NATURAL JUSTICE:IN FOCUS AGAIN

I.THE FOCUS:

1.The decision of the honorable Bombay High Court in the judgement in the case of SPL Gold India private limited in writ petition number 1368 of 2021 **decided on 28th of October 2021** brings into sharp focus yet again the aspect of natural Justice. In the said case the assessee was saddled with the assessment order u/s. 143(3) dated 25th of May 2021 assessing its income at rupees 114.57 crores as against declared total income of Nil. According to the petitioner notice u/s 142 (1) was received on 21ST of May 2021 and humongous details were called for by 25th of May 2021. It is noteworthy that there was a weekend intervening in the said period as also complications due to the pandemic. As detailed in para 2 of the said order the documentation required included conformations of advances, copies of invoices, bank statements, bank books, Itemwise stock register, monthwise stock movement summary, details of all sales and purchases of parties above Rs. 5 lakhs along with their ledgers, and multiple such other items. The assessee could not furnish the said details within the specified period of time resulting in passing of the assessment order at the net amount mentioned above. The hon'ble court held the order is violative of the principles of natural Justice and quashed the assessment order dated 25th of may 2021. In a matter of respite to the Department the issue was submitted for de novo consideration of the assessing officer but with the instructions to pass the order in accordance with law after giving a personal hearing to the petitioner in accordance with rules.

2.We have been witness to several such orders in the recent past most notably in regard to the so-called faceless assessment scheme in which orders have been set-aside or quashed far violation of principles of natural Justice as enshrined in section 144B(9). One such example is the decision again of the hon'ble Bombay High Court in the case of **Mantra industries ltd in writ petition number 1625 of 2021.** [**Mantra Industries Limited Vs National Faceless Assessment Centre (NFAC or NeAC) & Ors].**The judgement is **dated 11 October 2021.** As per the facts noted by the hon'ble court the petitioner received a notice dated 22 April 2021 for assessment year 2018-19 attaching therewith a draft assessment order and asking the petitioner to submit response by 23 :59 hours of 24 April 2021. The petitioner requested for a personal hearing and also sought 20 days time to fulfil the requirements as per notice; the replies were filed on 27th of April 2021 and the assessment order was passed 6 weeks later on 8th of June 2021. The hon'ble court noted that the assessment order is an exact replica of the draft assessment order except the one sentence which has been added stating that assessee has not given any justification for non-furnishing of quantitative details in form 3 CD; the hon'ble court also noted that the quantitative details were indeed given by the assessee and a falsehood has been perpetrated by the assessing officer in saying that no reply was given. The hon'ble court thereafter, in para 8, held that it is compelled to set aside the impugned order and also the consequential notices. Subsection 9 of section 144B of the Act provides that any assessment made shall be non-est if such assessment is not made in accordance with the procedure laid down under the section and therefore the order be impugned be non-est ;the assessing officer may take such steps as advised in accordance with law .Thereafter in a significant observation **in para-9 of the honorable court held that** ''*respondents are*

put to notice, and Mr Sharma to circulate this order right from the revenue secretary to everybody in the finance ministry that if such orders are continued to be passed, this court will be constrained to impose substantial cause on the concerned officer to be recovered from his salary and also direct the Department to Place such judicial orders in the career records of search assessing officer. ''

3.This is yet another illustration of violation of the principles of natural Justice by the revenue. Earlier also in the case of **Zeus housing company in writ petition number 199 of 2021, in judgement dated 14 September 2021** the hon'ble Bombay High Court noted that that the respondent which is the assessing officer failed to consider reply to the show cause notice before passing the order. In responding to the affidavit filed by the assessing officer, in para 5, the hon'ble court sternly noted that it is rather unfortunate that officers respondent number 3 are not truthful in filing their affidavits. *''Mistakes happen. It would, therefore, have been better if the concerned officer had accepted the error on their part did not file an affidavit* ***which, to put it mildly, is economical with truth****."* Thereafter in para-6 hon'ble court noted that *''a copy of this order be placed before the Commissioner of income tax(Judicial) Mumbai and also be circulated to all Commissioner (Judicial) in the country so that they are made aware of the fact that it would in the interests of Department to be truthful and accept the mistakes instead of filing such affidavits as it has been done in the present case".*

