



POWER OF SEARCH, SEIZURE AND COMPLIANCE OF PRINCIPLE OF NATURAL JUSTICE

Anushree Modi³¹³

ABSTRACT

The paper study the power of search and seize inbuilt in many statutes in compliance of Principles of Natural Justice. It is a structure of jurisprudence followed by respective Authorities, as they have overriding power for the protection of public tranquillity and safety which are regulated by the different provision of different statutes dealing the wide area and covering every aspect. The interesting thing is how hideously all the power conferred to officials are checked through compliance of the Principles of Natural Justice.

Every Section of various statutes which enables power of search and seizure also mentions of how citizens fundamental rights and principles of natural justice are affected only to negligible extent except in some circumstances. One of the aspects of the Natural Justice Principles is reasoned decision-making, which has effectively become an important component of decision-making processes by judicial, quasi-judicial, or even administrative authorities. This is also the most commonly seen factor in protecting civilians against official authority's misuse of the power of search and seizure.

³¹³ Undergraduate Law. Pursuing B.A. LL.B (Hons.), Gujarat National Law University

INTRODUCTION

Power to exercise search any place or person is of course can be said as derogatory to the person on whose premises search is happening or on whom it is happening. But through the power of search no restriction is imposed on the right to enjoy the property or hold it. It is when the power to seize comes into picture and person fundamental rights are violated but within the reasonable restriction but the thing to keep in mind is compliance of Principles of Natural Justice (hereinafter referred to as “PNJ”).

Seizure is taking possession of something against the wish of the owner or possessor of the belongings it is done in pursuance of demand under legal right. While exercising the power to seize it curbs and deprives the affected person from those particular goods which he can no longer enjoy, until he/she restore them back. Thus, the unilateral act of the person seizing is the very essence of the concept of seizure.³¹⁴

Rules of Natural Justice are not codified nor are they unvarying in all the matters. That does not comply that they are stagnant but instead are flexible and expanding concept. They may however be summarised in one word: fairness.³¹⁵

One of the objectives of the PNJ is Audi Alteram Partem, which states that everybody impacted by a decision has the right to be heard, implying fairness. The idea is usually believed to mean “hear the other side or both sides before making a judgement”.³¹⁶ The precise content of the audi alteram partem principle is difficult to determine. What natural justice requires alters with time and circumstances.³¹⁷ There are three basic essentials of Doctrine of Audi Alteram Partem i.e.

- i. Firstly, a person whose rights are likely to be affected adversely or against whom an order would be passed must be granted an opportunity of fair hearing or oral hearing.
- ii. Secondly, a fair and transparent procedure should be produced.
- iii. Lastly, concerned authority should have applied mind and dispose the matter by reasonable or speaking order.

³¹⁴ State of Punjab v. Dial Chand Gian Chand & Co., (1983) 2 SCC 503.

³¹⁵ Dev Dutt v. Union of India (2008) 8 SCC 725.

³¹⁶ M.P. JAIN & S.N. JAIN, PRINCIPLES OF ADMINISTRATIVE LAW 303 (Lexis Nexis 2015).

³¹⁷ S.P. SATHE, ADMINISTRATIVE LAW 187 (Butterworths India 1999).

The state has an overriding power of search and seizure which are enabled for the protection of social and public security.³¹⁸ Such power infringes on the privacy, reputation, property rights, freedom, and business of the person who is being searched or whose premises is being searched, and materials are taken as a result of the search. Without invoking the Principles of Natural Justice, such power can be exercised.³¹⁹ The power of seizure cannot be employed unless the other party is treated with natural equity. Similarly, the power of confiscation cannot be used unless the individual who would be impacted is given an opportunity to be heard in opposition to the intended confiscation.³²⁰

POSITION OF PRINCIPLE OF NATURAL JUSTICE IN EXERCISING SUCH POWER IN VARIOUS STATUTES

Sec. 110(2) of The **Custom Act, 1962** when r/w Sec. 124(a) tells us that when goods are seized by Collector Officer, such goods cannot be confiscated for more than six months and hence need to be returned. However, if they want to keep the goods seized for more than six months a notice is to be issued with reasonable cause showing sufficient grounds for goods to be confiscated for more than six months.

