

'DOCTRINE OF POST - DECISIONAL HEARING'

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ABSTRACT

The Principles of Natural Justice were earlier to be followed by authorities taking any judicial or quasi judicial action. These principles being Nemo Judder In Cause Sua, that is rule against bias; and Audi Alteram Partem which is right to be heard. The principle of Audi Alteram Partem is usually applied before issuance of final order by the authority. This is also known as pre-decisional hearing which is the general rule. However, in some situations, an immediate action is required to be taken and a prior hearing cannot be given. In such instances, the doctrine of post-decisional hearing is applied, that is a hearing is given to the affected person after taking of an action or passing of an order and such order can be cancelled based on the outcome of hearing given. It is used in the cases relating to impoundment under the Passport Act such as the case of Maneka Gandhi. The Court has ruled in a number of cases that the doctrine is not a substitute to pre-decisional hearing. This research paper discusses if post-decisional hearing is a mere compliance or does it serve a purpose. The cases of Maneka Gandhi, Swadeshi Cotton Mills, K.I. Shephard and H.L. Trehan have been analysed for the research and it is concluded that a post-decisional hearing has been allowed by the court only on the commitment that hearing will be given within a specified time period or the impugned order will stand invalid and in cases wherein damage was already done and further hearing would not do any good, the courts have declined post-decisional hearings and quashed the order.

INTRODUCTION

The authorities conferred with administrative or quasi-judicial powers are also given some discretion to interpret the enabling act or law in their own way depending upon the facts and circumstances of each case. It is seen that where there is discretion, there is always a set of general rules and principles to be followed by the authorities, one of them being Principles of Natural Justice. This paper talks about one such principle - Audi Alteram Partem. This principle means that every party has a right to be heard before passing of any decision or issuance of order in a disputed matter. This principle is the base of judicial proceeding, however, it is also applicable in administrative or quasi-judicial matters. An adjudicating authority has the obligation to hear both the parties before issuing any order. This is known as Pre-Decisional Hearing. There is also a concept of Post-Decisional Hearing. The Doctrine of Post-Decisional Hearing says that the party be given a hearing after passing of the order for compliance with the rule of Audi Alteram Partem. The said doctrine is like an exception to the general rule of pre-decisional hearing.

The doctrine was first recognised in India in the case of *Maneka Gandhi v. Union of India*. It has been used in number of other cases but the Supreme Court has always ruled against it. This research paper deals with the question if the said doctrine serves any purpose or exists for mere compliance with the principle of Audi Alteram Partem.

RESEARCH QUESTION

Whether the Doctrine of Post-Decisional Hearing serves a purpose or is a way of mere compliance with the principle of Audi Alteram Partem?

RESEARCH METHODOLOGY

The researcher has mostly relied on secondary sources like news articles, web journals, and online articles for analysis of the concept of post decisional hearing and the cases dealing with the same. No empirical research or survey has been conducted.

LITERATURE REVIEW

1. The researcher referred to C.K. Takwani's book titled *Lectures on Administrative Law* (6th edition). The book provides a brief background of post-decisional hearing and explains evolution through a number of case laws. The researcher has used this material in analysing the judgements.
2. A research paper titled 'The Concept Of Post Decisional Hearing: Establishing Its Jurisprudence, And Contemporaneous Relevance' published in International Journal of Law and Legal Jurisprudence Studies (ISSN 2348-8212) was referred for better understanding of the principle of Audi Alteram Partem and detailed study of Maneka Gandhi's case. The content added to the instant research.
3. An article titled 'Principles of Natural Justice' by Ashish Makhija available on the website of AMC law firm was referred to understand the principles and their application. The article helped in supporting researcher's stance that post-decisional hearing is not a mere compliance.

4. ANALYSIS

Audi Alteram Partem

Every nation has its own set of laws to be abided by. The basis or criteria of enacting such laws varies with the circumstances and needs of the country or region. However, most of these laws follow a common set of Principles of Natural Justice.

The proceedings for resolving of any kind of disputed matter or issue are to follow a set of basic principles to ensure fairness and justice to parties at dispute along with the efficiency of authorities. These principles are supposed to eliminate any possible bias or wrong doing by the adjudicating authority and pronounce a fair judgement. Administrative proceedings are one such area. Under the administrative law, the adjudicating authority, in most cases, is conferred with the discretion to interpret the parent act as per the issue at hand. Since discretion is given, it cannot go unchecked and has to follow the principles of Natural Justice as held in the case of *A.K. Kraipak v. Union of India*¹, namely Audi Alteram Partem. This principle means the right to be heard implying every party has the right to be given a hearing before issuing the final order.

