(2011) 04 DEL CK 0291

Delhi High Court

Case No: LPA No. 2 of 2011

Arun Tyagi		APPELLANT
	Vs	
Election Commission of India and Another		RESPONDENT

Date of Decision: April 4, 2011

Acts Referred:

- Canara Bank Officer Employees (Conduct) Regulations, 1976 - Regulation 6(18), 6(21)
- Constitution of India, 1950 - Article 14, 21
- Industries (Development and Regulation) Act, 1951 - Section 18AA, 18AA(1), 18F
- Representation of the People Act, 1950 - Section 14, 15, 22, 24

Citation: (2011) 4 ILR Delhi 508

Hon'ble Judges: Dipak Misra, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Ch. Rabindra Singh, for the Appellant; P.R. Chopra, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Questioning the correctness of the order dated 26.10.2010 passed by the learned Single Judge in W.P.(C) No. 13779/2009, the present intra-Court appeal has been preferred.

2. The factual matrix giving rise to the present appeal is that the Appellant was registered as a voter and he was issued an EPIC No. CZF1248509 by the Electoral Registration Officer for 68 Gokul Pur (SC) Assembly Constituency within the territory of Delhi. In the first week of March 2009, prior to the parliamentary elections, he came to know that his name had been deleted from the Electoral Roll 2009 by the Respondents.

3. Being dissatisfied with such deletion, he preferred WP(C) No. 7967/2009 seeking inclusion of his name in the electoral roll. The writ petition was disposed of on

1.4.2009 granting liberty to the Appellant to prefer an appeal u/s 24 of the Representation of Peoples Act, 1950 (for brevity "the 1950 Act?). The Appellant filed an appeal which was dismissed by the Chief Electoral Officer by the order dated 25.9.2009.

4. Being aggrieved by the order of the appellate authority, the Appellant preferred W.P.(C) No. 13779/2009. It was contended before the writ court that the appellate authority had not taken into consideration the fact that he had produced the electricity bills, house tax receipts and a copy of the ration card which showed his mother''s address to be in Gokul Pur, Delhi. The learned Single Judge perused the impugned order wherein the CEO had recorded that there was a joint inspection on 17.6.2009 which revealed that the house of the Appellant is situated in Uttar Pradesh and not in the National Capital Territory of Delhi. The learned Single Judge, by order dated 25.1.2010, required the Respondent No. 2 to produce the said joint inspection report. On a scrutiny of the said report, the learned Single Judge found that the revenue officials of district Ghaziabad, Uttar Pradesh as well as the revenue staff of the district North-East, Delhi undertook a joint inspection of the house of the Appellant at A-1/67, Gali No. 2, Harijan Basti Colony, Gokul Puri in the presence of the Assistant Electoral Registration Officer and came to the conclusion that the house is situated beyond the boundary of Delhi in Uttar Pradesh and, in particular, in village Behta Hajipur, district Ghaziabad (Uttar Pradesh) in khasra No. 1031. The learned Single Judge came to the conclusion that the same being in the realm of fact, the writ court in exercise of extraordinary jurisdiction cannot re-appreciate the same and it can only be agitated in a civil suit and accordingly granted liberty to the Petitioner therein to seek other appropriate remedies available to the Appellant.

5. We have heard Mr. Rabindra Singh, learned Counsel for the Appellant, and Mr. P.R. Chopra, learned Counsel for the Respondent Nos. 1 and 2.

6. It is submitted by Mr. Singh that before deleting the name of the Appellant, it was incumbent on the part of the concerned authorities to follow the principles of natural justice but the same was not followed. It is his further stand that the finding recorded by the appellate authority that there was a joint inspection and the committee had gone to the house of the Appellant and, therefore, the principles of natural justice stood substantially complied with is not factually correct.

7. Mr. P.R. Chopra, learned Counsel for the Respondents, would contend that the order passed by the appellate authority is totally defensible inasmuch as the appellate authority had granted opportunity to the Appellant to explain his case in detail which he did by presenting himself through his counsel on 8.6.2009. The learned Counsel would further submit that the joint inspection report speaks eloquently about the situation of the house of the Appellant and, therefore, there is no warrant for interference by this Court and the observation made by the learned Single Judge that it is a disputed question of fact and should not be gone into in the writ petition cannot be found fault with.

