

# Kanwar Natwar Singh vs Directorate Of Enforcement & Anr on 5 October, 2010

**Equivalent citations:** 2010 AIR SCW 6427, 2010 (13) SCC 255, AIR 2010 SC (SUPP) 9, 2011 CLC 36 (SC), (2010) 99 CORLA 415, (2010) 8 MAD LJ 983, (2010) 10 SCALE 401, (2011) 1 ICC 380, (2010) 4 RECCRIR 813, (2011) 101 ALLINDCAS 5 (SC), (2011) 330 ITR 374

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**Bench:** Surinder Singh Nijjar, B. Sudershan Reddy

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8601 OF 2010

ARISING OUT OF

SPECIAL LEAVE PETITION (C) NO. 10553 OF 2008

KANWAR NATWAR SINGH

... APPELLANT

VERSUS

DIRECTOR OF ENFORCEMENT & ANR.

... RESPONDENTS

WITH

CIVIL APPEAL NO. 8602 OF 2010

ARISING OUT OF

SPECIAL LEAVE PETITION (C) NO. 10554 OF 2008

KANWAR JAGAT SINGH

... APPELLANT

VERSUS

DIRECTOR OF ENFORCEMENT & ANR.

... RESPONDENTS

JUDGMENT

B. SUDERSHAN REDDY, J.

1. The central question of law arising on the appeal before this Court is whether a noticee served with show cause notice under Rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (hereinafter referred to as 'the Rules') is entitled to demand to furnish all the documents in possession of the Adjudicating Authority including those documents upon which no reliance has been placed to issue a notice requiring him to show cause why an inquiry should not be held against him?

The Adjudicating Authority's refusal to supply all the documents as demanded by the appellants led to filing of writ petitions by the appellants in Delhi High Court which were heard and dismissed.

2. In order to consider and decide the issue that arises for our consideration, it is just and necessary to briefly notice the relevant facts:

PART I : BACKGROUND FACTS A complaint in writing has been filed by an officer authorized against the appellants under sub-section (3) of Section 16 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as 'FEMA' or 'the Act') in which certain serious allegations have been levelled against the appellants which we are not required to notice in detail. The gravamen of the complaint is that the appellants along with others, jointly and severally, without general or special permission of the Reserve Bank of India dealt in and acquired Foreign Exchange totaling US \$ 8,98,027.79 in respect of two oil contracts with SOMO of Iraq. Out of the said amount, the appellants and others jointly and severally, without the required permission of the Reserve Bank of India made payment and transferred Foreign Exchange of US \$ 7,48,550 to the credit of specified account with Jordan National Bank, Jordan i.e., to persons resident outside India, in fulfillment of precondition imposed by SOMO for allocation of oil under aforesaid two contracts, in contravention of the provisions of FEMA. It is further alleged that the appellants and others, jointly and severally, without the required permission of the Reserve Bank of India transferred Foreign Exchange of US \$ 1,46,247.23 being the commission amount in respect of two oil contracts with SOMO to the account with the Barclays

Bank, London in contravention of the provisions of the Act. The appellants together with others jointly and severally failed to take all reasonable steps to repatriate the aforesaid Foreign Exchange within the stipulated period and in the prescribed manner, in contravention of the provisions of FEMA read with Regulations, 2000. In addition to the above, some other allegations also levelled against appellant No. 2. The Adjudicating Authority having received the said complaint, set the law in motion and accordingly issued a notice to the appellants under the provisions of FEMA read with the Rules, requiring them to show cause why an inquiry should not be held against them.

3. The appellants having received the show cause notice, instead of submitting their reply, required the Adjudicating Authority to furnish "copies of all the documents in ... possession in respect of the instant case, including the 83000 documents allegedly procured by one Virender Dayal from USA in connection with the instant case..." This seemingly innocuous request ultimately turned out to be the origin of this avoidable litigation. The fact remains that the copies of all such documents as relied upon by the Adjudicating Authority were furnished. The Authority, however, declined to furnish copies of other documents and decided to hold an inquiry in accordance with the provisions of FEMA and the Rules.

