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POST DECISIONS HEARING

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Abstract:

The primary aim of law is to provide justice. One of the main objectives in providing justice is the principles of natural justice, which provide impartial and fair justice. Principles of Natural justice also protect arbitrary use of power by administrative authorities. Principles of natural justice include Audi alteram partem, Nemo Judex casua sua, and Reasoned decision. In this one major part is the Audi alteram partem, which covers post decisional hearing, which emerged after landmark judgment named Menaka Gandhi V UOI. In this article, Post decisional hearing was dealt in detail and its impact in affecting the principle of natural justice and case laws relating to it, which gave the decision that Post decisional hearing is of exceptional in nature.

Keywords: Principle of natural justice, Nemo Judex causa sua, Audi alteram partem and etc.

Introduction:

The concept post decisional hearing comes under the doctrine of principle of natural justice. In principle of natural justice one of the main doctrine audi alteram partem governs post decisional hearing. In 1970s this concept was developed by supreme court to maintain a balance between administrative efficiency and fair procedure to the individual. In case when a authority taken a tentative decision the individual has given an opportunity to be heard about their side. In post decisional hearing the authority has power in taking tentative decision...but the final decisions are taken after the final hearing. The main objective of this doctrine was if a final decision is taken by the authorities, then it is difficult for them to reverse the decision and the fair hearing was defeated. It also prevents arbitrary decisions.

Principle of natural justice:

Principle of Natural justice was derived from a Latin phrase - Jus Natural means "natural law". Indian legal system developed a concept called principle of natural justice to protect the arbitrary use of Powers by the

authorities. Every individual have the rights to hear their side, to prevent that right the concept was developed by the courts.

Case: Mohinder Gill vs Chief Election commissioner

In this case the court stated that whether in Judicial or quasi judicial fairness should be there in every action.

It has two main principles

- 1) Nemo judex
- 2) Audi Alteram partem

Right of Hearing both

sides

Audi Alteram partem

It comes under the Principle of Natural justice. It is a Latin phrase- which means to "hear the other side". Audi Alteram partem is a fundamental principle in natural justice. It necessitates that fairness should be in every legal proceedings and the actions taken by the administrative authorities. The main principles of Audi Alteram partem is Hearing of Both sides. No one should condemn without hearing. It

provides an opportunity to present their case and defend their side before a decision made.

It ensures the right of fair hearing and provide opportunities to present their evidences to protect their side.

It has some essential components.

1. Notice.

Punjab National Bank v. All India Bank Employees Federation– The notice issued to the party was not clear related to imposition of penalty. It stated that the imposed penalty was considered as invalid.

2. Hearing.

3. Evidence

4. Cross-examination.

5. Legal Representation.

Post Decisional Hearing:

In early 1970's the India legal system developed a concept called Post Decision Hearing to maintain a balance between administrative efficiency and individual justice. An individual is given an opportunity to present their evidences to protect their side. By granting opportunity for each parties to present their side, it upholds justice and is essential to prevent arbitrary decision. It believe that by considering all sides of arguments the fair decision can reached. When the pre-decision given by the authorities are not feasible then the post decisional hearing takes place. In post decisional hearing only tentative decision was taken by the authorities not the final decision and the final decision was taken after the final hearing.

The main objective of Post Decision Hearing is that when a decision was made by the authorities then it is difficult to change or reverse that and the fair hearing purpose also gets defeated. Pre-decisional hearing is preferred over post-decisional hearing by the Honorable Supreme Court. It ensures the objective of Principle of Natural Justice. It provides an opportunity to be heard in the later stages. In India this concept was introduced by the judicial decision of the Apex Court. It also

strengthen the Concept of Audi Alteram Partem.

Evaluation of Post Decisional hearing:

Maneka Gandhi v. Union of India

This case plays a most significant role towards the transformation of judicial review on Article 21 of the Constitution. It also known as golden triangle case.

Facts of the case: Maneka Gandhi's passport was issued on 1/06/1976 under the Passport Act 1967. She was a journalist. A Notice was issued by the he regional passport officer, Delhi dated 2nd June 1977. In that letter Maneka Gandhi was asked to submit her passport within 7 days from receiving the notice, under section 10(3)(c) of Passport Act,1967, and stated that the passport was impounded in the 'Public Interest'. Then Maneka Gandhi immediately ask to furnish reason for such order by wrote a letter to the regional passport officer, New Delhi.

The Government of India refused to produce her any reason for its decision Later she filed a writ petition on Supreme Court under Article 32 of the Indian Constitution for the violation of her fundamental rights 14, 19(1) guaranteed in Article 21 of the Indian Constitution.

