



## One Who Hears Should Decide: Competition Appellate Tribunal's Admonishment to Competition Commission of India

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### ABSTRACT

*There is a Rule of Natural law that one who hears should decide. This rule should apply to all adjudicating bodies. A judge who heard the case should decide the case. If a case is heard by another judge and decided by another judge then it is nothing but the gross violation of the principles of natural justice. The recent decision of the Competition Appellate Tribunal elaborates the same principle in which it held that Members of the Competition Commission of India who were not present at the time of the hearing of the case cannot join the other members in the final decision of the case. This paper tries to explore the ratio relied on by the Appellate Tribunal while upholding this contention.*

**KEYWORDS :** Competition Commission, Natural justice, judicial procedure

In a landmark decision the Competition Appellate Tribunal which is the appellate body of the Competition Commission of India, held that members of the Competition Commission who were not present in the hearing of a particular case cannot pass the orders of that case.

The Competition Appellate Tribunal and Competition Commission of India both are established by Competition Act 2002. The Competition Commission of India is the enforcement agency of the Competition law in the country and Competition Appellate Tribunal is its appellate body. Section 7 (1) of the Competition Act 2002 provides for the establishment of Competition Commission that "With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the 'Competition Commission of India'. Section 53A (1) of the Competition Act 2002 provides for the establishment of appellate authority that, "The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal

(a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under subsection (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act."

In the case of All India Organization of Chemists and Druggists vs. Competition Commission of India the Competition Appellate Tribunal (COMPAT) held that the statement of the Competition Commission of India (CCI) that it 'has perused the material available on record besides hearing the counsel for the appellant at length' is factually incorrect because the date on which the arguments were heard the Chairperson and two members, namely, Shri Sudhir Mittal and Shri Augustine Peter were not present. COMPAT held that, "it deserves to be mentioned that two of the five members who signed the impugned order had joined the Commission after more than one and half months of the date of hearing. Therefore, the only possible inference which can be drawn is that they had mechanically signed the order and such an order cannot but be treated as vitiated due to flagrant violation of the basics of natural justice."

The COMPAT quoted Supreme Court of India in this matter. The question whether the one who hears must decide was considered by the Supreme Court in Gullapalli Nageswara Rao and Others vs. Andhra Pradesh State Road Transport Corporation and Others, and it was held that an order passed by a person who had not heard the arguments offends the principle of judicial procedure. The Supreme Court held in that case, "... In the case of quasi-judicial proceedings, the authority

empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interest in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is one the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceedings and the hearing given, in violation of that principle, are bad."

"The second objection is that while the Act and the rules framed there under impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules imposes a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argued to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold the said procedure followed in this case also offends another basic principle of judicial procedure."

The Competition Appellate Tribunal followed the decision of Union of India vs. Shivraj where a three Judge Bench of Supreme Court reiterated the principle laid down in Gullapalli Nageswara Rao's case. In Union of India vs. Shivraj it was held that:

"This Court in Rasid Javed vs State of U.P. following the judgement in Gullapalli Nageswara Rao, held that : ( Rasid Javed case 17, SCC p. 796, para 51)

'... a person who hears must decided and that divided responsibility if destructive of the concept of judicial hearing is too fundamental a proposition to be doubted.'

A similar view has been reiterated by this Court in Automotive Tyre Manufacturers Association vs. Designated Authority, wherein this Court dealt with a case wherein the Designated Authority (DA) under the relevant statute passed the final order on the material collected by his predecessor-in-office who had also accorded the hearing to the parties concerned. This Court held that the order stood vitiated as it offended the basic principles of natural justice."

In view of the above, the law on the issue can be summarized to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice."

Hob'ble Mr. Justice G. S. Singhvi speaking as the chairperson and sole member of the COMPAT concluded that, "By applying the ratio of the above noted judgements to the facts of this case, I hold that the impugned order is vitiated due to violation of one of the important facets of the principles of natural justice and is liable to be set aside only on that ground."

This decision reaffirms the old principle of natural justice that who heard the case should decide it. The reason COMPAT considered it gross violation of natural justice was that two of the members were not even joined the CCI when the hearing of the case was going on. COMPAT considered it mechanically signing on papers of judgment by those two members. After COMPAT's adverse decision, the Chairman of the CCI Ashok Chawla defended their decision by saying that, "such instances do not result in 'great miscarriage of justice'. The members look at written submissions which are equally important in addition to the oral submissions. We don't think there is any great miscarriage of justice but we respect the judgment and we will try to adhere to it more strictly in the future. But it is also a fact that hearings go over a long period of time. They are not essentially related to one particular day; it is possible that on some day some member may not be present." The decision of COMPAT gave a message that by any adjudicatory authority the rules of natural justice should not be breached. The basic principles of natural justice and fair play should be followed by every authority.