4. Aggrieved by the communications so sent by the Authority, the appellant No.1 filed writ petition in Delhi High Court which was disposed of with direction extending time to file reply to the show cause notice. As regards the prayer for supply of copies of the documents, the Court gave liberty to demand such copies but left the issue regarding the entitlement of appellant No.1 to such documents open.

5. Thereafter, a preliminary/short reply to the show cause notice was submitted by the appellants but once again insisting with the demand that the copies of the documents not otherwise relied upon by the Adjudicating Authority also be supplied before taking any further steps in the matter.

6. The Adjudicating Authority, by the impugned proceedings, made it clear that the provisions of FEMA and the Rules provide for supply of the grounds, nature of contravention and copies of relied upon documents only in order to enable the noticee to make effective representation and the said requirement has been met. The Adjudicating Authority also made it clear that it is bound to conduct proceedings in accordance with the statute and the Rules and the noticees in any case are not entitled to ask the Authority to deviate from the said procedure laid down in FEMA and the Rules. The Authority clearly put the appellants on notice that it shall proceed with the inquiry in accordance with the provisions of the Act and the Rules.

7. The appellants promptly challenged the impugned order of the Adjudicating Authority in petitions filed under Article 226 of the Constitution of India resulting in the impugned judgment of the Delhi High Court. Hence these appeals.

8. Leave granted.

9. We have heard Shri U.U. Lalit, learned senior counsel for the appellants and Shri Gopal Subramaniam, learned Solicitor General of India for the respondents. PART II : LEGAL SUBMISSIONS

10. Learned senior counsel for the appellants strenuously contended that there is a duty cast on the Adjudicating Authority to disclose and supply copies of all the documents that may be available with him enabling the noticee to effectively defend and rebut the allegations mentioned in the show cause notice. The submission was that the noticee is not only entitled to the documents referred to and relied upon to set the law in motion but all such other documents that may be in possession of the Adjudicating Authority. The learned senior counsel submitted that principles of natural justice and concept of fairness require supply to the noticee all such documents whether relied on or not by the Adjudicating Authority.

11. The learned Solicitor General of India, on the other hand, submitted that rule 4 of the Rules is a comprehensive self contained code and that the Adjudicating Authority is to follow and proceed step by step in accordance with the said Rules. The learned Solicitor General submitted that it is a normal rule of construction that when a statute vests certain power in an Authority to be exercised in a particular manner, then the said Authority has to exercise it only in the manner provided in the statute itself. Hence the Adjudicating Authority cannot deviate from the mandate of the statute and the Rules to do something which is not provided for either in the statute or in the Rules. The submission was that the Rules do not provide for furnishing all the documents that may be in possession of the Adjudicating Authority as prayed for by the appellants. It was alternatively contended that principles of natural justice are complied with in the instant case since copies of relied on documents were supplied to the appellants.

### PART III : RELEVANT STATUTE AND RULES

12. As part of the ongoing economic liberalization relating to foreign investments and foreign trade, a review of the Foreign Exchange Regulation Act, 1973 was made in the year 1993 and several amendments were enacted subsequently. The Government of India felt that Foreign Exchange Regulation Act, 1973 must be repealed and to be replaced by a comprehensive legislation and for that purpose, a taskforce was constituted to have overall look on the subject and suggest the required changes. The taskforce submitted its report in 1994. On the recommendations of the taskforce and keeping in view the significant developments that had taken place since 1993, the Foreign Exchange Management Bill was introduced in the Parliament. The Statement of Objects & Reasons reveals that the provisions of the Bill aim at consolidating and amending the law relating to Foreign Exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of Foreign Exchange markets in India. The Foreign Exchange Management Bill having been passed by both the Houses of Parliament, received the assent of the President on 29th December, 1999 and it came into force on the first day of June, 2000 as the Foreign Exchange Management Act, 1999 (42 of 1999).

13. Chapter II of FEMA deals with "Regulation and Management of Foreign Exchange". Chapter III thereof deals with "Authorized Person". Chapter IV deals with "Contravention and Penalties".

Section 13 of FEMA which is relevant for our present purposes reads as under:

13. Penalties -

(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the Foreign exchange holdings, if any of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.- For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include ;-

- (a) Deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) Any other property which has resulted out of the conversion of that property.