8. To appreciate the submissions raised at the Bar, it is apposite to refer to Section 22 of the Act. It reads as follows:

22. Correction of entries in electoral rolls. - If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency -

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under Clause (a) or Clause (b) or any action under Clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

9. On a plain reading of the aforesaid provision, it is clear as crystal that the Electoral Registration Officer can act on the basis of an application made to him or suo motu after causing an enquiry that any entry in the electoral roll of the constituency should be deleted on the ground that the person concerned is dead or ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll but before taking any action, it is obligatory on the part of the electoral registration officer to give the person concerned reasonable opportunity of being heard in respect of the action to be taken in relation to him. Thus, the provision mandates conducting a prior enquiry and affording an opportunity of hearing to the aggrieved person.

10. The question that emanates for consideration is whether in a case of this nature, hearing by the appellate authority would sub serve the mandate of the statute. The learned Counsel for the Respondents would submit that when a hearing is given at the appellate stage and a joint inspection has been conducted, the mandate of Section 22 is substantially complied with. The learned Counsel for the Appellant would urge that in a democracy, correction of entries in electoral roll has its own sanctity and when the statute clearly commands that before taking any action the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation

to him, it cannot be viewed like a case or a lis in other sphere. That apart, it is canvassed by him that the joint inspection was conducted behind the back of the Appellant and, therefore, it has no meaning in law.

11. At this juncture, we think it appropriate to refer to certain authorities which deal with the concept of basic rule of audi alteram partem and its effect and impact and also the invocation of the principle of post decisional hearing. In State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, the Apex Court has observed thus:

It is true that the order is administrative in character but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first Respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first Respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.

12. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, the Constitution Bench has ruled thus:

Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion 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 one fails to see 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.

13. In this regard, we may profitably quote a passage from K.I. Shephard and Others Vs. Union of India (UOI) and Others, wherein the Apex Court has held thus:

15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of

fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities....

14. In Swadeshi Cotton Mills Vs. Union of India (UOI), the issue that emerged for consideration was whether prior hearing was imperative to be given to the persons affected before an order u/s 18AA of Industries (Development and Regulation) Act, 1951 was passed. The majority, after scanning the anatomy of Section 18AA while analyzing the said question, held as follows:

42. "The necessity for speed", writes Paul Jackson: "may justify immediate action, it will, however, normally allow for a hearing at a later stage." The possibility of such a hearing - and the adequacy of any later remedy should the initial action prove to have been unjustified-are considerations to be borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought "that because rough, swift or imperfect justice only is available that there ought to be no justice": Pratt v. Wanganui Education Board.

43. Prof. de Smith, the renowned author of JUDICIAL REVIEW (3rd Edn.) has at page 170, expressed his views on this aspect of the subject, thus: "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto? A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings."

44. In short, the general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the

maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

After stating the said principles, their Lordships opined thus:

77. The second reason - which is more or less a facet of the first - for holding that the mere use of the word "immediate" in the phrase "immediate action is necessary", does not necessarily and absolutely exclude the prior application of the audi alteram partem rule, is that immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse effect on fall in production. And, such likelihood and the urgency of action to prevent it, may vary greatly in degree. The words "likely to affect...production" used in Section 18AA(1)(a) are flexible enough to comprehend a wide spectrum of situations ranging from the one where the likelihood of the happening of the apprehended event is imminent to that where it may be reasonably anticipated to happen sometime in the near future. Cases of extreme urgency where action u/s 18AA(1)(a) to prevent fall in production and consequent injury to public interest, brooks absolutely no delay, would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claims of hurry and hearing.

78. The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure), this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

Their Lordships further came to hold as follows:

94. ...In the facts and circumstances of the instant case, there has been a non-compliance with such implied requirement of the audi alteram partem rule of natural justice at the pre-decisional stage. The impugned order therefore, could be struck down as invalid on that score alone. But we refrain from doing so, because the learned Solicitor-General in all fairness, has both orally and in his written submissions dated August 28, 1979, committed himself to the position that u/s 18F, the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking taken over, a "full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action/of take-over", within a reasonable time after the take-over. The learned Solicitor-General has assured the Court that such a hearing will be afforded to the Appellant-Company if it approaches the Central Government for cancellation of the

impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking had a right to such a hearing.

(Emphasis added)

15. In Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, , the Apex Court while dealing with the application of principles of natural justice adverted to the concept of pre-decisional hearing and post-decisional hearing and stated thus:

15. ...Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show-cause notices for requisitioning vehicles to evacuate population. If there is an outbreak of an epidemic, we presume one does not have to issue show-cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post-decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case....