In **Narcotic Drugs and Psychotropic Substances Act, 1985** (hereinafter “NDPS Act), natural justice preserved through the inbuilt safeguards under the Act. U/s. 42 and 53, recovery and investigations are to be done by two different officers i.e. officers empowered under sections respectively. U/s. 42³²¹ concerned officer does not possess the power to investigate instead they are designated the role limited to “effect”, “search”, “seizure” and, “arrest”. Whereas, Sec. 52 (3)³²² requires concerned officer u/s. 42 to handover every arrested person or Passover article seized to the officer entitled u/s. 53 or an officer in charge of police station having the power to investigate the case under Code of Criminal Procedure (hereinafter “Cr. P. C.). When officer u/s. 42 is required to Passover the articles seized and person arrested by him/her to police station’s officer in charge or officer u/s. 53 of the NDPS Act, the material and information given is considered as the First Information Report as investigation starts by relying on them

³¹⁸ MP Sharma v. Satish Chandra, District Magistrate Delhi, AIR 1954 SC 300.

³¹⁹ HALSBURY, ADMINISTRATIVE LAW 89 (Lexis Nexis) (ebook).

³²⁰ Asst. Collector of Customs and Superintendent, Preventive Service Customs, Calcutta v. Charan Das Malhotra, AIR 1972 SC 689.

³²¹ Narcotic Drugs and Psychotropic Substances Act, 1985, § 42, No. 61, Acts of Parliament, 1985 (India).

³²² *Id.*, § 53(3).

and hence are recorded u/s. 154 of Cr. P. C³²³.

The **Arms Act, 1954**, Sec. 24³²⁴ deals with seizure and detention of arms and ammunition by Central Government when it thinks necessary for public tranquillity and safety, nevertheless that such person is entitled by virtue of any other law or this Act. U/s. 22³²⁵ Magistrate is entitled to search and seize arms and ammunition if they think they are in possession of someone which could be danger to public tranquillity and protection or with some unlawful person. This power is huge and somewhere hinders the fundamental rights of the citizen so to safeguard them, they are affected to a minimal extent hence PNJ is to be complied with.³²⁶

Sec. 5 of **The Public Gambling Act, 1867**³²⁷ (hereinafter “PGA”) enables power to, Magistrate of district or any other Magistrate authorised with such power, or the District Superintendent of police or police officer authorised by District Superintendent (not below the rank of sub-inspector), to enter and search any gaming house which they believe are involved in wagering and betting or consist of any instruments of gaming. This power is exercisable only when they believe that the information or tip, they received are credible, and after proper inquiry and some evidences if they still think necessary to barge in, then only they should exercise this power. Ensuring that they have reasonable reasons hence fulfilling the one of the elements of PNJ.

Sec. 5(A) of PGA³²⁸ empowers the District Magistrate or the Addition District Magistrate or a Police Officer (not below the rank of Asst. Superintendent of Police to confiscate or seize and register, record or writing of any kind on which digits, symbols, digit figures or signs which relates to any form of gaming (betting, wagering etc.). The instruments found and seized would be considered as instruments involved in gaming unless the person, from whom it is seized, shows otherwise and connects it with any lawful and legal action. This highlights, that the person from whom the record, register or writing is seized is given an opportunity to hearing where they can prove that the instruments which are taken to be related to any gaming activity are actually related to any lawful trade industry, profession, business or vocation of any lawful personal transaction of any person or are not an instrument of gaming.

³²³ Code of Criminal Procedure, 1973, § 154, No. 2, Acts of Parliament, 1974 (India).

³²⁴ Arms Act 1959, § 24, No. 54, Acts of Parliament, 1959 (India).

³²⁵ *Id.*, § 22.

³²⁶ *Hari Singh Harnam Singh Khalsa v. E. F. Deboo and Anr.*, AIR 1969 Guj 349.

³²⁷ The Public Gambling Act, 1867, § 5, No. 2, Acts of Parliament, 1867 (India).

³²⁸ *Id.*, § 5A.