14. Chapter V deals with "Adjudication and Appeal". Section 16 is relevant which is reproduced hereinbelow:

16. Appointment of Adjudicating Authority -

(1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (2) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit. (2) The Central Government shall, while appointing the Adjudicating Authorities under sub-

section (1), also specify in the order published in the Official Gazette their respective jurisdiction. (3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

(4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority. (5) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and;-

(a) All proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860);

(b) Shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavor shall be made to dispose off the complaint finally within one year from the date of receipt of the complaint:

Provided that where the complaint cannot be disposed off within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing off the complaint within the said period.

15. In exercise of the powers conferred by Section 4 read with sub-section (1) of Section 16, sub-section (3) of Section 17 and sub-section (2) of Section 19 of the Act, the Central Government made the Rules for holding inquiry for the purpose of imposing penalty and appeals under Chapter V of the said Act. The rules are called the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. Rule 4 of the said Rules which prescribes the procedure for holding of inquiry which is material for our present purposes is as under:

#### 4. Holding of inquiry.--

(1) For the purpose of Adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him.

(3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him.

(4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of Rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place. (5) The Adjudicating Authority shall, then, given an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872).

(6) While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so.

(8) If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, be order in writing, impose such penalty as he thinks fit, in accordance with provisions of Sec. 13 of the Act.

(9) Every order made under sub-rule (8) of the rule 4 shall specify the provisions of the Act or of the rules, regulations, notifications, direction or orders or any condition subject to which an authorisation is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain reasons for such decisions. (10) Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority. (11) A copy of the order made under sub-rule (8) of the rule 4 shall be supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of copying fee @ Rs. 2 per page, (12) The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority. PART IV : DISCUSSION Analysis of relevant provisions of FEMA and the Rules

16. The issue that arises for our consideration is to be resolved in the background of this statutory setting. The FEMA is a self contained and special legislation dealing with the Foreign Exchange management. It essentially deals with regulation and management of the Foreign Exchange. The provisions of the Act mandate that save as otherwise provided in the Act, rules or regulations made thereunder or with the general or special permission of the Reserve Bank, no person shall deal in or transfer any Foreign Exchange or foreign security to any person not being an authorised person; make any payment to or for the credit of any person resident outside India in any manner; receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner; enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India in any manner. It is further provided that no person resident in India shall acquire, hold, own, possess or transfer any Foreign Exchange, foreign security or any immovable property situated outside India. That if any person contravenes any provision of the Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under the Act, or contravenes any condition subject to which an authorisation is issued, he shall, upon adjudication, be liable to a penalty. For the purpose of adjudication, the Central Government may, by an order, appoint officers of the Central Government as the Adjudicating Authorities for holding inquiry in the manner prescribed after giving the person alleged to have committed contravention against whom a complaint has been made, a reasonable opportunity of being heard for the purpose of imposing any penalty.

17. That a bare reading of the relevant provisions of the Act and the Rules makes it abundantly clear that the manner, method and procedure of adjudication are completely structured by the statute and the Rules. The Authority is bound to follow the prescribed procedure under the statute and the Rules and is not free and entitled to devise its own procedure for making inquiry while adjudicating under Section 13 of the Act since it is under legislative mandate to undertake adjudication and hold inquiry in the prescribed manner after giving the person alleged to have committed contravention against whom a complaint has been made, a reasonable opportunity of being heard for the purpose of imposing any penalty. The discretion of the Authority is so well structured by the statute and the Rules.

