a particular presiding officer and that presiding officer comes to the knowledge of that fact, it will be in the interest of justice to transfer the case to other court. See : Ram Narayana Vs. Rakesh Tandon, 2006 (63) ALR 47 (All).

32. **Apprehension or inconvenience as ground for transfer of case must be reasonable and not mere conjectures or surmises :** Convenience for purpose of transfer of case means convenience of prosecution, other accused, witnesses and larger interest of the Society. Court has to be visualize comparative inconvenience and hardships likely to be caused to the witnesses besides the burden to be borne by the State ex chequer in making of travelling and other expanses of the official and non-official witnesses for attending the court proceedings. The apprehension of the party that it will not get a fair and impartial enquiry or trail besides inconvenience in pursuing the case requires to be reasonable apprehension or inconvenience and not based on mere conjectures and surmises. See : Harita Sunil Parab Vs. State (NCT of Delhi) & Others, (2018) 6 SCC 358 (Three-Judge Bench).
33. **Application seeking time to move transfer application u/s 408 CrPC not to be granted :** An application moved by the accused seeking time to move transfer application if mala fide and moved with intent to delay the disposal of the case should be rejected. See : Anil Kumar Vs. State of UP, 2014 (86) ACC 805 (All).
34. **Dismissal of BSF Commandant set aside on proof of bias:** In the present case, disciplinary proceeding was initiated against the Commandant of the Border Security Force under the provision of the Border Security Force Act, 1968 and the Border Security Force Rules, 1969. Authority higher than the Commandant directed to initiate the departmental proceedings against the delinquent. Said procedure is unknown to law. It is for the disciplinary authority to apply mind to material on record and arrive at conclusion as to necessity of disciplinary action. Further, action of the higher authority who was interested and also a witness attached the delinquent to the wing of own Unit. That was not proper. No material was supplied to the delinquent as was mandatorily required under Rule 45-B. The delinquent was merely heard as to whether he pleads guilty to the charge or not. The Supreme Court held that the opportunity for protection against bias was denied to the delinquent commandant. The order of dismissal of the delinquent was set aside. See: Union of India Vs. B. N. Jha, AIR 2003 SC 1416.
35. **In the event of allegations of mala fides, ill-will or improper motives, person in authority should contradict the same by his counter version:** It is true that the allegation of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact are made in several of the cases which have come up before the Supreme Court and other Courts and it is found that they

have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not, some of it at least might stick. Consequently, it has become the duty of the Courts to scrutinise these allegations with care so as to avoid being in any manner influenced by them in cases where they have no foundation in fact. In this task which is thus cast on the courts, it would conduce to a more satisfactory disposal and consideration of them if those against whom allegations are made came forward to place before the Court either their denials or their version of the matter so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of authorities have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer. Where certain Motor Transport operators had challenged the validity of certain schemes framed under Chapter IVA of the Motor Vehicles Act, 1939 nationalising the motor transport in their particular area on the ground that State Road Transport Corporation had framed the schemes not because of their opinion formed under Section 68-C of the Act but on the direction of the Chief Minister of the State and that the Chief Minister was motivated by extraneous considerations, namely to strike at his political opponents, who worked either against himself or his friends, supporters and relations in the elections in February 1962 and had devised the schemes in order to cause them loss and compass their ruin; and the petitioners gave all the relevant objective facts in support of their allegations in their affidavits but there was no denial by the Chief Minister nor an affidavit by any person who claimed or could claim to know personally about the truth about these allegations and the counter affidavit filed by a Secretary of the Government formally denying the allegations on the instructions of the Chief Minister was rejected as hearsay. It has been held by the Supreme Court that the Court was constrained to hold that the allegations that the Chief Minister was motivated by bias and personal ill-will against the petitioners stood un-rebutted. See: M. Gangappa Vs. The State of A.P., AIR 1964 SC 962 (Five-Judge Bench)

36. **Allegation of bias not to be accepted in absence of evidence:** In the absence of any evidence and when there was no submission even before the High Court that the enquiry officer was biased, it has been held by the Supreme Court that the contention pertaining to allegation of bias against the enquiry officer deserves to be rejected. See: Regional Manager, UCO Bank Vs. Krishna Kumar Bharadwaj, (2022) 5 SCC 695 (Para 22)

37. **Inference of bias or influence of superior cannot be drawn merely because enquiry officer is subordinate to officer framing charges:** Simply

because the enquiring officer is in a position subordinate to the officer framing the charge, it cannot be said that he would be influenced by the officer framing the charge and will sit with a bias. See: Ram Naresh Lall Ram Yash Lall Vs. The State of UP, AIR 1967 Allahabad 384.