JUDICIAL INTERVENTION OR ANALYSIS

In *Krishna Bus Service*³²⁹ case where private operators of motor vehicles contested that when exercising power or discharging duties is in hand of General Manager of Haryana Roadways to stop the vehicles and search them, seize them or detain the vehicle belonging to others but going easy on the vehicles of his own department by being over-fervent is not fair and bias. The court observed that it cannot be expected from the General Manager of Haryana Roadways cannot be expected to be completely fair and reasonable towards their opposing business of private operators. Fundamental rights of the owners to carry on the business of their own interest would also be violated if he is bias towards his' own department. Moreover, when concerned officer is bias confidence rooted in administration by people, which is must would be destroyed.³³⁰ Therefore, SC upheld the contention and quashed the notification.

The **Custom Act, 1962** Sec. 110(1B)³³¹ the goods pass-through Customs (under Custom Clearance) can be search and seized by the proper officer as specified under sub-section (1A) where he would note all the necessary information as mentioned. U/s. 110(2)³³² says that goods can be restored by the person in whose possession the goods are if the concerned officer, who seized them, does not show any notice stating reasons for search and seizure within six months under clause (a) of Sec The question was put forth in SC i.e. whether after six months, the person whose goods were seized is enabled to get a notice and a fair hearing.³³³ The court observed that:

“Even without proceeding of a judicial nature that does not waive off the Right to Notice. But indeed, the proceedings get its character when it goes beyond the basic reason, and that reason is that there may be prejudiced in the notice and the person’s rights may be violated if he/she is not enabled with an opportunity to put forth his case in the proceedings.”³³⁴

In *Hari Singh*³³⁵ case it was observed that elementary PNJ are always open to review in the cases of search and seizure of arms and ammunition u/s 22 and 23 of the **Arms Act, 1959**. As

³²⁹ *Krishna Bus Service (P) Ltd. v. State of Haryana*, (1985) 3 SCC 711.

³³⁰ *Id.*, at 716.

³³¹ The Customs Act, 1962, § 110, No. 52, Acts of Parliament, 1962 (India).

³³² *Id.*

³³³ *Asst. Collector of Commission v. Bibhuti Bhushan*, (1989) 3 SCC 202.

³³⁴ *Id.*

³³⁵ *Hari Singh Harnam Singh Khalsa v. E. F. Deboo and Anr.*, AIR 1969 Guj 349.

the other two principle are bit illusory which would hinder Central Government and Magistrate to maintain public peace and safety. So fair opportunity hearing would be reasonable restriction which would balance the power of Central Government and Magistrate and fundamental rights of the citizen, affecting to a minimal extent.

When informant/ recovery and investigation officer are same u/s 42 and 53 of **NDPS Act** it violates the rule against bias principle which a one of the PNJ. Protection from biasness is also enshrined in Article 14 and 21 of the Indian Constitution.³³⁶ In *Mukesh Singh*³³⁷ the court held that the accused will not be acquitted just on the basis that recovery and investigator officer was same. Though, it is not a general proposition of law laid down by court through various judgments i.e. *Bhagwan Singh*³³⁸ case; *Megha Singh*³³⁹ case; and *State by Inspector of Police, NIB, Tamil Nadu*³⁴⁰ case that in each and every case the officer has prosecuted the case with biasness and prejudice, when he/she is informing as well as investigating officer.

Leading to drop the whole prosecution and acquit the accused. The question of bias and prejudice is dependable on the facts and background of each case. The matter has to be decided on a case to case basis. Therefore, the vice of unfairness and bias when informing and investigating officer are same person cannot be a ground for accused acquittal. Though, if accused feel that there is some biasness and unfairness, he/she can file the suit and they will be provided with fair hearing.³⁴¹

To prevent the victimisation of any innocent person in gaming activity (betting, wagering etc.) by putting certain checks when it proceeds to provide for prosecution and detection of the offenders against the Act. The power to search and seize are given u/s 5 and 5A of the PGA which empowers only high authority or superior officers i.e. District Magistrate or any other Magistrate authorised by him or District Superintendent or any other officer authorised by him not below the rank of sub-inspector to act on such power reasonably and after due confirmation (which can by any kind of evidences, material, information etc.).³⁴² Additionally, the officer who arrested, searched and seized the articles or instruments need to show reasonable grounds to the court satisfying court that their suspicion was based on them and hence they raided the

³³⁶ *Mohan Lal v. State of Punjab*, (2018) 17 SCC 627.