18. The Rules do not provide and empower the Adjudicating Authority to straightaway make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins. While holding inquiry into allegations of contravention, every Adjudicating Authority shall have the powers of a Civil Court



under the Code of Civil Procedure in respect of the matters, namely,

(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring discovery and production of documents; (c) receiving evidence on affidavits; (d) requisitioning any public record, document or copy of such record or document from any office; (e) issuing commissions for examination of witnesses or documents etc. That all proceedings before the Adjudicating Authority shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code; shall be deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973. Principles of natural justice : statutory requirement and fair hearing

19. It is true that rule 4 does not require the Adjudicating Authority to supply copies of any documents along with the show cause notice. The rule does not require the Adjudicating Authority even to furnish any list of documents upon which reliance has been placed by him to set the law in motion. Does it mean that the Adjudicating Authority is not required to furnish the list of documents and copies thereof upon which reliance has been placed by him to issue notice of show cause to a person against whom a complaint has been made by the authorized officer? Whether the principles of natural justice and doctrine of fairness require supply of documents upon which reliance has been placed at the stage of show cause notice? "It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to the scope of extent. Everything depends on the subject matter" [see R Vs. Gaming Board for Great Britain ex p. Benaim and Khaida<sup>1</sup>]. Observed Lord Denning MR.:

"Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject matter of the case". Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth. Can the Courts supplement the statutory procedures with requirements over and above those specified? In order to 1 (1970) 2 QB 417 ensure a fair hearing, Courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.

20. In Lloyd Vs. McMahon<sup>2</sup>, Lord Bridge observed:

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting

individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness".

21. As Lord Reid said in *Wiseman Vs. Boardman*<sup>3</sup>:

"For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose..."

<sup>2</sup> [1987] AC 625 <sup>3</sup> [1971] AC 297

22. It is thus clear that the extent of applicability of principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry.

23. The right to fair hearing is a guaranteed right. Every person before an Authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognized by this Court in *Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal*<sup>4</sup>. However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not brought to his notice. If relevant material is not disclosed to a party, there is *prima facie* unfairness irrespective of whether the material in question arose before, during or after the hearing. The law is fairly <sup>4</sup> (1955) 1 SCR 941 well settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future [See *R Vs. Secretary of State for Home Department*, ex. p. H]<sup>5</sup>.

24. The concept of fairness may require the Adjudicating Authority to furnish copies of those documents upon which reliance has been placed by him to issue show cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice <sup>5</sup> [1995] QB 43 and concept of fairness are required to be read into rule 4(1) of the Rules. Fair procedure and the principles of natural justice are built into the Rules. A noticee is always entitled to satisfy the Adjudicating Authority that those very documents upon which reliance has been placed do not make out even a *prima facie* case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the Authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no

manner frustrate the apparent purpose of the statute.

## PART V : DUTY OF ADEQUATE DISCLOSURE

25. The real question that arises for consideration is whether the Adjudicating Authority even at the preliminary stage is required to furnish copies of all the documents in his possession to a noticee even for the purposes of forming an opinion as to whether any inquiry at all is required to be held. In this regard, learned senior counsel for the appellant pressed into service the doctrine of duty of adequate disclosure which according to him is an essential part of the principles of natural justice and doctrine of fairness. A bare reading of the provisions of the Act and the Rules do not support the plea taken by the appellants in this regard. Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice. No Court can compel the Authority to deviate from the statute and exercise the power in altogether a different manner than the prescribed one. As noticed, a reasonable opportunity of being heard is to be provided by the Adjudicating Authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the Adjudicating Authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the Adjudicating Authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show cause notice and consideration of cause shown would meet the ends of justice. A proper hearing always include, no doubt, a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Lord Denning has added: "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them" [see *Kanda Vs. Government of Malaya*]<sup>6</sup>.

26. In the present case, the inquiry against the noticee is yet to commence. The evidence as may be available upon which the Adjudicating Authority may place reliance, undoubtedly, is required to be furnished to the person proceeded against at the second stage of inquiry into allegations of contravention. It is at that stage, the Adjudicating Authority is not only required to give an opportunity to such person to produce such documents as evidence as he may consider relevant to the inquiry, but also enforce attendance of any person acquainted with the facts of the case to give evidence or to produce any document which in its opinion may be useful for or relevant to the subject matter of the inquiry. It is no doubt true that natural justice often requires the disclosure of the reports and evidence in the possession of the deciding Authority and such reports and evidence relevant to the subject matter of the inquiry may have to be furnished unless the scheme of the Act specifically prohibits such disclosure.