4.Hon'ble Karnataka High Court in the case of ***Harish Wadhwa*** **v.** ***ITO*** **[2021] 126 taxmann.com 156 (Kar.)** wherein overturning the order passed by the ITAT Bangalore in [IT Appeal No. 561 (Bang.) of

2019, dated 28-8-2019] held that "*when an order is passed without application of mind and without adverting to the facts obtaining in the case it (the order) deserves to be set aside to the Tribunal with a direction to redo the exercise after affording an opportunity to the assessee to put forth his arguments.*"

II.The Concept

5.The Full Bench of hon'ble Delhi High Court has observed in *J.T. (India) Exports* v. *Union of India* [2003] 262 ITR 269 (Delhi) (FB), as follows —

". . . Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law ***involving linguistic technicalities and grammatical niceties****. It is the substance of justice which has to determine its form.*

The expression, 'natural justice and legal justice' does not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. ***Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication****. It supplies the omissions of a formulated law." (p. 271)*

5.1 The aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice as also observed by the hon'ble Supreme Court in ***A.K. Kraipak* v. *Union of India* AIR 1970 SC 150.**

5.1.1 They do not supplant the law but supplement it .

(***Union of India* v. *J.N.Sinha* AIR 1971 SC 40).**

6.The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction not merely of property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

7.The philosophy behind natural justice is participatory justice in the process of democratic rule of law. Hearing need not be an elaborate ritual. It has been held that *''In situations of quick despatch, it may be minimal, even formal''*. Fair hearing is a postulate of decision making, although fair abridgement of that process is permissible. For detailed exposition ***A.K. Kraipak* v. *Union of India* [1970] 1 SCR 457: AIR 1970 SC 150** can be referred.

III.The Principles

8.Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

9.The classic or purist admits of two fundamental principles:

1.Audi alteram Partem[Nobody shall be condemned unheard]

2.Nemo judex in causa sua [Nobody shall be a judge in his own cause]

A **corollary** has come into being from the above two rules namely, "**qui aliquid statuerit parte inaudit a alteram actqum licet dixerit, hand acquum facerit**" that, " he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right". Justice should not be done but should manifestly be seen to be done. {Bosewell's case of 1605}.

9.1 The following principles of natural justice have become part of the Income-tax law :

1.*Audi alteram partem, i.e.,* no man should be condemned unheard;

2. Giving reasons for decisions;

3.Acting fairly, reasonably and without prejudice, on evidence.

IV.Audi Alteram Partem: the bedrock

10. Limbs:

1.PROPER NOTICE - Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. The authority must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.

2.ADEQUATE TIME - Time given for the purpose should be adequate so as to enable him to make his representation.

In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person *in absentia* becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him.

3.OPPORTUNITY HAS TO BE EFFECTIVE - The hon'ble Calcutta High Court in ***CIT* v. *Panna Devi Saraogi* [1970] 78 ITR 728** observed that it is this opportunity of being heard which introduces the principle of natural justice. The opportunity, no doubt, must be reasonable and effective opportunity. It should not be a mere paper opportunity or any illusory opportunity or a pretence.Held likewise in ***State of UP* v. *Shatrughan Lal* 1998 (6) JT SC 55.** Opportunity of hearing includes opportunity to lead such evidence as the parties may deem proper[***Camphor & Allied Products Ltd.* v. *Union of India* [1995] 75 ELT (All.) 733.]**

11.The process:

The process of *audi alteram partem* essentially consists of -

i)making the allegations against a person known to him,

ii)giving him an opportunity to state his defence and thereafter,

iii)to consider his defence in the light of the circumstances, and

iv)pass an order germane to the considerations.