¹ [1970] AIR SC 150

The general rule is pre-decisional hearing². As the name suggests, it means that hearing is given before the decision is pronounced³. It is followed in judicial matters and most of the administrative or quasi-judicial issues. For instance, there is a deadline for submitting certain documents and the parent act says that documents may be accepted after imposing a fine on the violator. The amount of fine to be imposed is on the discretion of the administrative authority. Here, the violator be given a hearing before deciding upon the amount of fine to be imposed.

Exception of Post-Decisional Hearing

The Doctrine of Post-Decisional Hearing is an exception to the general rule of pre-decisional hearing. This doctrine states that hearing be given to the person after an action is taken against him so as to be fair and just. It comes into play in situations wherein an immediate action is required to be taken by the administrative authority and the time lost in the process of pre-decisional hearing will defeat the purpose of the action so taken. In such situations, the person is given the opportunity to present his case after the action is already taken. The exception was introduced to club administrative efficiency with fairness. The doctrine is found applicable in cases relating to impounding of passports under The Passport Act, 1967.

Judicial Pronouncements

The doctrine of post-decisional hearing was first recognised in the case of *Maneka Gandhi v. Union of India*⁴. Over time, it came up in a number of other cases where a hearing was not given to the person before taking an action and such action was challenged by the person.

Maneka Gandhi v. Union of India

In this case, Petitioner's, Maneka Gandhi, passport was impounded via letter dated July 2, 1977 sent by Delhi Passport Office. The letter stated that the Petitioner's passport was to be impounded on the ground of public interest under S. 10(3)(c) of the Passport Act, 1967. The petitioner requested for reasons for such action of the authorities under S. 10(5) of the Act. The request was declined and later, a writ petition was filed against the Government of India for violation of fundamental rights of the Petitioner. The respondent contended that an immediate action was required and the opportunity of giving a hearing would have defeated the purpose. It was also submitted that the Passport Act itself provides that passport may be impounded before giving any hearing to the person. However, the Bench in the instant case did not support the actions of Government of India and held it bad. It was said - "It may be that, in an emergent situation, the impounding of a passport may become necessary without even giving an opportunity to be heard against such a step, which could be reversed after an opportunity given to the holder of the passport to show why the step was unnecessary, but, ordinarily, no passport could be reasonably either impounded or revoked without giving a prior opportunity to its holder to show cause against the proposed action. The impounding as well revocation of a passport, seem to constitute action in the nature of a punishment necessitated on one of the grounds specified in the Act. Hence, ordinarily, an opportunity to be heard in defence after a show cause notice should be given to the holder of a passport even before impounding it.

² Dhruv Bhardwaj, 'The Doctrine Of Post Decisional Hearing' (*iPleaders*, 2019) <<https://blog.ipleaders.in/the-doctrine-of-post-decisional-hearing/>> accessed 8 February 2020.

³ C.K. Takwani, *Lectures On Administrative Law* (6th edn, Eastern Book Company 2019).

⁴ [1978] SC, AIR (SC).

It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.”⁵

A safe inference can be made from the above quoted part of the judgement that the bench does not support post-decisional hearing as a whole. They hold it as an exception to rectify a situation wherein the petitioner's rights are being violated. Rather they have asked to issue a show cause notice to the person and put in best efforts to provide a hearing before impounding of the passport. In the instant case, the order of the respondent was quashed on the condition that the petitioner will be given an opportunity of hearing within a specified period of time.

Swadeshi Cotton Mills v. Union of India⁶

The Government of India, through National Textile Corporation Limited, took over Swadeshi Cotton Mills (appellant) by issuing a notification dated April 13, 1978 under S.18AA of the Industries (Development and Regulation) Act, 1951 stating the reason that the company had brought a situation which has and will probably continue to affect the production of goods and urgent action was required to resolve the issue. A petition was filed against this order, one of the issues being the principle of Audi Alteram Partem that whether the order stands invalid because a hearing was not given and whether hearing can be given after the issuance of order.