38. **Inference of bias or influence of superior cannot be drawn merely because enquiry officer is subordinate to officer framing charges:** Simply because the enquiring officer is in a position subordinate to officer framing the charge, it cannot be said that he would be influenced by the officer framing charge and will sit with a bias. See: Ram Naresh Lall Vs. Ram Naresh Lall Vs.State of UP, AIR 1967 Allahabad 384

39. **Integrity & its meaning :** As regards the meaning of the word "integrity", the Supreme Court has defined the said word thus : "integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity." See: Vijay Singh Vs. State of UP, (2012) 5 SCC 242

40. **Allegation of bias against High Court for dismissing Civil Judge found guilty of demand and acceptance of graft found not proved:** There was proof for demand and acceptance of illegal gratification to do judicial work by a probationer Civil Judge of Maharashtra. Evidence adduced during disciplinary enquiry was sufficient to prove proclivity and corrupt conduct on his part. The probationer Judge was dismissed from service by the Bombay High Court. The Supreme Court held that it cannot re-appreciate evidence charge by charge and reach a conclusion different from that of the Disciplinary Authority. Allegations of bias against the enquiry Officer were not warranted. Punishment of dismissal was found proportionate. See: High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil & Another, AIR 1997 SC 2631.

41. **Closure of proceedings by showing undue haste and not providing time to file reply sought on medical grounds held illegal:** Undue haste demonstrated by the enquiry committee for closing the enquiry cannot justify curtailment of right of the charged employee to fare hearing. Even if the medical grounds taken by the charged employee seemed suspect, the enquiry committee ought to have given him reasonable time to prepare his defence, more so, when his request for being represented through lawyer was already turned down. The proceedings conducted by the enquiry committee thus fell sort of as for as practicable norm prescribed in relevant rules. Discretion

vested in the enquiry committee for conducting the enquiry was improperly exercised by violating the principles of natural justice. The impugned judgment of the High Court upholding the decision of the Executive Committee terminating the services of the delinquent employee was found by the Supreme Court to be unsustainable. The Supreme Court remitted the matter to the complaints committee constituted under the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 to conduct the enquiry afresh as it stood on 05.05.2009 in due compliance with the prescribed procedure and the principles of natural justice. See: Aureliano Fernandes Vs. State of Goa, (2024) 1 SCC 632.

42. **Opportunity of hearing must be reasonable opportunity of hearing:** One of the cardinal principles of natural justice is that no man should be condemned unheard. Hearing intends to prevent the authority from acting arbitrarily against the rights of the concerned person. No decision can be taken against a person which affects his rights without first informing him of the case against him and giving him an opportunity of hearing and to defend him. See:
    (i) Transmission Corporation of AP Ltd. Vs. Sri Rama Krishna Rice Mill, (2006) 3 SCC 74
    (ii) D.K. Yadav Vs. JMA Industries Ltd., (1993) 3 SCC 259
    (iii) Mohinder Singh Gill Vs. Chief Election Commissioner, (1978) 1 SCC 405
    (iv) Municipal Corporation of Greater Mumbai Vs. Kamla Mills Ltd., (2003) 6 SCC 315
    (v) Union of India Vs. Shiv Shanker Kesari, (2007) 7 SCC 798.

43. **Meaning of expression "reasonable opportunity":** The broad test of "reasonable opportunity" is whether in the given case, the show cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage or in the alternative to show that the penalty imposed was much too harsh and disproportionate to the nature of the charge established against him. See: U.P. Government Vs. Sabir Hussain, AIR 1975 SC 2045 (Three-Judge Bench).

44. **Meaning of phrase "reasonable opportunity of hearing" under Article 311(2):** Meaning of the phrase "reasonable opportunity of hearing" has been clarified by a Constitution Bench of the Supreme Court in 1958 in the case given below:
    (a) Opportunity to the person concerned to deny his guilt and to put forth his defence to prove his innocence.
    (b) Opportunity of cross-examination of witnesses produced against him and also an opportunity to him to examine himself and his witnesses in support of his defence, and
    (c) Opportunity to submit his representation against the penalty proposed to be awarded against him by the authority. See: Khem Chand Vs. Union of India, AIR 1958 SC 300 (Five-Judge Bench)

45. **Non-examination of witnesses despite opportunity does not amount to breach of principles of natural justice:** Delinquent was charged of obtaining HRA on false certificates of municipal authorities. Delinquent did not furnish list of witnesses to be examined. Sufficient opportunity given to examine witnesses was not availed of by the delinquent. Plea of non-examination of officials issuing certificates was held unjustified since the fact of issuance of certificate was not disputed. Plea that the documents were marked as exhibits after the enquiry was found untenable. There was no evidence to show that the enquiry officer was biased. Enquiry was not conducted in breach of the principles of natural justice. See: Director General, Indian Council of Medical Research Vs. Dr. Anil Kumar Ghosh, AIR 1998 SC 2592.