27. However, the learned senior counsel for the appellants in support of his contention that there is a duty cast on the Adjudicating Authority to disclose and supply copies of all the documents that may be available with him to the noticee, placed reliance on State Inspector of Police, Vishakhapatnam Vs. Surya Sankaram Karri<sup>7</sup> which is not an authority for the proposition canvassed. It was a case where the Court found that investigation into an offence punishable under Section 13(1)(e) of the Prevention of Corruption Act was undertaken without the required authorization of the Superintendent of Police. In that context, this Court observed that the manner in which "the investigation was conducted, is condemnable. 7 (2006) 7 SCC 172 The least that a court of law would expect from the prosecution is that the investigation would be a fair one. It would not only be carried out from the stand of the prosecution, but also the defence, particularly, in view of the fact that the onus of proof may shift to the accused at a later stage". Shri Lalit, strongly relied upon the observations so made by this Court which in our considered opinion, are not relevant for our purpose. One cannot pick a sentence from here and there in the Judgment and characterize it to be the ratio of the case. The observations made in that case were in the context of criminal investigation which was found to be unfair and illegal.

28. In Union of India Vs. Ranu Bhandari<sup>8</sup> this Court found that some of the vital documents which have a direct bearing on the detention order, had not been placed before the detaining Authority and the detenu was entitled to question such omission. It was the case of the detenu that if his representation and the writ petition had <sup>8</sup> (2008) 17 SCC 348 been placed before the detaining Authority which according to him contained his entire defence to the allegations made against him, the same may have weighed with the detaining Authority as to the necessity of issuing the order of detention at all. It is under those circumstances, this Court expressed its view that on account of non-supply of those documents, the detenu was prevented from making an effective representation against his detention. In fact, the said decision is an authority for the proposition that "when a detention order is passed, copies of all the documents, both against the detenu and in his favour, which had been relied upon by the detaining Authority for reaching the satisfaction that in the interest of the State and its citizens the preventive detention of the detenu is necessary, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5) of the Constitution, irrespective of whether he had knowledge of the same or not.

29. The learned senior counsel further relied upon the following observations made by this Court in Dwarka Prasad Agarwal (Dead) by LRs. & Anr. Vs. B.D. Agarwal & Ors.<sup>9</sup>:

"The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the International Treaties and Conventions, the right to get a fair trial is a basic fundamental /human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial Tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950."

We fail to appreciate as to how the above observations are of any relevance to resolve the issue that arises for our consideration in the present case. It is not the case of the appellants that the procedure prescribed under Rule 4 of the Rules comes in their way in getting a fair trial and therefore the said provision is violative of Article 14 of the Constitution of India. It is not the case that the Adjudicating Authority 9 (2003) 6 SCC 230 constituted under the present Act is not an independent and impartial tribunal.

30. In *Tribhuvandas Bhimji Zaveri & Anr. Vs. Collector of Central Excise*<sup>10</sup>, Officers of the Income Tax Department raided the business premises of the appellant and prepared an inventory of the stock of gold and gold ornaments found in the premises. This was followed by a show cause notice as to why penal action should not be taken against the appellants. The appellants by their letter had requested the authorities to furnish a certified copy of the check list prepared at the time of raid with a view to enabling them to check and verify the particulars. In reply thereto, the Income Tax Officer expressed his inability to provide the required documents on the ground that they were not readily available with the Officer. It is under those circumstances, this Court observed that the failure to supply important piece of information to the appellants has prejudiced the appellants and to this extent the principles of natural justice would stand <sup>10</sup> (1997) 11 SCC 276 violated. From the facts in that case, it is clear that particular documents containing important piece of information which would have enabled the noticee therein to offer a proper explanation were required to be made available. The nature of the document, its relevancy being a document prepared at the time of raid and its mention in the show cause notice were taken into consideration. It was a basic document based on which the law was set into motion against the appellants therein. It is for that reason this Court was of the view that such an important document could not have been withheld from the appellants therein.

31. In support of his submissions the learned senior counsel has also referred us to the decision of this Court in *State of M.P. Vs. Chintaman Sadashiva Vaishampayan*<sup>11</sup>. In that case, the charged police officer wanted the documents which were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witness who gave evidence against him in the Departmental Enquiry. It is in that context this Court observed that "it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice, and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of law". There is no dispute with this proposition.