³³⁷ *Mukesh Singh v. State (Narcotic Branch of Delhi)*, 2020 SCC OnLine SC 700.

³³⁸ *Bhagwan Singh v. State of Rajasthan*, (1976) 1 SCC 15.

³³⁹ *Megha Singh v. State of Haryana*, (1996) 11 SCC 709.

³⁴⁰ *State by Inspector of Police, NIB, Tamil Nadu v. Rajangam*, (2010) 15 SCC 369.

³⁴¹ *Mukesh Singh v. State (Narcotic Branch of Delhi)*, 2020 SCC OnLine SC 700.

³⁴² *Krishna Chandra & Ors. v. State of Madhya Pradesh*, AIR 1965 SC 307.

place. Following the principle of fairness is very important to not only violate PNJ but also Fundamental Rights of the accused.

A temporary government servant is dismissed or removed from their post at any time without due notice due to which they have no right to hold the post. If the order of termination, reversion, or reduction in rank causes a stigma on the character or integrity of the government servant, it will be a penal consequence under Article 311(2) of the Indian Constitution, and an inquiry order for search and seizure can be issued after giving him/her a proper opportunity to defend.³⁴³

NON-COMPLIANCE OF PRINCIPLES OF NATURAL JUSTICE

Principles of Natural Justice are diverse and flexible (changing with changes in the society) and hence they cannot be imprisoned with each and every code or set of sections, they cannot be put into a “straitjacket formula”. As under the Act of Income Tax every Income Tax Officer is required to act as judge of his/her own case therefore excluding one of the PNJ where a person cannot be appointed as a judge for his/her own case.³⁴⁴ He/she also exercise the power search and seizure under the **Income Tax Act, 1961** and examines them by interrogating the assessee and their relatives or other person related to them regarding the seized and searched goods. Sections 143 and 144 mandate that the assessment be made only by the Income Tax Officer. According to Sections 143(3) and 144, the Officer must persuade the assessee to provide the material conducting penalty procedures in order to apply the penalty. The first norm of natural justice cannot be stated to be relevant in light of the specific provisions of the Income-tax Act of 1961.³⁴⁵

In *Kanungo & Co. v. Collector of Customs*³⁴⁶ the authority searched a person's company premises and confiscated particular types of watches under **Sea Customs Act, 1963**. Cross-examination of the person, who gave the figures, was not allowed. The court determined that there was no breach of the PNJ, and that natural justice does not involve cross-examination of the individual concerned to witnesses of a seizure of goods under the Sea Customs Act. If the individual in question is given the chance to cross-examine, the method outlined in the Indian

³⁴³ *Moti Ram Deka v. N.E. Frontier Railway*, AIR. 1964 SC 600.

³⁴⁴ *M. Chockalingam and M. Meyyappan v. CIT, Madras*, (1963) 48 ITR 34 (SC).

³⁴⁵ *Id.*

³⁴⁶ *Kanungo & Co. v. Collector of Customs*, AIR 1972 SC 2136.

Evidence Act, 1972, is not required. It can be considered as classic case where statutory provision prevailed over PNJ.

It is necessary for a wholesome investigation to exercise the power to search and seize. Sec. 94-98 of the Cr.P.C. enable the District Magistrate and Sec. 165 Cr.P.C empowers the police officer in-charge of the police station to conduct searches. Any other Police Officer besides the Officer in Charge of the Police Station may not conduct a search without the approval of the Magistrate.³⁴⁷ Any investigating officer (police officer) or police officer in charge of the police station can conduct a search without a warrant from a court (though they must record the grounds for doing so and on what basis), without prior notice or an opportunity to be heard. The Delhi HC found that it is redundant to make detailed examination on the aspect. It is sufficient to simply state that an accused has no right to prior notice or an opportunity to be heard in connection with his arrest, search of his home, or seizure of any property in his possession associated with the offence, unless otherwise allowed by law.³⁴⁸

Central Government have the unrestrained power, reserved by them, through which they can search, inspect and seize any property when they believe that the other person has violated the Environment Act, to safeguard environmental law and procedures.³⁴⁹ Sec. 10 of **Environment (Protection) Act, 1986**³⁵⁰ Central Government or any person empowered on their behalf can enter any place, at any time with the assistance required. For the purpose to inspect whether anything is done which is in violation of the provisions of this Act or rules made or any notice, direction, order, authorisation given under this Act has to be complied with.