(Emphasis supplied)

16. In Canara Bank and Others Vs. Shri Debasis Das and Others, the Apex Court was dealing with the scope and ambit of Regulations 6(18) and 6(21) of the Canara Bank Officer Employees? (Conduct) Regulations, 1976. In the said case, their Lordships posed the question whether the principles of natural justice have been avoided and if so, to what extent and whether any prejudice has been caused and eventually held as follows:

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame work of the statute under which the enquiry is held. 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. Expression "civil consequences" encompasses infraction of not merely 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.

Thereafter, their Lordships referred to the decisions in Charan Lal Sahu Vs. Union of India, , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and Union Bank of India Vs. Vishwa Mohan, and came to hold that though in all cases, post-decisional hearing cannot be a substitute for pre-decisional hearing, yet it would depend upon the facts of the case.

17. In Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, while dealing with the concept of applicability of natural justice, the Apex Court has held thus:

The principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". In certain circumstances, application of the principles of natural justice can be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim audi alteram partem cannot be invoked if import of such maxim would have the effect of paralysing the administrative process or where the need for promptitude or the urgency so demands. The principles of natural justice have no application when the authority is of the opinion that it would be inexpedient to hold an enquiry and it would be against the interest of security of the Corporation to continue in employment the offender workman when serious acts were likely to affect the foundation of the institution.
(Emphasis supplied)

18. In Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, , a two-Judge Bench of the Apex Court after referring to the decisions in R.S. Dass Ors. Vs. Union of India (UOI) and Others, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has ruled thus:

36. The recent trend, however, is of "prejudice". Even in those cases where procedural requirements have not been complied with, the action has not been ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

Thereafter, their Lordships referred to the decision in P.D. Agrawal Vs. State Bank of India and Others, and opined as under:

42. Recently, in P.D. Agrawal (supra) this Court restated the principles of natural justice and indicated that they are flexible and in the recent times, they had undergone a "sea change". If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking a decision by the authority.

19. In State of Maharashtra Vs. Public Concern for Governance Trust and Others, while dealing with the non-affording of an opportunity of hearing to a person who is visited with civil consequences and his reputation is affected, their Lordships have opined thus:

39. ...In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play. Reputation of an individual is an important part of one''s life. It is observed in D.F. Marion v. Minnie Davis 1955 ALR 171 and reads as follows:

The right to enjoyment of a private reputation, unassailed by malicious slander is of an ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.

40. This Court also in Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, has observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

41. It is thus amply clear that one is entitled to have and preserve one''s reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognized and violation of the same will have to bear the scrutiny of judicial review.

20. In Bidhannagar (Salt Lake) Welfare Association Vs. Central Valuation Board and Others, he Apex Court, while testing the constitutional validity of certain provisions of the West Bengal Central Valuation Board (Amendment) Act, 1994, has expressed thus:

28. The proviso appended to Section 14 of the 1978 Act makes the situation worse inasmuch as before taking recourse to the review provision a pre-deposit is to be made in terms thereof. A statute which provides for civil or evil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.

29. Ordinarily an order entailing civil consequences should be preceded by an opportunity of being heard. Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others, The impugned Act, however, has taken away such a

provision which existed in the earlier one.

30. It may be that the legislature thought that while preparing the general valuation, it may not be possible to give an opportunity of hearing as such and, an opportunity of hearing may be given at a later stage. It is true that an order of assessment under the Act is conclusive subject to Sections 14 and 15 of the Act but keeping in view the limited power conferred upon the Revenue Committee there under in terms whereof a part of demand is beyond the pale thereof, it is possible that in a given case the entire exercise of review may end in futility. What, thus, was necessary was to provide for an independent and impartial body constituted for the general redressal of the grievance of the taxpayers.

After so holding, their Lordships referred to the decisions in Reliance Industries Ltd. Vs. Designated Authority and Others, and AM (Serbia) v. Secy. of State for the Home Deptt. 2007 EWCA Civ 16 (CA) and ultimately expressed the view thus:

45. We, therefore, for the aforementioned reasons have no other option but to hold that the provisions for review conferred in terms of the statute for all intent and purport are illusory ones and do not satisfy the test of Article 14 of the Constitution of India. No statute which takes away sombody''s right and/ or imposes duties, can be upheld where for all intent and purport, there does not exist any provision for effective hearing.