32. In our opinion, these decisions do not assist the appellants' case in any manner whatsoever because the documents which the appellants wanted in the present case are the documents upon which no reliance was placed by the Authority for setting the law into motion. Observations of the Courts are not to be read as Euclid's theorems nor as provisions of the statute. The observations must be read in the context in which they appear. A line or a word in a judgment cannot be read in isolation or as if interpreting a statutory provision to impute a different meaning to the observations

[see Haryana Financial Corporation Vs. Jagdamba Oil Mills<sup>12</sup>].

33. One more decision upon which heavy reliance has been placed by the learned senior counsel is RvH/RvC<sup>13</sup>. We fail to appreciate as to how the said judgment would render any assistance and support the case set up by the appellants in the present proceedings. In that case, the defendants were charged with criminal conspiracy to supply a class A drug. The prosecution case was based on police surveillance evidence. In pre-trial proceedings the defendants made far-reaching requests for disclosure, including all material relating to any covert human intelligence sources involved in the investigation. At a 12 (2002) 3 SCC 496 13 [2004] UKHL 3 preliminary hearing, it appeared that a public interest immunity inquiry would be necessary as the prosecution wished to withhold documents from disclosure to the defence on that ground. The Judge ruled, without having looked in detail at the documents provided by the prosecution, that unless independent counsel were appointed, so as to introduce an adversarial element into the public interest immunity inquiry, there was a risk that the trial would be perceived to be unfair and therefore violate Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (as set out in Schedule 1 to the Human Rights Act 1998) (the convention), which provided for the right to a fair trial. The Judge, therefore, ordered that special counsel should be appointed. The Crown's appeal against the Judge's ruling was successful. The defendants appealed to the House of Lords contending inter alia that it was incompatible with Article 6 of the convention for a Judge to rule on a claim to public interest immunity in the absence of adversarial argument on behalf of the accused where the material which the prosecution was seeking to withhold was or might be relevant to a disputed issue of fact which the Judge had to decide in order to rule on an application which would effectively determine the outcome of the proceedings. The House of Lords held that there is a golden rule that full disclosure of any material held by the prosecution which weakened its case or strengthened that of the defendants should be disclosed to the defence. In circumstances where such material could not be disclosed to the defence, fully or even at all, without the risk of serious prejudice to an important public interest, some derogation from the golden rule could be justified, but such derogation was always to be the minimum necessary to protect the public interest in question and had never to imperil the overall fairness of the trial.

34. This decision was followed by Attorney General's guidelines and disclosure in which it is clearly explained that disclosure is one of the most important aspects in the criminal justice system and the application of proper and fair disclosure is a vital component of a fair criminal justice system. This amounts to no more and no less than a proper application of the Criminal Procedure and Investigations Act, 1996 (CPIA), recently amended by the Criminal Justice Act, 2003. The scheme set out in the Criminal Procedure and Investigations Act, 1996 is held to be designed to ensure that there is fair disclosure and material which may be relevant to an investigation and which does not form part of the prosecution case. The disclosure under the Act should assist the accused in the timely preparation and presentation of their case and assist the case to focus on all the relevant issues in the trial.

35. It appears that those Acts recognize rights of accused persons in a criminal case to a fair trial. It is clear that disclosure of unused material in criminal proceedings in United Kingdom is regulated by the provisions of those Acts and applicable to criminal trials where the accused are charged with

criminal offences. Duty of disclosure of unused material is not a definite concept to be applied in any and every case in this country. There is no such Act or law as in United Kingdom, nor any procedure prescribed for disclosure of unused material in criminal proceedings. In the present case, the appellants are not defendants in any criminal trial. The judgment has no application as to the fact situation and the law applicable in United Kingdom is not applicable to either the adjudicatory proceedings or even criminal trials in this country.

36. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework. Hegde, J. speaking for the Supreme Court propounded:

"In other words, they (principles of natural justice) do not supplant the law of the land but supplement it" [see A.K. Kraipak Vs. Union of India<sup>14</sup>]. Its essence is good conscience in a given situation; nothing more but nothing less [see Mohinder Singh Gill Vs. Chief Election Commissioner<sup>15</sup>].