12. A KEY ASPECT-supplying documents and affording cross examination

In ***CIT*** **v.** ***Eastern Commercial Enterprises*** **[1994] 210 ITR 103 (Cal.). RIGHT TO GET COPY OF EVIDENCES AND CROSS-EXAMINE THE HOSTILE WITNESS** has been emphasized.It is trite law that cross-examination is the *sine qua non* of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be **supplied with the contents of all such evidences, both oral and documentary, so that he can prepare to meet the case against him.** This necessarily also postulates that he should cross-examine the witness hostile to him -

13.THE SECTIONS IN I.T.ACT IN WHICH PROVISION OF HEARING SPECIFICALLY EXIST –

The doctrine of *audi alteram partem* has been incorporated in some provisions of the Income-tax Act as part of the procedural law. Such sections include —

-section 127 relating to transfer of cases from one Assessing Officer to another,

-sections 142, 143, 144, 144A relating to assessments,

-sections 154 and 155 relating to rectification,

-sections 250 and 251 relating to appeals before the Commissioner (Appeals),

-sections 263 and 264 relating to revision,

-section 254 dealing with appeals before the ITAT, and

-sections 273B and 274 relating to penalties.

14.Even in cases where the provisions **do not specifically provide** for a hearing to be given before proceeding to act against the assessee or for recording reasons or for making an order in writing (*i.e.,* where clear and specific provisions embodying the principles of natural justice are absent), these principles have to be read in them and are required to be followed. The hon'ble Supreme Court in the case of ***Rajesh Kumar* v. *Deputy CIT*** **[2006] 287 ITR 491 (SC)** held that *"when by reason of an action on part of statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed and in such an event although no express provision is laid down in this behalf, Compliance of principles of natural justice would be implicit and where for auditing books of account of assessee, Deputy Commissioner passed order under section 142(2A) of the Act without giving an opportunity of hearing to assessee and refusing assessee's request for supply of reasons therefor, action of Deputy Commissioner was vitiated in law."*

A 3 Member Bench of the Supreme Court in the case of ***Sahara India (Firm)* v. *CIT*** **[2008] 300 ITR 403 (SC)** approved this decision.

This led to a Constitutional Amendment . A proviso to section 142(2A) was added by the Finance Act,2007 with effect from 1st June,2007 providing for affording an opportunity to the assessee on the following lines-

"Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard."

The purpose for which proviso was inserted was explained thus by clause 37 of the Finance Bill 2007-

'There is no legislative intent to allow the assessee an opportunity of being heard before ordering a special audit under sub-section (2A) of section 142 of the Income-tax Act. Accordingly, the Income-tax Department has over the years ordered a large number of special audits without giving any opportunity to the taxpayer of being heard. While it is not feasible to give effect to the ratio of the decision of the Hon'ble Supreme Court in the case of Rajesh Kumar and others in view of the large number of cases where such audit has been ordered in the past, **respectfully following the decision of the Hon'ble Supreme Court in the said case, it is proposed to provide, prospectively, that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.**'

These amendments will take effect from 1st June, 2007."

Notwithstanding,even prior to the amendment the rulings were rightly made against Revenue.

15.So,the application of principles of natural justice **becomes presumptive** unless found excluded by express words of statute or by necessary intendment [: ***Mangilal* v. *State of MP* [2004] 14ILD 229(SC)**].

Even if grant of an opportunity is not specifically provided for **it has to be read into the unoccupied interstices unless there exists a statutory interdict.**

16. A Disclaimer:

However , as pointed out by Lord Denning by the United Kingdom, Court of Appeal (England and Wales) in the case of ***R* v. *Secretary of State for the Home Department Ex parte Mughal* [1973] 3 All ER 796,** rules of natural justice must not be stretched too far. **They should not be allowed to be exploited as a purely technical weapon** to undo a decision which does not in reality cause substantial injustice and which, had the party been really aggrieved thereby, could have been set right by immediate action. This leads us to a relatively unchartered territory of useless formality which is subject matter of part 2 of this article.Prior to that we need to touch briefly on the aspect of passing reasoned orders as a vital part of natural justice and consequences of violation of these principles.