46. **Delinquent not willing to avail opportunity of hearing and participate in enquiry cannot complain violation of principles of natural justice:** In the instant case, the appellant Principal of a College governed by the Uttar Pradesh State Universities Act, 1973 was acting as Senior Superintendent of examination centre and was charged for replacing his son's answer book. The appellant Principal was given adequate opportunities to place his case before the Inquiry Committee. The appellant however exhibited defiance and total indifference in extending co-operation. The appellant cannot complain of denial of opportunity of hearing. Eight of the eleven members of the managing committee had accorded approval to the proposed action of termination of the appellant services. The discordant note by the others who did not agree with the majority was apparently obliging the appellant. Upholding the termination of services of the appellant, the Supreme Court held that it is only a person who was ready and willing to avail of opportunity given can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunities given and indulgence shown

exhibited defiance and total indifference in extending cooperation. Therefore, on that score, the appellant cannot have any grievance. See: Indra Bhanu Gaur Vs. Committee, Management of M. M. Degree College & Others, AIR 2004 SC 248.

47. **Non-exchanging representations of parties made to deciding authority amounts to violation of principles of natural justice:** The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the tribunal and the rules under which it functions. Where both the parties to a dispute in a quasi-judicial proceeding had made separate representations to the Government and the deciding authority, but the representations were not made available to each other and one of the parties was not given opportunity to represent his case and the grievance, he is justified in complaining that the principles of natural justice had been contravened. See: The Purtabpur Company Ltd Vs. Cane Commissioner of Bihar & Others, AIR 1970 SC 1896.

48. **Post decisional hearing is irrelevant:** In the case noted below, the Supreme Court has held that it is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose. A post decisional hearing is irrelevant in as much as the decision by the disciplinary authority was already taken. See: K.I. Shephard Vs. Union of India, AIR 1988 SC 686.

49. **Notice to delinquent for hearing and submitting objections/reply cannot be dispensed with for any reasons:** In the case noted below, the Supreme Court has held that non-issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat". See: Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2006 (65) ALR 323 (SC)

50. **Equitable doctrines cannot be invoked in the event of fraud etc.:** In the cases noted below, it has been held by the Supreme Court that it is settled law that in the event of fraud or deceits etc. being played by a person, all equitable doctrines cease to apply to the case of such fraudster. See:

(i) District Primary School Council, West Bengal Vs. Mritunjoy Das and Others, 2011 (3) SLJ 239

(ii) Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & Others, (2003) 8 SCC 311.

51. Fraud vitiates all solemn acts: In the cases noted below**,** it has been repeatedly laid down by the Supreme Court that fraud vitiates even the most solemn acts. See:

(i) State of AP Vs. T. Suryachandra Rao, 2005 (33) AIC 761 (SC)

(iii) Bhavrao Dagdu Paralkar Vs. State of Maharashtra, 2005 (4) AWC 3460 (SC)

(iv) N. Khosla Vs. Rajlakshmi, 2006 (63) ALR 534 (SC)

(v) (iv) M/s Reliance Salt Ltd. Vs. M/s Cosmos Enterprises & Others, 2007 (66) ALR 653 (SC).

52. An advantage obtained by fraud disentitles the fraudster to retain the same: No person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job. See*:*

(i) Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319

(ii) (ii) Rajinder Singh Vs. Delhi Transport Corporation & Others, 2011 (3) SLJ 33(CAT)(Principal Bench)(New Delhi).

53. Petitioner held not entitled to any equitable relief under Article 136 for concealment of fact: Petition under Article 226 of the Constitution questioned high handed activities of police against the petitioner and claimed various reliefs. The reliefs claimed were based on several causes of action for which specific remedies were provided under law. The petition also involved disputed questions of facts. The Supreme Court held that the matter could not be dealt with by the High Court in exercise of its power of judicial review under Article 226 of the Constitution. The petitioner did not disclose the fact of having filed a petition under Article 32 of the Constitution before the Supreme Court at the time of issuance of notice in the SLP by the Supreme Court. The Supreme Court held that the petitioner was not entitled to any equitable relief under Article 136 of the Constitution because of his conduct. See: Sanjay Sitaram Khemka Vs. State of Maharashtra & Others, AIR 2006 SC 2016.

54. Candidate appearing at competitive examinations debarred for ten years for concealment of facts: Where a candidate had appeared in competitive examinations for number of attempts but had concealed this fact in his writ petition filed before the High Court, the Supreme Court held

that apart from cancelling his examination, such candidate can be debarred for ten years from appearing at the competitive examinations. See: Lakshmi Bai National Institute of Physical Education Vs. Shanti Kumar Agarwal, 2013 (1) ESC 212 (SC).

55. Fraud and equitable doctrines cannot co-exist: **A**n appointment obtained by fraud is *non est*. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine. See: (i) Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319 and (ii) Rajinder Singh Vs. Delhi Transport Corporation & Others, 2011 (3) SLJ 33(CAT)(Principal Bench)(New Delhi)

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