#### Alternate submission

37. Yet another submission made by the learned senior counsel requiring our consideration relates to 14 (1969) 2 SCC 262 15 (1978) 1 SCC 405 interpretation of sub-rule (6) of Rule 4. The learned senior counsel contended that the appellants' request to the Adjudicating Authority to furnish the copies of the documents could be treated as one made under sub-rule (6) of rule 4 which enables the Adjudicating Authority to direct any person to produce any document which in his opinion may be useful for or relevant to the subject matter of inquiry. We find no merit in the submission. A plain reading of sub-rule (6) of rule 4 makes it abundantly clear that such a power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which may be relevant to the subject matter of inquiry is only available to the Adjudicating Authority while holding an inquiry into allegations of contravention, but not at the stage where the Authority is merely required to form an opinion as to whether an inquiry should be held into allegations of contraventions. It is always open to a person facing an inquiry to invoke the jurisdiction of the Adjudicating Authority requiring any person to produce any document which may be useful for or relevant to the subject matter of inquiry. Such request may have to be considered upon its own merits. A fair reading of rule 4 which is a complete compendium for holding of inquiry suggests that all the evidence and documents which the Adjudicating Authority may consider relevant for the purpose of inquiry may have to be furnished to a person facing the inquiry on the allegations of contravention of the provisions of the Act etc., alleged to have been committed by him. In addition, the Authority may require attendance of any person acquainted with the facts and circumstances of the case to give evidence and to produce any documents which in its opinion, may

be useful for or relevant to the subject matter of the inquiry. Only upon consideration of the entire evidence produced, if the Adjudicating Authority is satisfied that the person has committed the contravention, he may by order in writing accordingly impose such penalty as he thinks fit in accordance with the provisions of the Act which of course is not final as it is subject to appeal. Practice of inclusion of list of judgments in compilations not cited at the bar :

38. Before parting with the judgment, we are constrained to observe with some reluctance about the recent practice and procedure of including list of authorities in the compilation without the leave of the Court. In many a case, even the senior counsel may not be aware of inclusion of such authorities in the compilation. In our considered opinion, this Court is not required to consider such decisions which are included in the compilation which were not cited at the Bar. In the present case, number of judgments are included in the compilation which were not cited at the Bar by any of the counsel. We have not dealt with them as we are not required to do so. At any rate, all those judgments deal with the procedural aspects and concern the interpretation for various provisions of the Code of Criminal Procedure applicable to a criminal trial and they are totally irrelevant for the purposes of deciding the issue that had arisen for our consideration in the present case.

#### CONCLUSIONS:

39. The appellants insisted for supply of all documents in possession of the Authority and such demand is based on vague, indefinite and irrelevant grounds. The appellants are not sure as to whether they are asking for the copies of the documents in possession of the Adjudicating Authority or in possession of authorized officer who lodged the complaint. The only object in making such demand is obviously to obstruct the proceedings and the appellants, to some extent, have been able to achieve their object as is evident from the fact that the inquiry initiated as early as in the year 2006 still did not even commence.

40. We are constrained to take note of the fact that it is on account of continuous unreasonable requests on the part of the appellants, the Adjudicating Authority could not deal with the complaint expeditiously which is required to be disposed of within one year from the date of receipt of the complaint. We accordingly direct the Adjudicating Authority to deal with the complaint as expeditiously as possible and every endeavor shall be made to dispose of the complaint finally at the earliest. No unreasonable request for adjournment shall be entertained by the Adjudicating Authority.

However, we make it clear that the Authority shall make inquiry into the allegations made in the complaint strictly in accordance with the law and uninfluenced by the observations if any made in this order. We have not expressed any opinion whatsoever on the merits of the case. The appellants are entitled to all the defence that may be available to them in law.



41. For all the aforesaid reasons, the appeals are dismissed with costs.

.....J. (B. SUDERSHAN REDDY) .....J.  
(SURINDER SINGH NIJJAR) NEW DELHI, OCTOBER 5, 2010.