IV.REASONED ORDER

17.The requirement of recording of reasons for decisions is another vital aspect of the principles of natural justice. There are some provisions under the Income-tax Act that explicitly require the officer to record reasons for the decision he makes. Sections 143(3) , 148, 171, 269UD and 281B contain such provisions. "'The giving of reasons', as Lord Denning put it in *Breen* v. *Amalgamated Engineering Union* [1971] 1 All ER 1148 (CA), is one of the fundamentals of good administration and, to recall the words of this Court in *Khudiram* v. *State of West Bengal* [1975] 2 SCR 832 at p. 845 ; AIR 1975 SC 550 at p. 558, in a Government of laws '**there is nothing like unfettered discretion immune from judicial reviewability'.** The executive not less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in arts. 14 and 16(1)."

17.1 In *Siemens Engg. & Mfg. Co. of India Ltd.* v. *Union of India* AIR 1976 SC 1785, the Apex Court held :

> ". . . If courts of law are to be replaced by administrative authorities and Tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and Tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and Tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. . . ." (p. 1789)

17.2 This issue has also been dealt with in the case of ***Gurdas Ram & Co.* v. *Union of India* AIR 1988 J&K 4,** wherein it has been observed that the administrative authority should never forget that any act of it is open to judicial review. **Unless reasons are given by an administrative authority** for its decision, finding, opinion or conclusion, it is not possible to hold as to whether it is based upon relevant facts. The requirement for giving reasons for the act of the administrative authority, which is extremely essential, is based upon the following sound principles of law, equity and justice :

(*a*)to eliminate arbitrariness and ensure a just, fair and reasonable decision;

(*b*)to allow an aggrieved person to make a representation against the decision of the authority;

(*c*)to make a judicial review possible so as to ensure that the authority acted objectively and not on subjective, irrelevant and extraneous considerations.

V.CONSEQUENCES FOR VIOLATING THE PRINCIPLES OF NATURAL JUSTICE

18.Breach of natural justice nullifies the order made in breach. If that is so, then the order made in violation of the principles of natural justice is of no value.

In ***Ridge* v. *Baldwin* [1964] AC 40** the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. [Also refer ***Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 AC 147.**]

The Kerala High Court in ***Ponkunnam Traders* v. *Addl. ITO* [1972] 83 ITR 508, *Addl. ITO* v. *Ponkunnam Traders* [1976] 102 ITR 366 (Ker.)** has held that failure to conform to the principles of natural justice would make a judicial or quasi-judicial order void, and such an order cannot be validated by the appellate or revisional orders.

19.In my studied view **there can be two consequences for violation of principles of natural justice** in context of income tax law:

1. Hold the action of the authority concerned as illegal in the sense of irregularity and send the matter back to the point where the irregularity happened.

2. Hold the action of the authority concerned as illegal in the sense of nullity and thereby annul the order leaving no records for the authority concerned except to go in appeal against our decision holding its order as non-existent in the eyes of law.

In an overwhelming number of cases where natural Justice was seen as the prime factor in the matter, holding of the order of the authority as illegal in the sense of regularity prevailed and still so prevails. However there are instances in which it has been held that sending the matter back to the authority concerned would amount to providing second innings to it whereas the breach of natural Justice is such that it does not warrant that the second chance be given to the authority concerned.

19.1 One such sterling example has been set by the hon'ble Bombay High Court in the case of **KSS Petron Pvt Ltd. Vs ACIT in ITA 224/2014 dated 3.10.2016.**

It was held by the hon'ble H.C. as follows;

''7 On further Appeal, the Tribunal passed the impugned order.By the impugned order it held that the Assessing Officer was not justified in finalizing the Assessment, without having first disposed of the objections of the appellant. This impugned order holds the Assessing Officer is obliged to do in terms of the Apex Court's decision in GKN Driveshafts (India) Ltd., v/s. ITO 259 ITR 19. In the aforesaid circumstances, the order of the CIT(A) and the Assessing Officer were quashed and set aside. However, after having set aside the orders, it restored the Assessment to the Assessing Officer

to pass fresh order after disposing of the objections to reopening notice dated 28th March, 2008, in accordance with law.