Any place, material, records, documents etc. found while searching can be seized if they are believed to be used to conduct offence under the Environment (Protection) Act, 1986 without any notice or explanation to the person from whose possession these are confiscated.³⁵¹ This is done to reserve the secrecy of the investigation and caught the accused by surprise hence not following elements of natural justice.

³⁴⁷ Union of India v. W.N. Chaudhary, AIR 1993 SC 1082.

³⁴⁸ Rahul Saraf v. Union of India, (2017) 244 DLT 86.

³⁴⁹ Sanjay Jose Mullick, *Power Game in India: Environmental Clearance and the Enron Project*, 16 STAN. ENVTL. L. J. 256, 273 (1997).

³⁵⁰ The Environment (Protection) Act, 1986, § 10, No. 29, Act of Parliament, 1986 (India).

³⁵¹ *Id.*

PRINCIPLES OF NATURAL JUSTICE APPLICATION WHERE STATUTES DOES NOT EXPRESSLY PROVIDE.

In Peerless General Finance & Investment Co. Ltd.³⁵² it was found that PNJ can be presumed if they are not expressly prohibited by the statutes. SC held that PNJ could be formulated unless they are strictly or specifically barred from the application. It is a necessary tool in order to protect the civil liberties of the people and giving him/her reasonable opportunity of fair hearing before judgment or order is passed.³⁵³ As court cannot ignore the legislate mandate, so they can provide with an opportunity to fair hearing to make up for it.³⁵⁴

Now, the question that arise is that which would prevail when both are on equal footing. Provision of Statute would prevail over PNJ. But if there is no particular exclusion mentioned in the statute the application of the principles can be assumed in the circumstances where in administrative jurisdiction the rights of citizen are affected to their prejudice.³⁵⁵ It was also observed by SC that order by administrative order and a quasi-judicial order are hardly distinctive. Adding to it SC said that now the line of difference between order of administrative authority and quasi- judicial authority stands obliterated and hence there will be no difference of opinion.

CONCLUSION

Compliance of Principles of Natural Justice is really important while giving superior officials powers such as search and seize. Through this check and balance is maintained from both the side not stepping them on equal footing. Which ensures that the State would not abuse their power while exercising search or seize for their benefits as well as the citizen abide by the procedural law of the nation and not indulge in any illegal or unlawful act. When power of search and seize is exercised it directly intervene with the personal space or instrument of the affected party and one wrong move by the legal authority would cost them their privacy and freedom to life with dignity.

³⁵² Peerless General Finance & Investment Co. Ltd. v. Dy. CIT, (1999) 263 ITR 671.

³⁵³ Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151.

³⁵⁴ G. S. DAS, LAW RELATING TO SEARCH AND SEIZURE WITH ASSESSMENT OF SEARCH CASES 261 (Taxmann, 2014).

³⁵⁵ Asiatic Oxygen Ltd. v. Registrar of Companies, 1981 SCC OnLine Cal 192.

As this power can be exercised in various scenario or circumstances so all the statutes dealing with such circumstances have proper legislature on how such power needs to be exercised by the concerned officers or judges in compliance of elements of natural justice and fundamental rights of the citizen. Almost all legislature states that reasoned notice should be given prior to the inspecting and seizing the goods or arresting the person. After that affected person should be given an opportunity to fair hearing and defending himself/herself. Though as there always exception in certain statutes this power is not complied with PNJ so that smooth investigation can be processed and the person do not get chance to erase or remove the evidence.

If a statute does not state anything about natural justice it is to be taken that they need to be followed while exercising such power unless the statutes expressly prohibit following PNJ. But when question of prevails comes into context it is always statutory provision of natural justice. Similarly, Public Tranquillity and Safety is priority for Central Government hence when question comes of who prevail who come it is always Social Safety above Principles of Natural Justice.