21. In City Montessori School Vs. State of Uttar Pradesh and Others, the Apex Court has stated thus:

28. ...It is now a well-settled principle of law that it cannot be put in a straitjacket formula. The Court despite opining that the principle of natural justice was required to be followed may, however, decline grant of a relief, inter alia, on the premise that the same would lead to a useless formality or that the person concerned in fact did not suffer any prejudice....

22. From the aforesaid enunciation of law, the principles that are culled out are that non-compliance of the principles of natural justice vitiates the decision; that it is a common experience that once a decision has been taken there is a tendency to uphold it; that unless the statute or a rule excludes the application of natural justice the same should be adhered to; that a person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing; that the doctrine of audi alteram partem is not founded on a straitjacket formula and it can be modified in the exigencies of the situation; that the doctrine of post-decisional hearing can be invoked if a danger or a different situation is required to be avoided; that a higher forum in certain circumstances can afford adequate opportunity of hearing though in all cases post-decisional hearing cannot be substituted for pre-decisional hearing; that the hard realities of life are to be borne in mind and it would depend upon the facts of the case; that the factum of prejudice that has been caused is a factor to be taken note of; that there has to be a pragmatic approach;

and that sometimes the court may not interfere and direct for a post-decisional hearing.

23. Regard being had to the aforesaid principles that have been laid down by the Apex Court, it is necessitous to see whether a pre-decisional hearing could have been done away with despite the statutory mandate engrafted in Section 22 of the Act. It is to be borne in mind that the said provision basically pertains to the rights of a voter registered in the electoral roll. There is no trace of doubt that the right to vote is a statutory right and it can only be curbed within the statutory parameters. Parliamentary democracy has its sacrosanct features. In this context, we think it apt to refer to certain citations in the field.

24. In Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , the Apex Court, while discussing about the concept of democracy, in the majority opinion, has stated thus:

42. Democracy is a basic feature of the Constitution. Whether any particular brand or system of government by itself, has this attribute of a basic feature, as long as the essential characteristics that entitle a system of government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular, prescribed intervals is essential to be democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficacy and adequacy of the machinery for resolution of electoral disputes....

25. In P.V. Narsimha Rao Vs. State (CBI/SPE), t has been held that parliamentary democracy is a part of the basic structure of the Constitution.

26. In Ref. by President, the Apex Court has opined thus:

...It is no doubt true that democracy is a part of the basic structure of the Constitution and periodical, free and fair election is the substratum of democracy. If there is no free and fair periodic election, it is the end of democracy and the same was recognized in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

12. A free and fair election based on universal adult franchise is the basic, the regulatory procedures vis-a-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics.... The super authority is the Election Commission, the Kingpin is the Returning Officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provision.

78. Similar concern was raised in the case of A.C. Jose Vs. Sivan Pillai and Others, In that case, it was argued that if the Commission is armed with unlimited arbitrary powers and if it happens that the persons manning the Commission shares or is wedded to a particular ideology, he could by giving odd directions cause a political

havoc or bring about a Constitutional crisis, setting at naught the integrity and independence of the electoral process, so important and indispensable to the democratic system. Similar apprehension was also voiced in M.S. Gill v. Chief Election Commissioner (supra). The aforesaid concern was met by this Court by observing that in case such a situation ever arises, the Judiciary which is a watchdog to see that Constitutional provisions are upheld would step in and that is enough safeguard for preserving democracy in the country.

27. In People''s Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, their Lordships have stated thus:

62. It has to be stated that in an election petition challenging the validity of election, rights of the parties are governed by the statutory provisions for setting aside the election but this would not mean that a citizen who has right to be a voter and elect his representative in the Lok Sabha or Legislative Assembly has no fundamental right. Such a voter who is otherwise eligible to cast vote to elect his representative has statutory right under the Act to be a voter and has also a fundamental right as enshrined in Chapter III. Merely because a citizen is a voter or has a right to elect his representative as per the Act, his fundamental rights could not be abridged, controlled or restricted by statutory provisions except as permissible under the Constitution. If any statutory provision abridges fundamental right, that statutory provision would be void. It also requires to be well understood that democracy based on adult franchise is part of the basic structure of the Constitution. The right of an adult to take part in election process either as a voter or a candidate could be restricted by a valid law which does not offend constitutional provisions....