8 We note that once the impugned order finds the Assessment Order is without jurisdiction as the law laid down by the Apex Court in GKN Driveshafts (supra) has not been followed, then there is no reason to restore the issue to the Assessing Officer to pass a further/fresh order. ***If this is permitted, it would give a licence to the Assessing Officer to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the Assessing Officer for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the Assessee by reviving stale/ old matters.***

….

11 Therefore, on the above facts and law, the substantial question of law is answered in the negative i.e. in favour of the AppellantAssessee and against the Respondent Revenue.''

20. In my considered view, in a limited number of cases, the **breach of natural Justice must be held to be fatal to the proceedings** in the sense of not providing another opportunity to the erring party. Such a course of action unless taken, albeit in a limited number of cases where,

the breach of natural Justice is a result of discernible malafide intent or,

plainly prejudicial or perverse interpretation and application of law or,

gross abuse of authority vested in the officer concerned or ,

gross and contemptuous disregard of the principles of natural Justice,

there must be irreversible penalisation. This shall serve the twin purposes of not letting the offending party feel that at worst, the matter shall be remitted back and it shall be free again to adjudicate thereupon as also to

prevent totally avoidable injury to the opposite party and suffering of having to undergo the punishment of the same process again for no fault of his. The latter is especially significant as in my ex-career as a revenue officer for decades, I've seen that many a time, **the process is the punishment**. To subject the assessee to a second-round of avoidable compliances is one such punishment. The blissful ignorance of the officers of revenue and their conscious and contemptuous disregard of the honoured canons of natural Justice as also devil may care attitude towards jurisprudence specially theory of precedents needs to be met with the fate it deserves.

20.1 I am humbly emboldened in my above view by judgement in the case of **Nawabkhan Abbaskhan v. State of Gujarat reported in AIR 1974 SC 1471** -a pioneering decision for this concept.It says

" A determination is no determination if it is contrary to the constitutional mandate of Art. 19. …… Any order made without hearing the party affected is void and ineffectual to bind parties from the beginning if the injury is to a constitutionally guaranteed right. ''

Holding it to be a nullity and distinguishing it from mere illegality ,it was observe further that *'' nullity is the consequence of unconstitutionality and so the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of citizen* ***is void ab initio and of no legal efficacy****. The duty to hear,* ***manacles his jurisdictional exercise, and any act is, in its inception, void*** *except when performed in accordance with the conditions laid down in regard to hearing".*

PART II

EXEMPTION FROM THE PRINCIPLES OF NATURAL JUSTICE : ”USELESS FORMAILTY THEORY”.

21.1 ”It is beyond any cavil that ordinarily unless excluded by operation of a statute, the superior courts while exercising power of judicial review shall proceed on the basis that assignment of reasons is imperative in character. When an authority, be it administrative or quasi-judicial, adjudicates on a dispute and if its order is appealable or subject to judicial review, it would be necessary to spell out the reasons therefor. While, however, applying the principles of natural justice, ***the court must also bear in mind the theory of useless formality and the prejudice doctrine****.": **Rajesh Kumar* v. *Deputy CIT* [2006] 287 ITR 491 (SC)**

21.2 This" useless formality theory" was also applied by the hon’ble Supreme Court in the case of Escort Farms Ltd. (formerly known as ***Escorts Farms (Ramgarh) Ltd.)* v. *Commissioner*, [2004] 4 SCC 281** wherein it was held by reiterating the position that rules of natural justice should be followed for doing substantial justice but at the same time it would be of no use if it amounted to completing a mere ritual of hearing **without possibility of any change in the decision of the case on merits** by explaining in the following terms at para.64 of its judgment-