The majority bench held that the order is not vitiated due to the fact that a prior hearing was not given. S. 18F of the Act clearly provides for post-decisional hearing and the management of the taken over industrial undertaking can get the order cancelled on a relevant ground, but it does not exclude a prior hearing. The mention of word “immediate” in S.18AA(a) also does not confer the power to exclude the right to hearing; it provides the option to exclude the investigation. However, it was also held that a post-decisional hearing can neither be treated as a remedy nor as a substitute to mere urgent situations or immediacy of matter or not giving of pre-decisional hearing. The reasons behind so should be justiciable. The order was not invalidated on the concession that the company will be given a full and fair hearing.

K.I. Shephard v. Union of India⁷

The Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank were amalgamated with Punjab National Bank, Canara Bank, State Bank of India respectively through distinct schemes under the Banking Regulation Act and 125 employees of the transferred banks were excluded from employment by the respective transferee banks. The employees challenged the order on one of the ground that no hearing was given to them and the authorities did not act in a fair manner among other grounds. The RBI contended that the employees did not have any right to be given a hearing as the scheme making process, being of legislative nature, is not subject to the Principles of Natural Justice. It was also contended that the action is administrative in nature and cannot be challenged for violation of the principles of Natural Justice.

⁵ 'Maneka Gandhi v. Union Of India On 25 January, 1978' (*Indiankanoon.org*) <<https://indiankanoon.org/doc/1766147/>> accessed 13 February 2020.

⁶ [1981] SCR (2) 533

⁷ [1988] SCR (1) 188

The Court held the action as bad saying that an administrative actions have to be in compliance with the principles of Natural Justice and the people being directly affected by the order should be duly informed so that they can prepare their case for hearing. The Court said, "In the facts of the case, there is no justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand, the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment. There is no ground to think of post-decisional hearing. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity as a condition precedent to action. 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."

H.L. Trehan v. Union of India⁸

The shares of Caltex Oil Refinery (India) Ltd. (CORIL) were acquired. The related Act under S.11 provided that the whole time and other employees of the company will continue at same terms and conditions and will be entitled to same perquisites as before the acquisition. The Chairman of the board issued a circular dated March 8, 1978 rationalising the perquisites given to the management of the company. The employees of CORIL filed a writ petition against the circular on the basis that no hearing was given to them before issuance of the order.

Both the High Court and the Supreme Court accepted the contentions of petitioners and quashed the impugned circular on the grounds that the hearing given post to the issuance of circular in question does not amount to compliance with the principle of *Audi Alteram Partem* and is violative of Article 14 of the Constitution. It was held that as is directly quoted - "The post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity."⁹

CONCLUSION

The principles of Natural Justice are given a high pedestal in the legal system and the laws enforced in our nation. Every kind of proceeding, may it be judicial or administrative, has to comply with these principles. One of these principles is *Audi Alteram Partem*, that is, the right to hearing. It says that the parties to the issue must be given a hearing before issuance of any order by the adjudicatory authority, the process being called pre-decisional hearing. This is to be fair to the parties and to prevent any vitiation of laws or provisions or misuse of power and is followed as a general rule. However, in certain situations, it is not possible to give a prior hearing because an immediate action is required or a prior notice will defeat the purpose. The doctrine of post-decisional hearing was introduced for these situations. The doctrine is to be treated as an exception. It was first recognised in India in the case of *Maneka Gandhi v. UoI* where the hearing was not given to the petitioner before impounding her passport. The court did not invalidate the order on the condition that the petitioner will be given a hearing within prescribed time period. The same was held in another case of *Swadeshi Cotton Mills* that post-decisional hearing is not a substitute to prior hearing but an exception and reasons behind must be justified. There are cases wherein the court struck down the order because the

⁸ [1988] SCR Supl. (3) 925

⁹ 'H.L. Trehan And Ors. Etc Vs Union Of India And Ors. Etc On 22 November, 1988' (*Indiankanoon.org*) <<https://indiankanoon.org/doc/1018127/>> accessed 14 February 2020.

grounds for not giving a prior hearing were not justified or the post-decisional hearing would not justify the matter because the authorities will proceed with a shut mind. Analysing these cases, conclusion can be made that if the doctrine of post-decisional hearing is a mere compliance or serves a useful purpose primarily depends on the facts and circumstances of the case and the provisions of the parent act. However, as per researcher's understanding and trusting the legislature's wisdom of incorporating the doctrine in the laws such as the Passport Act, Industries (Development and Regulation) Act, et cetera, the doctrine would serve a useful purpose in most of the cases since the order in question could be revoked or cancelled on proving of relevant grounds.

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