(Underlining is ours)

28. In People''s Union for Civil Liberties and Another Vs. Union of India (UOI) and Another, their Lordships have held thus:

4. In Lily Thomas (Ms), Advocate Vs. Speaker, Lok Sabha and Others, the Court elucidated the meaning of the term "voting" in the following words: (SCC pp.236-37, para 2)

2. ...Voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question.... Right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well.

5. The scope of the citizen''s right to express his/her opinion through the medium of the franchise was further developed in Union of India (UOI) Vs. Association for Democratic Reforms and Another, ...

29. From the aforesaid pronouncement of law, it is clear as noon day that democracy is an essential feature of our Constitution - the fountainhead of all laws. It basically refers to the "people''s power?. The collective governance is founded on

the principle that the people have the potentiality and ability to choose as well as discard a government. Every citizen has a right of political participation within legal parameters. A voter in a democratic setup has the right to exercise his right of voting in favour of or against a particular political philosophy or an individual. The said right under the Act flows from the entry in the electoral roll. In this context, we may refer with profit to the decision in Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, wherein their Lordships, after reproducing Section 62 of the Act which deals with the right to vote, proceeded to state as follows:

11. Section 62 can clearly be divided into two parts. One part is Sub-section (1), which is couched partly in positive form and partly in the negative. A person who is not entered in the electoral roll of any constituency is not entitled to vote in that constituency though he may be qualified under the Constitution and the law to exercise the right to franchise. To be entitled to cast a ballot the person should be entered in the electoral roll. Once a person is so entered he is entitled to vote in that constituency. The phrase "for the time being" has been significantly and strategically cast into the framing of the provision and qualifies the expression "entered in the electoral roll of any constituency". It gives the factum of entry in the electoral roll of any constituency a decisive role to play for finding out whether he is or is not entitled to vote in that constituency. The other part of Section 62 consists of Sub-sections (2) to (5). In spite of a person having been entered into an electoral roll and by virtue of such entry having been conferred with a right to vote, such right may yet be defeated by existence of any of the disqualifications or ineligibilities enacted by Sub-sections (2) to (5).

30. In the said case, their Lordships referred to the decision in Hari Prasad Mulshanker Trivedi Vs. V.B. Raju and Others, wherein it has been stated that the 1950 Act is a complete code in the manner of preparation and maintenance of electoral rolls. The relief of enrolment or striking out of the name of a person enrolled therein on the ground of his lacking in qualifications conferring a right to be enrolled must be adjudicated in the manner prescribed by the 1950 Act invoking the jurisdiction of the authorities contemplated therein. We may hasten to add that in the said case, the inclusion of a person or persons in the electoral roll by the authority empowered in law to prepare the electoral roll, though they are not qualified to be so enrolled, cannot be a ground for setting aside the election of a returned candidate but the fact remains that emphasis has been laid on the issue of enrolment and preparation of electoral roll of any constituency and the obligations of an authority. If these aspects are appreciated in a cumulative manner, we are of the considered opinion that there has to be strict compliance of Section 22 of the 1950 Act as the same takes away the substantial right of a voter. The deletion or inclusion may not be a ground to set aside the election but the competent authority under the Act cannot be granted leverage to proceed in an arbitrary manner without complying with the proviso to Section 22(c). It has a statutory function to carry out and must understand the purity of such a procedural aspect. Thus,

adherence to the same, we are inclined to think, is a must. The provision clearly lays a postulate that the person concerned has to be afforded reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him by the electoral registration officer. Therefore, the doctrine of post-decisional hearing or hearing at the stage of appeal would not meet the statutory requirement. Judged from both the angles, the order is unsustainable. The deletion is unsustainable because of procedural non-compliance. As has been held by the Lordships in the authorities which we have referred hereinbefore, the principles of natural justice may not be put in a straitjacket formula and it may vary from statute to statute, situation to situation and case to case. In our view, when there is a deletion u/s 22 in the context of the statutory provision, considering the extent of repercussion it can have in a democratic setup and its effect on the right of a citizen to vote, pre-decisional hearing is imperative.

31. In view of our aforesaid premised reasons, we allow the appeal, set aside the order passed by the learned Single Judge as well as all the orders passed by the authorities and direct the electoral registration officer to proceed afresh u/s 22 of the Act. In the facts and circumstances of the case, there shall be no order as to costs.