Any pre-decisional hearing or notice was not given to her.

Issue: Whether Fundamental Rights under Article 14,19(1)(a) and 21 was violated by Section 10(3)(c) of the Passport Act 1967.

Whether Passport Act prescribes a 'procedure' as required by Article 21 before depriving a person from the right guaranteed under this article.

Should the government give opportunity for the petitioner to be heard?

Whether fundamental rights given to a person is absolute or not. Fundamental rights such as Freedom of speech and expression shall extend to foreign also or only within Indian Territory

Judgment:

It is violation of Article 14 of the Indian Constitution; it confers undefined power on the passport authority to impound a passport "in the interest of the general public".

Section 10(3) (c) of Passport Act, 1967 is violation of Article 21 since it does not prescribe 'procedure' within the meaning of that article. Then the procedure practiced is not good.

No there is no fair hearing process takes place and pre-decisional hearing was not given to the petitioner.

Fundamental rights given to a person are not absolute that can be subject to reasonable restrictions. It can extend to outside of Indian Territory.

In this case they interpreted the connection between Article 14, 19, 21.

Here these three articles are said to be Golden Triangle (These three articles should be Equal). To ensure the personal liberty of a person these articles should be equal proportion in law. **The concept of Post Decision Hearing was developed after this case.**

Swadeshi cotton mills Re: Post decisional hearing is not applicable for all cases because it must be of exceptional in nature.

In Bari Doab Bank V. UOI: A legislature was passed to the Bank for request under Banking Regulation Act, 1949 of petitioner Bank. The Supreme Court held that the applicant was not qualified for pre-decisional hearing.

Trehan v Union of India: A circular was issued by a Government office in which prejudicially adjust about workers without providing a chance of hearing. The circular was challenged, Stated Post Decision Hearing doesn't amount to Principle of Natural Justice.

Benefits:

➤ Post Decision Hearing gives an opportunity for individuals to express their thoughts about the decisions that affect them.

➤ **Goldberg v Kelly(1970):**

➤ **Mathews v Eldridge(1976):**

It provides an opportunity for the individuals to seek redress for the decisions they believe unjust.

➤ It can reveal the mistakes or misunderstandings and it can be corrected for the benefit of those who affected.

➤ Parties can challenge the decision by providing evidences to protect themselves in post decisional hearing.

➤ **Reed v Town Gilbert.**

It promotes fairness in decision making by analyzing the real issue.

➤ **Cleveland Board of Education v loudermill.**

It prevents people from getting affected by an unfair final decision by providing tentative decision.

Criticism

Unfair Process:

When court is taking a decision, people who involved in the case might not have a opportunity to fully present their side of the case before the final decision was made. Sometimes there can be a hearing after the final decision. But it feels unfair cause it brings an illusion of the decision of the decision makers is already made. This can damage the trust in progress

Late fixes:

In many cases, post decision hearing can happen after the decision is on effect. The previous decision might have cost them money or even job loss and other harms as well. So even if the final hearing change the entire decision that was made, the loss of time, reputation or opportunity can't be undone. Thus, people feel that the process is too late a make a real difference.

Limited Review:

Sometimes hearing only follows the procedure correctly instead of examining the real fairness of the decision. For example, Some reviews may done without investigating whether the decision itself was fair and correct, it simply confirm that all rules were followed and the paper works are completed. This limited scope can make the review less useful for the persons who affected by the decision.

Possible Bias:

If the same people who made the previous decision are involved in reviewing it, there's a high change for bias. Even if the reviewers trying to make new and fair decision, it will feel like the original decision makers are trying to justify

their own actions. It will create a trust issue. This can cause distrust in the system

Cost and time:

Post decisional hearings can cost a lot of time, money, and energy for preparing and attending the hearings. This can cause financial struggles and distress for individuals and small organisations if the process takes too long. Some might give up their rights because of the money and time it takes.

Conclusion

The concept of Post Decision Hearing was developed in India by the *Maneka Gandhi vs. Union of India* case. It provides a balance between fairness and administrative actions. It is governed by the Principle of Natural Justice. The post decisional hearing takes place when the pre-decision hearing fails. The individuals are getting an opportunity to be heard. The concept of Post Decision Hearing is a slow rule which is applied. It is mostly a tentative decision, not a final decision. And the fundamental objective of Post Decision Hearing is that it is difficult to reverse or correct the decision for the authorities. But the Supreme Court prefers pre-decisional hearing more than post decisional hearing. It ensures that whether the decision taken by the authorities is correct and fair.