"Right of hearing to a necessary party is a valuable right. Right of Denial of such right is serious breach of statutory procedure prescribed and violation

of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of Government Grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question, all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. ***Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits."***

21.3 The hon'ble Madras High Court in the held case of ***S. Gurushankar* v. *CIT* [2020] 427 ITR 175 (Mad.)** on a writ petition filed by the assessee held that "As section 115JC of the Income-tax Act (the Act) starts with *non-obstante* clause, **provisions relating to Alternative Minimum Tax can be invoked by the Assessing Officer without giving prior notice**; therefore, where section 115JC of the Act was invoked during remand proceedings without giving prior notice to the assessee, it could not be said that the Assessing Officer had violated principal of natural justice."

The Learned Single Judge referred to the decisions rendered by the Supreme Court in the cases of ***Aligarh Muslim University* v. *Mansoor Ali Khan*** **[2000] 7 SCC 529 and *Punjab National Bank* v. *Manjeet Singh* [2006] 8 SCC 647 to consider the effect of a "useless formality theory".**

21.4 The facts of the case which arose before the Allahabad High Court in ***Trimurti Fragrances (P.) Ltd.* v. *CIT*[2006] 283 ITR 547 (All.)** were that the assessee-company and others (firms/individuals)belonged to one group engaged in manufacturing and selling Gutkha and all were operating from Kanpur and assessed at Kanpur. Sbsequent to a search, and after a notice to assessee u/s 127(2) ,the Commissioner of Income-tax, Kanpur transferred the case of the assessee from Kanpur to New Delhi for coordinated investigation. The assessee's case was that no reasonable opportunity of hearing was given before passing the orders. The High Court, after referring to the decision of the Supreme Court in the case of ***Canara Bank* v. *Debasis Das* [2003] 4 SCC 557** reiterated the accepted basic principle of adherence to principles of natural justice *vis-à-vis* useless formality theory and held that, on facts, it could be said that assessee was given reasonable opportunity to place its case and therefore, there was sufficient compliance of principles of natural justice and order of transfer could not be said to be arbitrary

22.What is known as the useless formality theory has received consideration in the judgment of the Hon'ble Supreme Court in *M.C. Mehta* v. *Union of India* JT 1999(5) SC 114 SAYS **THE THEORY CAN BE APPLIED where there is no substantial possibility of success or that the result will not be different, even if natural justice is followed .**

22.1 It must be 'demonstrable beyond doubt' that the result would have been different. No absolute rule of proof of prejudice however can be laid down'.

23.Useless formality theory' to some is a dangerous one and, however inconvenient, natural justice must be followed. It has been judicially

observed that 'convenience and justice are often not on speaking terms'. Also that" *unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case"*, the Court may refuse to exercise said jurisdiction.

24.Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a **considerable divergence of opinion** whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. There is an interesting catena of cases led **by *State Bank of Patiala* v. *S.K. Sharma* (JT 1996(3) SC 722), *Rajendra Singh* v. *State of M.P.* (JT 1996 (7) SC 216)in which it was held** *''that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived. We do not propose to express any opinion on the correctness or otherwise of* ***the 'useless formality theory'*** *and leave the matter for decision in an appropriate case, inasmuch as the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy, J."*

PART III

IN CONCLUSION:

25.Whether and how far the principles of natural justice should guide the exercise of power, depends upon :

-the express words of the provisions;

-the nature of the power;

-the purpose for which it is conferred;

-the effect of exercise of that power.

26.The final word must belong to **The Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee [1977] 2 SCC 256 where** the HON'BLE Supreme Court succinctly summarized the **concept of natural justice** as follows :

> "Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such **essential processual 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 to the administrative realities and other factors of a given case, can be exasperating. We can neither be financial nor fanatical but should be flexible yet firm in this jurisdiction. **No man shall be hit below the belt - that is the conscience of the matter."**